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OFFICE FOR CIVIL RIGHTS

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September 8, 2017

XXXXX X. XXXXX, XXXXX XXXXX  
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XXXXX, XXXXX XXXXX

Re: Docket # 07-10-6001

Dear XXXXX. XXXXX:

This letter is to notify you of the resolution of the above-referenced compliance review initiated by the U.S. Department of Education (Department), Office for Civil Rights (OCR). The compliance review assessed whether Pittsburg State University (the University), Pittsburg, Kansas, provided female students an equal opportunity to participate in the University's intercollegiate athletic program by effectively accommodating their interests and abilities and providing opportunities for financial assistance to members of both sexes in proportion to the participation rate of men and women in the intercollegiate athletics program. OCR's compliance review also examined whether the University provided equal athletic opportunities for female students with regard to the benefits and opportunities in all other aspects of the University's intercollegiate athletics program as described in this letter.

OCR initiated this compliance review under Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving federal financial assistance (FFA) from the Department. The University is a recipient of FFA from the Department. Therefore, OCR has jurisdiction to investigate this matter under Title IX.

OCR's investigation thus far included a comprehensive review and analysis of documents and other data pertinent to the compliance review issues. OCR examined University policies and procedures, student enrollment data, athletic participation data and financial aid data; practice and competitive schedules; and publications such as media guides, game programs, posters and pocket schedules. During onsite visits to the University, OCR visually inspected practice and competitive facilities and locker rooms, coaches' offices, University-provided athletic equipment and supplies, and equipment storage areas. OCR interviewed the University's athletic director, the senior women's administrator, the Title IX coordinator, sports information personnel, athletic trainers, strength and conditioning staff, the athletic administrative assistant, as well as all head coaches and most assistant coaches. OCR also solicited information from male and female student athletes regarding their experiences in the University's intercollegiate athletics program through an electronically distributed survey.

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

In this compliance review, OCR identified compliance concerns regarding the accommodation of athletic interests and abilities, the provision of athletic financial assistance to student athletes, and the University's Title IX notice. Prior to OCR completing its investigation, the University submitted the enclosed Resolution Agreement (Agreement) on August 30, 2017, which when fully implemented, addresses these compliance concerns. OCR found insufficient evidence to establish the University failed to provide equal athletic opportunities for female students with regard to the benefits and opportunities in all other aspects of the University's intercollegiate athletics program. The following is a statement of the applicable regulations and legal standards and a summary of the information obtained to date regarding OCR's investigation of the University's athletic program.

### **Applicable Legal and Policy Standards**

The Title IX implementing regulation, at 34 C.F.R. § 106.41(a), states generally that “no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient [of Federal financial assistance], and no recipient shall provide any such athletics separately on such basis.”

In this review, OCR examined whether the University provided female students an equal opportunity to participate in its intercollegiate athletics program by effectively accommodating their interests and abilities, in accordance with the Title IX implementing regulation at 34 C.F.R. § 106.41(c)(1). The implementing regulation states that in determining whether equal athletic opportunities are provided for males and females, OCR considers whether the selection of sports effectively accommodates the interests and abilities of members of both sexes to the extent necessary to provide equal opportunity. OCR also examined whether the University provides its athletes scholarship opportunities in proportion to the number of students of each sex participating in intercollegiate athletic. The provision of athletic scholarships or grants-in-aid is addressed in the Title IX implementing regulation at 34 C.F.R. § 106.37(c), which states that “to the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating” in intercollegiate athletics. In accordance with 34 C.F.R. § 106.41(a) and (c), OCR also examined the University's program to determine whether it was providing female students an equal opportunity to benefit from the University's intercollegiate athletics program.

**ISSUE I: Whether the University discriminated against female students by denying them an equal opportunity to participate in intercollegiate athletics.**

### **Legal Standard**

The regulation implementing Title IX, at 34 C.F.R. § 106.41(c), states that a recipient that operates or sponsors athletic teams must provide equal opportunities for members of both sexes to participate in its intercollegiate athletics program. In determining whether a recipient provides equal athletic opportunities for males and females, OCR considers whether the selection of sports

and levels of competition offered effectively accommodate the interests and abilities of members of both sexes.<sup>1</sup>

OCR uses a Three-Part Test to assess whether a University provides equal participation opportunities for individuals of both sexes. The Three-Part Test provides three avenues for measuring compliance with the requirement to provide individuals of each sex with nondiscriminatory opportunities to participate in intercollegiate athletics. Each part of the Three-Part Test is an equally sufficient and separate method of complying with the Title IX regulatory requirement to provide nondiscriminatory athletic participation opportunities.

The Three-Part Test examines:

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.

If an institution meets any part of the Three-Part Test, OCR will determine that the institution has provided each sex with equitable opportunities to participate. If the University's athletic program also equitably provides each sex with the level of competition reflective of their respective abilities, OCR will determine that the University is effectively accommodating athletic interests and abilities.

### **Findings and Analysis**

OCR examined whether the University provided female students an equal opportunity to participate in its intercollegiate athletics program by effectively accommodating their interests and abilities, in accordance with 34 C.F.R. § 106.41(c)(1).

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

Under Part One of the Three-Part Test, OCR considered whether the University provided intercollegiate level athletic participation opportunities for female students in numbers substantially proportionate to their respective full-time undergraduate enrollments. 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; i.e.,

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<sup>1</sup> 34 C.F.R. § 106.41(c)(1) (2017).

a team for which there is a sufficient number of interested and able students and enough available competition to sustain an intercollegiate team.

To determine whether competitive opportunities were substantially proportionate to enrollment, OCR first established the number of intercollegiate athletic participation opportunities for the 2014-15 academic year. In order to establish the number of athletic participation opportunities, OCR reviewed the squad lists the University provided to OCR. OCR counted the number of actual athletes participating<sup>2</sup> in each competitive sport.<sup>3</sup>

As indicated in the chart below, the participation rate of women in the University’s intercollegiate athletics program during the 2014-15 school year was not proportionate to female undergraduate enrollment at the University during that year. There was a 21.1% difference between the participation rate of female student athletes and overall female student enrollment.

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

<b>Program</b>	<b>Rate of Participation</b>	<b>Rate of Enrollment</b>
<b>Men</b>	<b>286 (73.1%)</b>	<b>2,902 (52%)</b>
<b>Women</b>	<b>105 (26.9%)</b>	<b>2,684 (48%)</b>
<b>Total</b>	<b>391</b>	<b>5,586</b>

The 21% disparity between the athletic participation and respective enrollment rates for male and female students was significant. OCR does not require exact proportionality between participation and enrollment for the underrepresented sex, but rather substantial proportionality.

Under Part I of the test, OCR may also consider opportunities to be substantially proportionate when the number of opportunities that would be required to achieve proportionality would not be sufficient to sustain a viable team. A viable team is a team for which there are a sufficient number of interested and able students, and enough available competition to sustain an intercollegiate team. In making the assessment, OCR may consider the average size of teams offered for the underrepresented sex, a number that might vary by institution. The average size of an athletic squad for females at the University was 21 athletes. OCR determined the University would need to provide 159 additional athletic opportunities to the current athletic program for females to reach exact proportionality, which is well beyond the average team size of 21. Based on the rates of participation and enrollment for the 2014-15 school year, OCR determined that the University was not providing equivalent intercollegiate level participation opportunities for female students in numbers substantially proportionate to their enrollment.

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<sup>2</sup> Generally, OCR counts all student athletes listed on a team’s squad or eligibility list who are on the team as of the team’s first competitive event. Under the interests and abilities analysis, a student athlete who participates in more than one sport is considered a participant in each sport.

<sup>3</sup> An extracurricular activity not involving competition as its purpose is not considered a competitive sport for purposes of the interests and abilities analysis.

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

Under Part Two of the Three-Part test, an institution may demonstrate compliance by showing that it has a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex. Part Two examines an institution's past and continuing remedial efforts to provide nondiscriminatory participation opportunities through program expansion.

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 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.

First, OCR reviewed the University's history of intercollegiate program expansion. All sports comprising the men's program were intercollegiate by 1962. The University added no sports to the men's program after 1926, although two sports, baseball and golf, were reinstated in 1991 and 1986, respectively, after being discontinued for a period of several years. In May 2014, the University suspended the men's golf program, allowing the athletes to retain their scholarships for the 2014-15 school year even though the team did not compete during that year. The women's intercollegiate program began in 1974, two years after the enactment of Title IX, with the commencement of volleyball and women's basketball. All teams comprising the women's intercollegiate program were established at the University by 1979. University administrators could not explain why women's track and field and women's cross country were suspended from 1983 to 1987 and from 1982 to 1986, respectively, while the University continued offering men's track and field and men's cross country during those years.

OCR next determined whether there was evidence of a continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex. At the time OCR interviewed the athletic director and the Title IX coordinator, the University did not have a written policy or procedure for adding or eliminating sports, and was not in the process of implementing a plan for expanding the University's intercollegiate athletics

program. The University had not added a women's team or expanded the women's intercollegiate program since 1979, and thus did not have a record of adding intercollegiate teams, upgrading teams to intercollegiate status, or expanding the women's intercollegiate athletics program. Further, the University did not have a nondiscriminatory policy or procedure for requesting the addition of sports (including the elevation of club or intramural teams), and was not implementing a plan of program expansion that is responsive to the developing interests and abilities of female athletes. OCR concluded that the University does not have a history and continuing practice of program expansion which was demonstrably responsive to the developing interests and abilities of female athletes.

*Part Three: Effective Accommodation of Interest and Abilities*

In determining whether an institution is fully and effectively accommodating the interests and abilities of the underrepresented sex using Part Three of the Three-Part test, OCR considers whether: (a) there is an unmet interest in a particular sport; (b) there is sufficient ability to sustain a team in the sport, and (c) there is a reasonable expectation of competition for the team. An institution may determine the athletic interests and abilities of students by nondiscriminatory methods of its choosing, provided: the process takes into account the nationally increasing levels of women's interests and abilities, the methods of determining interest and ability do not disadvantage the members of the underrepresented sex, the methods of determining ability take into account team performance records, and the methods are responsive to the expressed interests of students capable of intercollegiate competition who are members of an underrepresented sex.

In determining whether there is unmet interest and ability to support an intercollegiate team in a particular sport, OCR uses a broad range of indicators, such as whether the institution uses nondiscriminatory methods of assessment when determining athletic interests and abilities of students; whether a viable team for the underrepresented sex recently was eliminated; and the frequency of the institution's assessments.

OCR also evaluates the interests of the underrepresented sex by examining indicators, such as requests by students and admitted students that a particular sport be added, requests for the elevation of an existing club sport to intercollegiate status, participation in club or intramural sports, results of interviews, surveys or questionnaires of students and admitted students regarding interest in particular sports, and the participation rate of admitted students in interscholastic sports and other sports leagues that operate in areas from which the institution draws its students.

Finally, OCR determines whether there is a reasonable expectation of intercollegiate competition for a particular sport in the institution's normal competitive region. In evaluating available competition, OCR will look at available competitive opportunities in the geographic area in which the institution's athletes primarily compete.

*The University's Assessment of Unmet Interests and Abilities of Students*

The University conducted four annual athletic interest and ability surveys in the springs/summers of 2013, 2014, 2015, and 2016. Each survey was offered to students through the University's email system between early April and late August each year, which coincides with the

University's fall enrollment cycle. The 2013 survey included all undergraduate students at the University including new students. The 2014, 2015 and 2016 surveys were distributed only to new students, including freshmen and transfer students. None of the four annual surveys asked students to indicate whether they currently participate in athletics at the University and if so, in what sport. The surveys also did not ask in which sport(s) students earned a high school varsity letter or in which sport(s) students participated in competitive clubs or teams outside of high school. Further, the surveys did not allow students to provide additional information or comments about their interest, experience, and ability, and did not request contact information for those student athletes who may have been willing to provide additional information to the University. OCR reviewed the University's analysis of the 2013 and 2014 survey results, but not the University's analysis of the 2015 and 2016 survey results.

At the time OCR interviewed the athletics director and the Title IX coordinator, the University did not have a process to review student participation in club or intramural sports as a possible indicator of student athletic interest, or to gather information about athletic participation in high schools, amateur athletic associations, and community sports leagues that operate in areas from which the University draws its students. As previously noted, the University did not have a process through which students can request that a particular sport be added to the University's athletics program or that a club or intramural sport be elevated to the intercollegiate level. Based on the preponderance of the evidence collected thus far, OCR determined the University had not satisfied Part Three of the Three-Part Test.

#### *Equivalent Levels of Competition*

In addition to the Three-Part Test, compliance is also assessed by examining whether the competitive schedules for men's and women's teams afford proportionately similar opportunities to compete. If an institutions' athletics program equitably provides each sex with the level of competition reflective of their respective abilities, OCR will determine that the institution is effectively accommodating athletic interests and abilities.

The Policy Interpretation outlines two factors to assess whether the quality of competition provided to male and female athletes equally reflects their abilities:

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

The University is a member of Division II of the National Collegiate Athletic Conference (NCAA) and the Mid-America Intercollegiate Athletics Association (MIAA). The University offers five of the eight women's sports sponsored by the MIAA and five of the nine men's sports sponsored by the MIAA. The University is one of three MIAA schools not offering tennis as

part of their women’s athletics program, and one of two schools not offering women’s soccer. The University is one of two MIAA schools not offering men’s golf.

All of the University’s men’s and women’s intercollegiate athletic teams compete in the MIAA conference and the NCAA Division II; however, the men’s and women’s basketball teams each play an NCAA Division I team once or twice a year. None of the coaches or student athletes expressed concern with the level of competition currently provided in the University’s intercollegiate athletics program, considering it to be appropriate to their abilities. OCR did not identify any significant disparities in the levels of competition provided to the men’s and women’s teams. Based on the evidence gathered thus far, the University is providing levels of competition which equivalently reflect the abilities of the male and female athletes in its intercollegiate athletics program. Therefore, OCR found no compliance concerns with regard to the levels of competition offered by the University’s intercollegiate athletic program.

Based on a preponderance of the evidence, OCR found the University did not provide participation opportunities for male and female students in numbers substantially proportionate to their respective enrollments during the 2014-15 school year. Women were underrepresented in the intercollegiate athletics program when compared to their representation in the student population. OCR further found the evidence did not demonstrate a history and continuing practice of intercollegiate athletic program expansion responsive to the developing interests and abilities of female students. Finally, OCR determined the University did not demonstrate that it fully and effectively accommodated the interests and abilities of the underrepresented sex (women) through its program. However, OCR has not reviewed the results of the 2015 and 2016 surveys issued by the University. Based on the evidence obtained by OCR thus far in its investigation, OCR determined it is appropriate to resolve this component with an Agreement pursuant to Section 302 of the *Case Processing Manual* (CPM).<sup>4</sup>

**ISSUE II: Whether the University discriminates against female athletes by not awarding athletic scholarships or grants-in-aid (Athletic Financial Aid) in proportion to the number of students of each sex participating in intercollegiate athletics.**

**Legal Standard**

The regulation implementing Title IX, at 34 C.F.R. § 106.37(c), provides that, “[t]o the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in...intercollegiate athletics.”

In determining compliance with this provision, OCR examines whether the University made proportionately equal amounts of financial assistance (scholarship aid) available to the men’s and women’s athletics programs. OCR calculates this by dividing the amount of aid available for members of each sex by the numbers of male and female participants in the athletics program and comparing the results.

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<sup>4</sup> The *Case Processing Manual* is available on OCR’s website at <http://www.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

An institution is considered to be in compliance if this comparison results in substantially equal amounts, or if a resulting disparity can be explained by adjustments to take into account legitimate, nondiscriminatory factors. If any unexplained disparity in the scholarship budget for athletes of either sex is 1% or less for the entire budget for athletic scholarships, there will be a strong presumption that such a disparity is reasonable and based on legitimate and nondiscriminatory factors. Conversely, there will be a strong presumption that an unexplained disparity of more than one percent is in violation of the regulation implementing Title IX. OCR evaluates each case in terms of its particular facts. For example, at those universities where 1% of the entire athletic scholarship budget is less than the value of one full scholarship, OCR will presume that a disparity of up to the value of one scholarship is equitable and nondiscriminatory. Even if an institution consistently has less than a 1% disparity, the presumption of compliance with Title IX might still be rebutted if, for example, there was direct evidence of discriminatory intent.

Where a disparity exists, i.e., where there is a “difference between the aggregate amount of money athletes of one sex received in one year, and the amount they would have received if their share of the entire annual budget for athletic scholarships had been awarded in proportion to their participation rates,” OCR considers whether the awards to the men’s and women’s programs were based on legitimate, nondiscriminatory factors. An institution must do more than merely assert a nondiscriminatory justification; it is required to demonstrate that its asserted rationale is in fact reasonable and does not reflect underlying discrimination. OCR therefore judges each justification on a case-by-case basis, and recognizes that disparities may be explained by a number of factors, such as actions taken to promote athletic program development, differences between in-state and out-of-state tuition at public colleges, legitimate efforts undertaken to comply with Title IX requirements, such as participation requirements, or unexpected fluctuations in the participation rates of males and females.

### **Findings and Analysis**

To determine compliance, OCR first reviewed the University’s policy and practice for awarding athletic financial assistance to student athletes. The University has no written policy for determining the scholarship funding levels for men’s and women’s athletic teams. Rather, the athletic director is responsible for determining the scholarship funding levels for all teams in the University’s intercollegiate athletics program consistent with NCAA and MIAA requirements. According to the athletic director, softball has been and continues to be the priority for receipt of additional scholarship funding, followed by men’s and women’s track and field, and baseball. Once the annual scholarship funding levels are determined, scholarships are awarded to individual student athletes at the head coaches’ discretion. Need-based or merit-based financial assistance is awarded to student athletes using the same policies and procedures for awarding need-based or merit-based financial assistance to the general student body.

According to the University, both the NCAA and MIAA have rules and regulations governing the amount of athletic financial aid the University can award to student athletes. Division II of the NCAA implements a partial-scholarship model, referred to as the equivalency model, to administer athletic financial aid. Division II schools are allowed to award athletic financial aid that is “equivalent” to a certain number of full athletic grants in aid in each sport. In addition,

during the 2014-15 academic year, the MIAA elected to place additional equivalency limits on certain sports.<sup>5</sup> Specifically, in the sports of football, men’s and women’s basketball, softball and volleyball, the member institution could provide up to 100% of the NCAA equivalency limit in each sport. In all remaining MIAA sponsored sports, the institution could provide athletic financial aid in an amount not to exceed 75% of the total NCAA equivalency limits for those sports. Equivalency limitations established by the NCAA and MIAA that are applicable to the University’s intercollegiate athletic program are detailed below. The chart below also identifies the equivalencies the University actually provided to athletes in each sport.

**2014-15 NCAA, MIAA and PSU Equivalencies<sup>6</sup>**

<b>Men’s Sport</b>	<b>NCAA Maximum Equivalency</b>	<b>MIAA Maximum Equivalency</b>	<b>PSU Provided</b>	<b>Women’s Sport</b>	<b>NCAA Maximum Equivalency</b>	<b>MIAA Maximum Equivalency</b>	<b>PSU Provided</b>
<b>Baseball</b>	9	6.75	5.94	<b>Softball</b>	7.2	7.2	4.02
<b>Basketball</b>	10	10	7.60	<b>Basketball</b>	10	10	8.47
<b>Cross Country/ Track and Field</b>	12.6	9.45	7.22	<b>Cross Country/ Track and Field</b>	12.6	9.45	6.67
<b>Football</b>	36	36	32.88	<b>Volleyball</b>	8	8	7.5
<b>TOTAL</b>	67.6	62.2	<b>53.64</b>		37.8	34.65	<b>26.66</b>

Based on the equivalencies in the chart above, during the 2014-15 school year, the softball team received a substantially lower percentage of the maximum allowed equivalencies than any other men’s or women’s athletic team at the University. The men’s and women’s basketball teams received 76% and 85% of the maximum equivalencies. Men’s and women’s track and field/ cross country teams received 76.4% and 70.6% of the allowed equivalencies. Football received 91.3% and volleyball received 93.75% of the maximum allowed equivalencies. Baseball received 88% of the allowed equivalencies, and softball received only 55.8% of the maximum allowed equivalencies.

OCR next reviewed the unduplicated participation rates for student athletes. During the 2014-15 school year, the University reported unduplicated participation rates of 90 female athletes and 258 male athletes, for a total of 348 athletes in its intercollegiate athletics program. The following chart shows the comparison between the unduplicated participant counts and the athletic financial aid amounts for men and women.

<sup>5</sup> According to the University’s NCAA compliance officer, however, effective the 2016-17 school year, the MIAA planned to eliminate limitations on the NCAA equivalencies for any sports in the conference.

<sup>6</sup> Source: NCAA Division II compliance resource (available on-line), MIAA financial aid rules (available on-line), and eligibility and aid documentation provided by the University in its data response.

### Comparison of 2014-15 Athletic Financial Aid for Men and Women

	# of unduplicated participants	% of participants	Amount of AFA	% of AFA
Women's Sports	90	25.9%	\$527,232.00	32.3%
Men's Sports	258	74.1%	\$1,105,393.00	67.7%
<b>Total</b>	<b>348</b>	<b>100%</b>	<b>\$1,632,625.00</b>	<b>100%</b>

During the 2014-15 school year, women comprised 25.9% of all athletes and received 32.3% of the athletic financial assistance (a 6.4 point difference); men comprised 74.1% of all athletes, and received 67.7% of the athletic financial assistance (a -6.4% difference). OCR determined that the difference in athletic financial aid and athlete participation rates was greater than one percent for the entire athletic scholarship budget for the 2014-15 school year in favor of the women's program. This disparity raised a compliance concern regarding whether the University was providing 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.

As explained above, OCR recognizes, however, that disparities such as this may be the result of legitimate nondiscriminatory factors, such as reasonable decisions regarding a course of program development. As noted above, the University does not have a written policy regarding the awarding of athletic financial assistance to student athletes. The determination of annual athletic scholarship funding levels for each team was left to the athletic director, who indicated that softball has been and continues to be the University's priority in terms of program development, including increasing scholarship funding, followed by men's and women's track and field and baseball. The low percentage of NCAA- and MIAA-allowed scholarship equivalencies awarded to the softball team (55.8%), and to a lesser extent to women's track and field (70.6%) during the 2014-15 school year, appear to support the need for further development of these programs, including increased scholarship funding.

OCR has not evaluated whether the 6.4% disparity favoring female athletes identified during the 2014-15 school year was the result of legitimate, nondiscriminatory factors that may explain the disparities in athletic scholarships awarded to male and female athletes. However, if the female participation rate increases, additional scholarships for women may be required for the University to demonstrate that it is in full compliance with its Title IX obligation to provide athletic scholarships in a non-discriminatory manner. Based on the evidence obtained by OCR in its investigation of this component to date, OCR determined it is appropriate to resolve this component with an Agreement pursuant to Section 302 of the CPM.

**ISSUE III: Whether the University discriminated against female students by denying them an equal opportunity to participate in other athletic benefits and opportunities.**

#### **Legal Standard**

The Title IX implementing regulation, at 34 C.F.R. § 106.41(a) and (c), also requires a recipient to provide equal athletic opportunity for members of both sexes in the provision of equipment

and supplies (34 C.F.R. §106.41(c)(2)); scheduling of games and practice time (34 C.F.R. §106.41(c)(3)); in the provision of travel and per diems (34 C.F.R. § 106.41(c)(4)); opportunity to receive academic tutoring and in the assignment and compensation of tutors (34 C.F.R. § 106.41(c)(5) & (6)); opportunity to receive coaching and in the assignment and compensation of coaches (34 C.F.R. § 106.41(c)(5) & (6)); in the provision of locker rooms, practice and competitive facilities (34 C.F.R. §106.41(c)(7)); in the provision of medical and training facilities and services (34 C.F.R. §106.41(c)(8)); in the provision of housing and dining facilities and services (34 C.F.R. § 106.41(c)(9)); in the provision of publicity (34 C.F.R. § 106.41(c)(10)); in the provision of support services (34 C.F.R. § 106.41(c)); and in the recruitment of student athletes (34 C.F.R. § 106.41(c)). In ensuring compliance with this section of Title IX, OCR examined each of these listed components of the University's program to ensure the University was providing female students an equal opportunity to benefit from its intercollegiate athletics program.

When conducting its analysis of these athletic program components, OCR first analyzes each factor within each program component to determine whether the benefits or services provided favor the men's program, favor the women's program, are the same, or if different, have a negative effect on students of one sex. Once each of the factors within a program component has been analyzed, OCR makes a determination for that program component. If the same or similar benefits or services within the program component are provided for all students, then there are no differences that negatively affect students of one sex thereby creating a disparity. If some factors favor teams of one sex, they may be offset by factors favoring teams of the other sex. For factors favoring teams of one sex to offset each other, they must have the same relative impact within the particular program component. Disparities need not necessarily be equal in number to offset each other. Where factors favoring students of one sex are not offset by the services or benefits provided to students of the other sex under other factors and there are no nondiscriminatory justifications, then a disparity exists for the program component. Once the determination is made for each program component, OCR analyzes all of the program components together to determine if there is compliance with the Title IX regulation. The result of this comparison is not to ensure identical benefits, opportunities, or treatment, but rather, to ensure that, overall, the athletics program provides equivalent benefits to men and women.

## **Findings and Analysis**

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

The Title IX regulation requires recipients to provide equal athletic opportunity for members of both sexes regarding the provision of equipment and supplies. 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. OCR weighs five factors to assess in determining compliance: (1) quality, (2) amount, (3) suitability, (4) the availability of equipment and supplies, and (5) the maintenance and replacement policies and practices of the institution regarding equipment and supplies.

### *Quality*

As part of its investigation, OCR interviewed the head coaches, and most of the assistant coaches, for every men's and women's team. All coaches interviewed by OCR rated the quality of the equipment and supplies provided to their teams as either good or excellent. OCR also collected information from student athletes through an online survey. Most athletes also rated the equipment and supplies provided to their teams as good or excellent; however, nine athletes rated their team's equipment and supplies as either fair or poor. Only one of those nine student athletes identified a specific concern: a female track athlete reported that the fabric of the uniform was too thin, requiring athletes to wear spandex underneath their uniforms. During OCR's August 2015 onsite, OCR inspected the equipment and supplies provided to each men's and women's athletic team. OCR did not observe any concerns with the uniforms provided for the women's track and field team. OCR observed that the quality of each team's equipment and supplies was at least adequate, and often more than adequate, for competition in each sport. Although OCR observed some slight differences in quality, overall OCR found no disparities based on team or gender in the quality of equipment and supplies the University provided for the men's and the women's athletic programs.

### *Amount*

All coaches interviewed by OCR rated the amount of the equipment and supplies provided to their teams as either good or excellent. Student athletes did not identify any concerns with the amount of equipment and supplies provided for their respective teams. OCR noted some differences in the amount of equipment and supplies provided to the men's and women's basketball teams during the 2014-15 school year. Specifically, the University provided the men's basketball team two pair of game shoes and the women's basketball team one pair of game shoes which is a difference favoring the men's program. The University also provided the men's basketball team three game uniforms while providing the women's team four game uniforms which is a difference favoring the women's team. Additionally, coaches for the women's teams reported providing their athletes more practice clothes than the coaches for the men's teams. Coaches for football and men's basketball reported providing their athletes with travel attire (a jacket, pants and shirt), but only the women's basketball team was provided travel attire. OCR determined that these differences between the men's and women's teams regarding the amount of apparel provided offset each other. During OCR's August 2015 onsite inspection of equipment and supplies, OCR confirmed the differences in the amount of certain items of apparel provided to athletes, but overall found no disparities based on team or gender in the amount of equipment and supplies the University provided for the men's and the women's athletic programs.

### *Suitability*

All coaches interviewed by OCR rated the suitability of the equipment and supplies provided to their teams as either good or excellent. During OCR's August 2015 onsite inspection, OCR observed no inadequacies regarding the suitability of the equipment and supplies provided to any teams in either the men's or women's athletic program.

### *Availability*

With respect to the availability of equipment and supplies, all coaches interviewed by OCR rated the availability of the equipment and supplies provided to their teams as either good or excellent. Most student athletes also rated the availability of their team's equipment and supplies as good or excellent. Six student athletes (three football, one baseball, one men's track and field and one women's track and field) rated the availability of their team's equipment and supplies as either fair or poor, but did not identify specific concerns with the availability of their team's equipment and supplies. Coaches and student athletes for all teams, except football and volleyball, acknowledged they shared some equipment with another team. None of the coaches or student athletes on these teams expressed any concern that the sharing of equipment as described above interfered with or limited their access to the equipment when they needed it for practice or competition. OCR determined that all sports, regardless of sex, were provided with substantially equivalent access to equipment and supplies.

### *Maintenance and Replacement*

The University did not have written policies or procedures regarding the replacement of equipment and supplies. Rather, coaches ordered and replaced equipment and supplies on an as-needed basis when financial resources permitted. Each school year, each men's and women's athletic team received allocated financial resources for the operation of the team. There were no line items in these funding allocations for any specific expense, including for equipment and supplies. Each coach had autonomy to determine the funding allocation equipment and supplies for the team each year. During interviews with OCR, no coaches identified any concerns with having the financial resources and ability to timely purchase or replace equipment and supplies as needed for their team.

Regarding equipment/student managers, during the 2014-15 school year the football team had a fulltime equipment manager who was responsible for the maintenance of all football equipment, checking equipment in and out to athletes, and the laundering of the teams' practice clothes and game uniforms. The men's and women's basketball teams both had student managers who laundered the teams' practice clothes and game uniforms, and help set up and take down equipment for games. The baseball team did not have an equipment manager, but received assistance from a student worker with laundering uniforms during the spring 2015. During the fall, the coaches laundered the baseball team's practice clothes and game uniforms. The softball team did not have an equipment manager or a student worker to assist with laundry; the coaches laundered the team's practice clothes and game uniforms. The volleyball team had one equipment manager, a student worker who laundered the team's practice clothes and game uniforms and helped set up and take down equipment for matches. The men's and women's track and field and cross country teams did not have equipment managers. The University's failure to provide the softball team with an equipment or student manager to launder practice clothes and game uniforms is a disparity with regard to the maintenance of equipment and supplies favoring the men's program.

Laundry facilities for the football team were located in the team's equipment room. The men's and women's basketball teams and the volleyball team shared laundry facilities located in the Weede Physical Education Building (Weede building). The softball and baseball teams shared laundry facilities located in the house by their practice and competitive facilities.<sup>7</sup> The student athletes on the men's and women's track and field teams and the men's and women's cross country teams laundered their own practice clothes and competitive uniforms. All of the laundry facilities were located in or near the practice and competitive facilities of the teams using them.

All of the University's men's and women's athletic teams had designated areas for equipment storage provided at or nearby their practice and competitive facilities. OCR's inspection of the storage areas for each men's and women's athletics team during OCR's August 2015 onsite visit established that each team's storage areas were adequate in size to meet the needs of each sport, and conveniently located in proximity to practice and competitive facilities to provide ready access to stored items when needed. OCR found no disparities in the University's provision of equipment storage space for the men's and women's athletics program.

All coaches interviewed by OCR rated the quality, amount, suitability, and availability of the equipment and supplies provided to their teams as either good or excellent. OCR noted differences in the amount of certain items of apparel provided to athletes, but overall found no disparities based on team or gender in the amount, quality, suitability or availability of equipment and supplies the University provided for the men's and the women's athletic programs.

With regard to the replacement of equipment and supplies, coaches ordered and replaced equipment and supplies on an as-needed basis. OCR determined that each team and coach had the flexibility to order and replace items for the team as needed on a regular and equitable basis.

Regarding the maintenance of equipment, neither the softball or baseball teams had an equipment manager; however the baseball team received assistance from a student worker with laundering uniforms during the spring 2015, which is the team's competitive season. During the fall, the coaches laundered the baseball team's practice clothes and game uniforms. Having softball coaches spend time laundering the team's practice and competitive uniforms required time from the coaches that could have otherwise been spent working with student athletes or performing other coaching responsibilities for the team. OCR determined the University's failure to provide the softball team with equipment or student manger to launder practice clothes and game uniforms – particularly during the team's competitive season – was a disparity with regard to the maintenance of equipment and supplies favoring the men's program.

OCR found no disparities regarding equipment and supplies favoring the women's program to offset the University's failure to provide the softball team with an equipment or student manger to launder practice clothes and game uniforms. Further, the University's failure to provide the softball team with equipment or student manger to launder practice clothes and game uniforms is not justified by a legitimate, nondiscriminatory reason. Consequently, OCR found a disparity in the program component, equipment and supplies, favoring the men's program and concluded the

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<sup>7</sup> The house is owned by the University and is the location for the offices of the softball and baseball coaches, and storage for both teams.

University, as of 2014-15, was not providing equivalent benefits and opportunities to the men's and women's athletic programs in this area.

## **2. Scheduling of Games and Practice Times – 34 C.F.R. § 106.41(c)(3)**

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

### *Number of Competitive Events*

In order to determine whether the University is providing equivalent opportunities to male and female athletes with respect to the number of competitive events, OCR considered the total number of competitive events provided for each intercollegiate athletics team, and compared the number of competitive events among similar sports as well as the number of competitive events allowed under NCAA guidelines for each sport. The men's and women's track and field and men's and women's cross country teams were excluded from this analysis. OCR determined that these teams competed at the same events throughout the 2014-15 school year; therefore, there were no differences in the number of competitive events in which the teams participated.

During the 2014-15 school year, the men's athletic teams participated in 95.4% of the NCAA maximum allowable contests permitted per sport under NCAA Division II guidelines. The women's athletic teams participated in 94.4% 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 92% and 89.3%, respectively, of the NCAA maximum allowable contests permitted per sport. None of the coaches interviewed by OCR or student athletes responding to OCR's athletic survey expressed any concern regarding the number of competitive opportunities provided for their team.

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

Practice schedules were prepared by coaches, approved by the facilities director and the NCAA compliance coordinator, and ultimately, the athletics director if there were questions or conflicts. There were no written University policies or procedures that governed the scheduling of athletic practice times other than those promulgated by the NCAA.

According to each team's NCAA documentation and information provided by coaches, during the 2014-15 school year, all men's and women's athletics teams had regularly scheduled in-season practices. While the number and length of practices varied somewhat by team, OCR found the number and length of practices for men's and women's teams to be comparable. Each men's and women's team practiced on average two to three hours five or six days a week when in season, with several coaches reporting shortened practices during competition. Coaches interviewed by OCR and student athletes surveyed by OCR reported that the number and length

of practice sessions for each team were sufficient. The time of day teams practiced also varied by team, although during the 2014-15 school year, most teams practiced in the mid- to late afternoon or early to mid-evening with the football team practicing in the early morning during the spring. Coaches interviewed by OCR and student athletes surveyed by OCR reported that the number and length of practice sessions for their team were sufficient.

All coaches interviewed by OCR reported practice occasionally conflicted with student athletes' class schedules, particularly the lab components that are often scheduled during the late afternoon in a number of degree programs. OCR noted no differences between the men's and women's teams regarding the frequency of conflicts with practice or the manner in which such conflicts were addressed by the University.

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

During the 2014-15 school year, competition schedules for MIAA conference games were established by the MIAA conference office and distributed to member schools. Coaches scheduled non-conference competition at their discretion after receiving the conference schedule. The competition schedules were approved by the facilities director and the NCAA compliance coordinator. They were also reviewed and approved by the athletics director for financial and travel purposes. All of the coaches interviewed by OCR 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. None of the student athletes responding to OCR's survey expressed any concerns with the days and times at which their teams competed.

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

Although all of the University's men's and women's athletic teams had the opportunity to participate in pre-season competition by invitation or solicitation, the men's and women's basketball teams were the only athletic teams electing to participate in pre-season competition. Both of these teams usually participate in one or two pre-season exhibition games against NCAA Division I institutions. Post-season competition for all of the University'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, 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 disparity between the men's and women's athletic programs regarding the number of competitive events. OCR also found no disparities between the men's and women's programs regarding the number, length, and time of day of practice opportunities, in the time of day that competitive events were scheduled, or with the opportunities to engage in pre- and post-season competition. OCR determined the University was providing equivalent benefits and opportunities to the men's and women's athletic programs in the scheduling of games and practice times in compliance with 34 C.F.R. § 106.41(c)(3).

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

In assessing compliance in this area, OCR considered modes of transportation, housing and dining arrangements furnished during travel, length of stay before and after competitive events, and per diem allowances for the 2014-15 school year.

#### *Modes of Transportation*

The University had no written policy governing the mode of transportation used by athletic teams for travel to away events during the 2014-15 school year. During interviews with OCR, the coaches for all men's and women's athletics teams indicated they had no concerns with the mode of transportation provided for their respective teams.

During the 2014-15 school year, the men's and women's teams generally used chartered busses and the University's 35-passenger busses for travel. The exception was that the men's and women's track and field teams and the men's and women's cross country teams used vans and University busses to travel to all competitive events except for their championship meets, for which the teams chartered a bus. These teams, which were the only teams to use vans, did so when the small number of athletes competing at particular meets did not justify use of a larger vehicle. Two track and field athletes, one male and one female, indicated that the University busses and vans were sometimes too cramped for the teams; however, to whatever the extent the vehicles may have been crowded, that circumstance did not create a disparity as it impacted both the men's and women's track and field teams. The University's 35-passenger busses include many of the same amenities as offered in the charter buses (i.e., air conditioning, arm rests, and upholstered seating); however, the University busses do not include a restroom. During the 2014-15 school year, two teams, football and women's basketball, traveled by air. These trips did not create a disparity between men's and women's athletic programs regarding the mode of transportation used for away events.

When comparing the overall modes of transportation used during the 2014-15 school year by the men's and women's basketball teams to travel to all competitive events, including conference and non-conference events, OCR found a slight difference favoring the women's basketball program in the use of chartered busses and University busses. When comparing the overall modes of transportation used by the football, baseball, volleyball and softball teams during the same year, OCR found that the softball and volleyball teams used chartered busses substantially less often than the football and baseball teams which is a difference favoring the men's program. The slight difference favoring the women's basketball program is not sufficient to offset the difference favoring the men's program.

OCR considered whether there was a legitimate nondiscriminatory explanation for the difference in the use of chartered and University busses. In this instance, the size of the travel squads for the football and baseball teams justified the use of the larger chartered busses for transportation over the University busses which have a capacity of only 35 passengers. The volleyball and softball teams have smaller travel squads which are readily accommodated by University busses.

### *Housing*

Regarding the length of stay at away events during the 2014-15 school year, all men's and women's teams made travel arrangements, including overnight travel, as needed in order to have an adequate amount of time before and after their competitive events. With regard to lodging on overnight trips, based on the information provided by coaches and student athletes, OCR found that the men's and women's teams generally stayed in moderately priced hotels, preferring those that offered complimentary breakfast. All men's and women's teams slept two or three athletes to a room with the exception of the baseball team which slept four athletes to a room. OCR found a disparity favoring the women's athletic program regarding the number of athletes per hotel room at away events.

### *Per Diem Allowance and Dining Arrangements*

The University did not have a policy requiring the use of a per diem for student athletes traveling for competition during the 2014-15 school year, and all of the coaches interviewed by OCR indicated they did not provide a per diem for student athletes when their respective teams traveled. None of the coaches interviewed by OCR expressed concern with the meals the University provided student athletes when traveling for competition. Student athletes who responded to OCR's athletics survey confirmed that they were not required to pay for meals when traveling with their respective teams and that their teams ate at a range of restaurants including buffets, moderately priced sit-down restaurants, pizza shops, and sandwich shops. Student athletes expressed no concerns with the meals the University provided for them when traveling to away events. Nonetheless, there were differences between teams in how some meals were handled. For example, the football team had a pre-game meeting and meal that included pancakes, spaghetti, grilled chicken breasts, green beans and potatoes at each away game. In some instances, the men's and women's track and field, softball, and baseball teams, purchased food items from a store for midday meals/snacks to eat at their competition site, rather than eating at a restaurant. In each instance, these meals were appropriate to the nature of the competition or to the team's competition schedule.

OCR found that both the men's and women's teams used similar modes of transportation when traveling to similar destinations, stayed in similar hotels and dined in comparable restaurants. When comparing the overall modes of transportation used by the football, baseball, volleyball and softball teams, OCR found that the softball and volleyball teams use chartered busses less often than the football and baseball teams, but determined the difference was due to travel squad size, a legitimate nondiscriminatory reason. Regarding housing, most coaches reported, and student athletes confirmed, that two to three athletes stay in a room when an overnight is required with the exception of baseball which reported that four student athletes share a room. When there were differences in the meals provided to student athletes, OCR determined these differences were due to legitimate nondiscriminatory reasons, specifically, the nature of the sport and time of day when the competitive events occurred. OCR found no disparities overall in the mode of transportation used or the number or quality of meals the University provided for the men's and women's teams when they were traveling to and from away events during the 2014-15 school year. OCR found a disparity favoring the women's athletic program regarding the number of athletes per hotel room at away events. OCR found no disparities regarding travel

and per diem allowances favoring the men’s program to offset the number of baseball athletes required to sleep in each hotel room when traveling to away games. Further, the number of baseball athletes required to sleep in each hotel room when traveling to away games was not justified by a legitimate, nondiscriminatory reason. Consequently, OCR found a disparity in the program component, travel and per diem allowance, favoring the women’s program and concluded the University was not providing equivalent benefits and opportunities to the men’s and women’s athletic programs in this area.

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

To determine whether the University provided the men’s and women’s athletic teams equivalent opportunity to receive academic tutoring and comparable assignment and compensation of tutors, OCR considered the following factors: (a) tutor availability, including the procedures and criteria for obtaining tutorial assistance; (b) tutor qualifications and experience, including training; and (c) rates of pay and employment conditions.

The University provided three academic supports for student athletes during the 2014-15 school year: the course “Athlete Transitions”; Academic Success Workshops; and traditional tutoring. Of these three academic supports, Athlete Transitions was the only academic support specifically provided for student athletes. The associate athletic director is the instructor for all sections of Athlete Transitions, a required course for all incoming student athletes. OCR found no differences in the University’s provision of this course for male and female students.

Tutoring sessions through the Student Success Center (SSC) during the 2014-15 school year were typically limited to three to five students on a first come, first served basis. During the week prior to midterm and final examinations, the SSC did not limit the number of students who attended the tutoring and review sessions; during these periods, there were typically 25 students per tutoring session. These sessions were equally available to all students at the University, regardless of a student’s participation in intercollegiate athletics. There was no athletics departmental oversight of the tutoring services provided, nor was there any specific team-based tutoring service provided to male or female athletes. There was an individual on staff at the SSC who assists students with scheduling tutoring, but this individual worked with all students requesting such assistance, not just student athletes. Information provided by student athletes and coaches confirmed that tutorial assistance was readily available to intercollegiate athletes at the University. OCR’s investigation did not reveal any concerns expressed by coaches or student athletes about the availability of tutoring services. Further, all student athletes were aware of tutoring services and how to access them, even if they had not personally accessed tutoring services themselves.

With regard to tutor qualifications, the director of the SSC said she contacted academic departments for tutor recommendations to ensure that tutors possess the necessary content knowledge. Tutors must have earned a grade of an “A” in the course for which they are applying as a tutor, as well as a recommendation from the applicable department. All academic tutors for the SSC receive training to help them develop their tutoring skills. No student athletes or coaches raised concerns regarding the quality of the tutors provided at the University. All tutors

employed by the SSC are paid minimum wage and receive a 25% pay increase each year they return to tutor at the SSC.

OCR found that while there were three different types of academic supports available to student athletes at the University, only the course Athlete Transitions was provided specifically for student athletes. OCR found no differences in the University's provision of this course for male and female athletes. The remaining academic supports, including individual peer tutoring and academic success workshops, were available to the entire student body, and there were no differences in how these services were accessed by or provided to student athletes and members of the general student body. OCR found the University's procedures for obtaining tutors were the same for male and female athletes, that the same tutors were used for male and female athletes who chose to access tutoring services, and that no teams were provided special tutoring services. OCR found that tutors were available to student athletes regardless of sex. OCR also found that the student load per tutor, rate of compensation, and tutor qualifications were comparable for tutors provided to both male and female athletes. Based on the analysis of the evidence, OCR concluded the University was providing equivalent benefits, treatment, services and opportunities with respect to the opportunity to receive tutoring and the assignment and compensation of tutors in compliance with 34 C.F.R. § 106.41(c)(5) and (6).

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

In determining compliance of the opportunity to receive coaching and assignment and compensation of coaches component, OCR considers three factors:

1. relative availability of full-time coaches;
2. relative availability of part-time and assistant coaches; and
3. relative availability of graduate assistants.

OCR considers two factors to be assessed in determining compliance for the assignment of coaches:

1. training, experience, and other professional qualifications; and
2. professional standing.

OCR considers seven factors in determining compliance for the compensation of coaches:

1. rate of compensation (per sport, per season);
2. duration of contracts;
3. conditions relating to contract renewal;
4. experience;
5. nature of coaching duties performed;
6. working conditions; and
7. other terms and conditions of employment.

### *Availability of Coaches*

For intercollegiate athletics programs, OCR's analysis of the availability of coaches consists of separating the women's from the men's program, determining the full-time equivalence (FTE)<sup>8</sup> of coaches in each program, computing the ratio of the FTE of coaches to the number of student 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.

According to the University's response and information provided by the coaches, all head and assistant coaches in the athletics program are full time employees of the University with 100% coaching duties for a 12 month calendar year, thus for this analysis, each coach is one FTE.

During the 2014-15 school year, the University had a total of 23 coaches on the intercollegiate athletic coaching staff. OCR considers 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; thus, the three coaches for these teams are excluded from the analysis. Consequently, the total number of coaches considered in OCR's analysis of the availability of coaches was 20.

The three men's teams had a total of three head coaches and 11 assistant coaches. The three women's teams had a total of three head coaches and three assistant coaches. OCR considered the differences in the number of available assistant coaches for the men's and women's programs during the 2014-15 school year. Baseball, softball, and volleyball each had one full time assistant coach. The men's basketball team had two full time assistant coaches,<sup>9</sup> and the women's basketball team had only one full time assistant coach. Football had eight full time assistant coaches. Although two similar sports, men's and women's basketball, had different numbers of assistant coaches during the 2014-15 school year with the men's team having two assistant coaches and the women's team having only one, the coaches for these two teams expressed no concern about the number of assistant coaches on their respective teams. Moreover, female basketball athletes responding to OCR's survey about their experiences in the University's intercollegiate athletics program generally reported that their team had a sufficient number of head and assistant coaches and that they were satisfied or very satisfied with the quality of coaching they received.

For the 2014-15 school year, when the total FTE of coaches for all sports in the women's program, which was six, was compared to the total FTE of coaches for the men's program, which was 14 – a difference of eight FTE resulted in favor of the men's program. The overall ratio of coaches to athletes for the 2014-15 men's teams was 1:14 (193 athletes to 14 coaches); for the 2014-15 women's teams it was 1:7 (42 athletes to six coaches). The difference between the men's and women's teams regarding the coach to athlete ratio was seven athletes per coach favoring the women's program. OCR determined that the difference in total FTEs of coaching

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<sup>8</sup> FTE is based on the full calendar year. A full time coach is someone with 100% coaching duties for 12 months; a half time coach is someone with 100% coaching duties for 6 months or 50% coaching duties for 12 months; a quarter time coach is someone with 100% coaching duties for 3 months or 25% coaching duties for 12 months, etc.).

<sup>9</sup> Commencing with the 2015-16 school year, the men's basketball team also had only one assistant coach.

between the men's and women's program, which favored the men's program, was offset by the difference in coach to athlete ratios between the men's and women's programs that favored the women's program.

### *Assignment of Coaches*

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

According to the University's institutional data response, the number of coaches per intercollegiate team was determined prior to September 2010 when the current athletic director assumed that position at the University. As of the 2014-15 school year, no new intercollegiate athletic coaching positions had been added since 2010. Each athletic team at the University has one head coach and the number of assistant coaches was determined based on staffing levels at comparable peer institutions, the number of student athletes per sport, and the varied duties and responsibilities of coaches specific to their sports.

OCR considered the educational background and professional experience of each head and assistant coach in the University's intercollegiate athletics program during the 2014-15 school year. Only one coach, an assistant coach for the men's basketball team, had not earned a graduate degree in a coaching-related field as of the 2014-15 school year. For the purposes of this analysis, during the 2014-15 school year, the men's athletics program had a total of 13 coaches with combined high school and collegiate coaching experience ranging from seven to 33 years, with an average of 18 years of coaching experience per coach. The women's athletics program had five coaches with combined high school and collegiate coaching experience ranging from one to 20 years, and an average of ten years of coaching experience per coach. A comparison of the average years of coaching experience of all the coaches of the men's and women's teams revealed a difference of eight years of combined high school and collegiate coaching experience favoring the men's program.

Next, OCR removed the assistant coaches from its analysis and analyzed only the combined high school and collegiate coaching experience of the head coaches for the men's and women's teams. As of the 2014-15 school year, the head coaches of the three men's teams (football, men's basketball, and baseball) had coaching experience ranging from 19 to 30 years, with an average of 25 years of coaching experience per head coach. The head coaches of the three women's teams (volleyball, women's basketball and softball) had combined high school and collegiate coaching experience ranging from ten to 20 years, with an average of 14 years of coaching experience per head coach. A comparison of the average years of combined high school and collegiate coaching experience of the head coaches of the men's and women's teams revealed a difference of 11 years of experience favoring the men's program.

OCR considered whether the differences in the coaching experience between the coaches of the men's athletic program and the coaches of the women's athletic program favoring the men's athletic program created a disparity. A difference on the basis of sex constitutes a disparity in benefits or services only when it has a negative impact on athletes of one sex when compared

with benefits or services available to athletes of the other sex. OCR took into account the performance of teams comprising the intercollegiate athletic program during the 2014-15 school year. The chart below shows the coaching experience for the head coaches of the men’s and women’s athletic teams and each team’s 2014-15 win-loss record.

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

<b>Sport</b>	<b>Total Years of Coaching Experience</b>	<b>Win-Loss Record</b>	<b>% of Wins</b>
<b>Football</b>	28	12-1	92.3%
<b>Men’s basketball</b>	30	20-12	62.5%
<b>Baseball</b>	19	18-29	38.3%
<b>Volleyball</b>	12	10-20	33.3%
<b>Women’s basketball</b>	20	27-7	79.4%
<b>Softball</b>	10	36-19	65.5%

When looking at similar sports, the head women’s basketball coach and the head softball coach had fewer years of coaching experience than the head coaches of the men’s basketball and the baseball teams; however, their respective teams won a higher percentage of games than the men’s basketball team and the baseball team during the 2014-15 school year. OCR determined the evidence did not establish that the difference in coaching experience between the coaches in the men’s and women’s athletic programs constituted a disparity between the men’s and women’s programs.

*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 program. Specifically, OCR examines the rate of compensation, duration of contracts, conditions relating to contract renewal, experience, nature of coaching duties performed, working conditions, and other terms and conditions of employment.

As noted above, all head and assistant coaches in the athletics program were full time employees of the University with 100% coaching duties for a 12 month calendar year. All head and assistant coaches at the University had the primary responsibility of coaching, as well as responsibility for recruitment, monitoring of academics, fundraising, public relations, and administrative duties for their respective teams.

OCR compared the total of the coaching salaries paid to all coaches in the men’s athletic program to the total of the coaching salaries paid to all coaches in the women’s athletic program. During the 2014-15 school year, the University spent a total of \$1,052,872.00 for coaches’ salaries in the men’s and women’s athletics program. Of that, the University paid \$766,373.00 to coaches in the men’s athletic program and \$286,499.00 to coaches in the women’s athletics program.

In addition, OCR compared the total of the coaching salaries paid to head coaches in the men's athletic program to the total of the coaching salaries paid to head coaches in the women's athletic program. During the 2014-15 school year, the University spent a total of \$266,822.00 on the salaries of head coaches in the men's program and \$178,037.00 on the salaries of head coaches in the women's program with a difference of \$88,785.00 favoring the men's program. OCR also 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 University spent a total of \$499,551.00 on the salaries of assistant coaches in the men's program and \$108,462.00 on the salaries of assistant coaches in the women's program with a difference of \$391,089.00 favoring the men's program.

The comparisons of coaching salaries of head and assistant coaches in the men's and women's athletic programs showed an overall difference in coaching compensation favoring the men's program. Salaries paid to coaches in the football program were the primary factor contributing to the difference in 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 University's head football coach was one of the most experienced coaches in the University's intercollegiate athletic program with 28 years of collegiate coaching experience. The football team had a large squad (140 student athletes), which required a large coaching staff including eight full time assistant coaches. OCR found the differences in coaching salaries of the head and assistant coaches in the men's and women's athletic programs were the result of nondiscriminatory factors unique to the nature of the sport of football and to the individual football coaches at the University.

OCR's analysis further considered compensation differences between coaching staff in comparable sports such as men's and women's basketball, baseball and softball. During the 2014-15 school year, the University paid the head men's basketball coach a salary of \$86,489.00 and the head women's basketball coach \$82,627.00, with a difference of \$3,862.00 favoring the men's program. During the 2014-15 school year, the University paid the head baseball coach a salary of \$56,702.00 and the head softball coach a salary of \$45,633.00, with a difference of \$11,069.00 favoring the men's program. OCR considered whether these differences in salary were justified by nondiscriminatory factors. OCR found that the head coaches of both men's teams had more total coaching experience than the head coaches for the two women's teams. Specifically, the head men's basketball coach had 30 total years of coaching experience and the women's head basketball coach had 20 years of total coaching experience. The head baseball coach had 19 total years of coaching experience and is responsible for coaching a significantly larger team than softball; whereas the head softball coach, who coaches a smaller team, had ten total years of coaching experience.

In summary, OCR found differences in the compensation the University provided coaches in the men's and women's athletics programs favoring the men's program, but found overall that the differences in compensation were attributable to nondiscriminatory factors.

With respect to the availability of coaches, OCR determined the 2014-15 total coaching FTEs favoring the men's program was offset by the ratio of coaches to student athletes per team favoring the women's program. Concerning the assignment of coaches, OCR found that coaches for the men's and women's teams had comparable educational backgrounds. Further, OCR found differences between the amount of coaching experience of the coaches for the men's and women's athletic teams favoring the men's program, but determined the differences in coaching experience did not appear to impact the effectiveness of the coaching provided to the men's and women's teams, and thus did not constitute a disparity between the men's and women's athletic programs.

Concerning compensation for coaches, OCR determined that the University's total compensation for coaches during the 2014-15 school year favored the men's athletics program when compared to the women's athletics program. The difference in compensation between the men's and women's programs, however, was attributable to football, which had a significantly larger team that required a larger coaching staff, and to the individual qualifications of the head football coach who had 28 years of collegiate coaching experience. OCR noted that differences in coaching compensation in comparable sports also consistently favored the men's program during the 2014-15 school year, but were attributable to each coach's years of coaching experience. Overall, OCR determined that while there were differences in compensation between the men's and women's programs during the 2014-15 school year, which typically favored the men's program, these differences were attributable to documented nondiscriminatory factors such as years of coaching experience and team size.

In summary, OCR determined the University provided equivalent availability, assignment and compensation of coaches in the men's and women's intercollegiate athletic programs with any differences being attributable to nondiscriminatory factors. OCR concluded equivalent benefits, treatment and services were being provided to male and female athletes at the University in the opportunity to receive coaching and the assignment and compensation of coaches in compliance with 34 C.F.R. § 106.41(c)(5) & (6).

#### **6. 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.

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

**2014-15 Facilities by Team**

<b>Team</b>	<b>Competition Facility</b>	<b>Practice Facility(ies)</b>
Football	Carnie Smith Stadium	Carnie Smith Stadium; John Lance Arena
Men's Basketball	John Lance Arena (in Weede Physical Education Building)	John Lance Arena (in Weede Physical Education Building)
Baseball	Al Ortolani Field	Al Ortolani Field; Baseball/softball indoor facility
Men's Cross Country	None	Prentice Gudgen Track
Men's Track/Field	Carnie Smith Stadium (outdoor); none (indoor)	Carnie Smith Stadium; Prentice Gudgen Track; John Lance Arena
Volleyball	John Lance Arena (in Weede Physical Education Building)	John Lance Arena (in Weede Physical Education Building); PSU Student Recreation Center
Softball	PSU Varsity Softball Field	PSU Varsity Softball Field; Baseball/softball indoor facility
Women's Basketball	John Lance Arena (in Weede Physical Education Building)	John Lance Arena (in Weede Physical Education Building); PSU Student Recreation Center
Women's Cross Country	None	Prentice Gudgen Track
Women's Track/Field	Carnie Smith Stadium (outdoor); none (indoor)	Carnie Smith Stadium; Prentice Gudgen Track; John Lance Arena

During the 2014-15 school year, the University constructed a new athletic facility, the Plaster Center, and renovated the athletic facilities in the Weede Physical Education Building. The Plaster Center was opened for use in late spring 2015; Weede Physical Education Building renovations were completed in August 2015. As a result of the new facility, commencing with the 2015-16 school year, the men's and women's track and field teams use the Plaster Center as an indoor competitive and practice facility. Additionally, the football team uses the Plaster Center as an indoor practice facility. Other teams use the Plaster Center for practice during inclement weather. All other practice and competitive facilities used in the athletics program during the 2014-15 school year remained the same for the 2015-16 school year.

*Quality and Availability of Practice and Competitive Facilities*

In interviews with OCR, all coaches, except the head coaches for softball and baseball, rated the quality and availability of their team's practice and competitive facilities as excellent or good. The head coach for softball rated the quality and availability of their practice and competitive facilities as average; the head baseball coach rated the quality and availability of their practice and competitive facilities as fair. The softball head coach rated the quality of softball's practice field as average because it had no locker room, the infield was not level or graded and the material holds water, and there was a lot of variation in the outfield grass. Also, the dugouts were of poor quality, there were no bathrooms, and there was no storage. The softball coach

rated the quality of the team's competitive facility as average because the seating was poor, there was no press box, and there was no locker room. The baseball head coach said he rated baseball's practice and competitive facility as fair because it had no locker room and no press box.

All student athletes responding to OCR's survey about the University's intercollegiate athletics program rated the quality and availability of their respective team's practice and competitive facilities as either good or excellent, generally expressing no concerns about the quality and availability of those facilities.

During OCR's August 2015 onsite visit, OCR inspected the practice and competitive facilities used by each men's and women's athletic team. OCR noted that the baseball team had one field that it used for practice and competition; the softball team had one field for competition and one that was available for practice. OCR noted that overall, the competitive fields for the baseball and softball teams were of comparable quality. As noted above, the softball team also had a practice field. The practice field was used as a competition field when the softball team hosts tournaments. Baseball does not include tournament competition. According to the softball coach, the practice infield was not level or graded, the infield surface material held water, and there was a lot of variation in the outfield grass. OCR confirmed during its onsite inspection of practice and competitive facilities that as a competition field used only during tournaments, the softball practice field, although meeting regulations for competition, is of lesser quality than the actual competition fields used by the softball and baseball teams. The practice field dugouts and spectator seating were of poor quality and it had no bathrooms. OCR found the quality of the softball team's practice field when used as a competition field was a disparity favoring the men's program.

#### *Exclusivity of Practice and Competitive Facilities*

During the 2014-15 school year the men's and women's basketball, volleyball, and indoor track and field teams shared the John Lance Arena for practice. All teams also used the arena for inclement weather practice. The football team shared the Carnie Smith Stadium with the outdoor track and field team for practice. The only teams with any exclusive use of their practice facilities during the 2014-15 school year were the softball and baseball teams, and although the softball and baseball teams had exclusive use of their practice fields, they still shared an indoor practice facility. During the 2015-16 school year, with the Plaster Center fully operational, men's and women's basketball and volleyball continued to share the John Lance Arena for practice. Men's and women's track and field shared Plaster Center with the football team for indoor practice and with all teams for inclement weather practice and conditioning. The football team continued to share the Carnie Smith Stadium with the outdoor track and field team for practice. The softball team and the baseball team continued to have exclusive use of their practice fields and shared use of their indoor practice facility.

All men's and women's teams had exclusive use of their competitive facility for competitive events.

OCR found no disparities in the exclusivity of practice and competitive facilities in the University's intercollegiate athletics program; the University was providing equivalent exclusivity of practice and competitive facilities in the men's and women's athletics programs.

#### *Quality and Availability of Locker Rooms*

As noted above, during the 2014-15 and the 2015-16 school years, all of the University's intercollegiate athletic teams had locker rooms except for softball and baseball. Due to the facility renovation, OCR was unable to inspect the locker rooms used by the University's intercollegiate teams during the 2014-15 school year because those locker rooms had already been dismantled as part of the facility renovation. During OCR's August 2015 site visit, however, OCR did inspect the new locker rooms in the Plaster Center as well as the renovated locker rooms in the Weede Physical Education Building.

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 size of 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. Although smaller than the locker rooms provided for the other men's and women's teams, the locker rooms for the men's and women's track and field and the men's and women's cross country teams are comparably sized.

The men's basketball, women's basketball and volleyball teams all have identical lockers constructed from stained wood with a gorilla logo on the front. At the top of each locker is a storage compartment with a combination lock. Hooks for hanging clothes line the back wall of the middle section of the lockers, and the bottom is a seat that lifts to provide additional storage. The lockers for the football team are similar to those provided for the men's basketball, women's basketball and volleyball teams except they are larger in order to accommodate football equipment and have padded seats. Although smaller and of lesser quality than the lockers of other teams, the lockers for the men's and women's track and field and cross country teams are identical. The showers and restrooms in all of the locker rooms are similar in quality and quantity relative to team size.

Each team, except football, has a new team meeting room adjoining their locker room or located in close proximity to their team's locker room. The meeting rooms were of comparable size and quality. Each meeting room was fully carpeted and contained one 60-inch flat screen TV and 20 black padded folding chairs with the Gorilla logo on them. If requested by the coach, the meeting room also contained a projector and screen and a white board. The meeting room for the men's and women's track and field and men's and women's cross country teams also has a built-in sink with cabinets and a counter along one wall for studying. The football team has several meeting rooms in the fieldhouse at the stadium where they practice and compete, including two large rooms and several smaller rooms. The large rooms contain folding chairs for seating; the smaller rooms are furnished with a table and folding chairs. The University has not renovated these meeting rooms, but the rooms are of an adequate size to accommodate the entire football team, have restrooms, and contain needed tables and chairs, chalk and dry-erase boards,

and audio-visual equipment to facilitate football team meetings and coaches' meetings before, during, and after practice and games.

Student athletes who responded to OCR's survey regarding their experience in the University's athletics program did so based on their experiences during the 2014-15 school year. Athletes were aware that all teams (except softball and baseball) would have new or renovated locker rooms starting in the 2015-16 school year and those with specific concerns about the availability and quality of their locker rooms indicated their concerns would no longer exist with the completion of the new locker rooms.

During interviews with OCR, the head and assistant coaches for all sports, except softball and baseball, confirmed that their teams had exclusive use of their assigned locker rooms. The assistant coaches for men's and women's basketball, as well as the head coach for men's and women's track and field and cross country, acknowledged that their team locker rooms were used very occasionally by the University 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.

During interviews with OCR, coaches for men's basketball and volleyball said they assigned lockers to individual players for their tenure on the team with no sharing of lockers. The women's basketball coach said during the 2014-15 school year, the team did not have enough lockers for each athlete on the team to have her own locker; consequently, four athletes shared two lockers. The renovated locker room for the women's basketball team has enough lockers for each athlete to have her own locker starting in 2015-16. The head coaches for football and for men's and women's track and field and cross country said they assigned lockers to individual players for their tenure on the team with the exception of a few freshman who were required to share lockers because there were not enough for every athlete to have his or her own, even in the new locker rooms in Plaster Center used by these teams commencing in the 2015-16 school year.

During OCR's onsite visit, OCR noted that the football team's locker room contained 120 lockers; the men's and women's track and field locker rooms each contained 48 lockers.<sup>10</sup> During the 2014-15 school year, the football team had 140 athletes, the men's track and field team had 74 athletes and the women's track and field team had 50 athletes. Consequently, 40 football athletes, 52 men's track and field athletes, and four women's track and field athletes were required to share lockers during the 2014-15 school year. The impact of sharing lockers for the men's track and field team is largely mitigated by the scheduling of practices by competitive events so the entire men's track and field team generally does not use the locker room at the same time. Additionally, both men's and women's track and field teams must share space, and although, because of the team size, this has a greater impact on student athletes on the men's team, the practice of sharing locker rooms is consistent for these teams. In contrast, the need for 40 football athletes to share lockers during the 2014-15 school year is not mitigated by the nature or timing of the individual athlete's practice or competitive events as all players are dressing and going to their team practices or game events at the same time. OCR concluded the need for

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<sup>10</sup> According to the University's institutional data response, the old locker rooms used by football, and men's and women's track and field during the 2014-15 school year contained the same number of lockers as the renovated locker rooms OCR observed during the August 2015 onsite visit.

approximately 40 football players to share lockers was a difference which created a disparity favoring the women's program.

*Maintenance and Preparation of Practice and Competitive Facilities*

Facility custodial and maintenance staff complete all maintenance and preparation of practice and competitive facilities for football, men's and women's basketball, and volleyball except the coaches or players for men's basketball occasionally sweep the floor before practice. For softball and baseball, the University's physical plant staff mows the infield and outfield grass at their practice and competitive facilities. Coaches and players for softball and baseball, however, share responsibility for the preparation of the infield for practices and games. The University's custodial and grounds crew maintains the practice and competitive facilities for the men's and women's track and field teams. Athletic department staff, coaches and athletes share responsibility for setting up the pole vaulting areas, setting up and taking down hurdles and starting blocks, and raking/watering the sand pits. The men's and women's cross country head coach chooses to do all preparation (primarily marking the course) for competitive events for the men's and women's cross country teams.

All head and assistant coaches rated the maintenance and preparation of their practice and competitive facilities as excellent or good. Student athletes responding to OCR's athletics survey generally indicated that the maintenance and preparation of their practice facilities was good or excellent.

Regarding the availability of practice and competitive facilities, OCR found no disparities between the men's and women's athletic program. OCR did, however, find a disparity favoring the men's teams regarding the quality of practice and competitive facilities. As noted above, when the softball team hosts tournaments, it uses a practice field as a competition field that is of lesser quality than the actual competition fields used by the softball and baseball teams. OCR found no disparity between the men's and women's athletic programs regarding exclusivity of practice and competitive facilities. Although all men's and women's teams in the University's intercollegiate athletic program share practice facilities to some extent, all men's and women's teams have exclusive use of their competitive facility for competitive events. Regarding the availability and quality of locker rooms, OCR noted that commencing with the 2015-16 school year the University has provided all men's and women's teams (except softball and baseball) with new or renovated locker rooms which address all concerns raised by coaches and athletes regarding the quality and availability of locker rooms during the 2014-15 school year. Nonetheless, OCR found a disparity in the quality of the locker rooms provided for the men's and women's teams favoring the women's teams in that 40 football athletes were required to share lockers during the 2014-15 school year, and are continuing to share lockers. Regarding the maintenance and preparation of practice and competitive facilities, OCR found no disparity between the men's and women's athletic programs. The coaches and athletes on two men's athletic teams (baseball and track and field) and two women's teams (softball and track and field) shared responsibility with the University's physical plant staff for the maintenance and preparation of their practice and competitive facilities.

When OCR identifies disparities within a program component, OCR will determine whether the disparities have the same relative impact within the program component, and consequently offset each other. In this instance, OCR determined that the disparity between the competitive facilities of the softball and baseball teams favoring the men's program and the disparity between the number of male and female athletes sharing lockers favoring the women's program offset each other. Thus, OCR determined that overall the University was providing the men's and women's athletic programs with equivalent services, benefits and opportunities regarding the provision of locker rooms, and practice and competitive facilities in compliance with 34 C.F.R. § 106.41(c)(7).

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

To assess compliance in this area, OCR considers the availability of medical personnel and assistance, health, accident and injury insurance coverage for athletic participants, weight and conditioning facilities, availability and qualifications of athletic trainers, and quality and availability of training facilities.

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

During the 2014-15 academic year, a local orthopedic surgeon provided services on a volunteer basis at the athletic training center once a week. He also attended all home and away football games during 2014-15, although he did not travel with the team. Commencing with the 2015-16 school year, the University arranged for the orthopedic surgeon to be compensated on an hourly basis for the weekly clinic hours and for his travel expenses to away football games. He has injury clinic hours every Wednesday for all student athletes regardless of team or gender. Although all student athletes may see the orthopedic surgeon through his clinic, medical personnel do not attend team practices, home events, or away events for any teams except football. Attendance of medical personnel exclusively for football constitutes a difference favoring the men's athletic program with regard to the availability of medical personnel and assistance. The availability of medical personnel only at football games, however, is justified by a nondiscriminatory factor: according to NCAA research substantially higher rates of injury occur in football than in any other men's or women's athletic program offered at the University.

Annual physical examinations of student athletes are required and are performed on campus by student health services. During the 2014-15 school year, all student athletes, except men's and women's basketball athletes, were required to pay the \$20.00 fee for their physicals. Physicals for men's and women's basketball athletes were paid out of each team's budget.

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

The University provided health insurance coverage for all student athletes on all men's and women's teams, without regard to the team or gender of the athlete, during the 2014-15 school year. The insurance provided by the University was secondary insurance to supplement a student athlete's personal health insurance if the athlete had his or her own health insurance. For student athletes without personal health insurance, the insurance provided by the University was the primary insurance coverage.

*Availability and Quality of Weight and Conditioning Facilities*

Commencing in the spring 2015, all men's and women's intercollegiate athletic teams at the University use the new weight and conditioning facility in the Plaster Center. Prior to that time, including most of the 2014-15 school year, all teams used the weight and conditioning facility in the Weede Physical Education Building.

Coaches and student athletes consistently described the weight and conditioning facility in the Weede Physical Education Building as old, outdated, small, and dirty. Athletes required the use of two rooms to complete a full workout. They noted that all of their concerns with the old weight room in the Weede building were eliminated with the opening of the new weight and conditioning facility in the Plaster Center in April 2015. In fact, most of the coaches told OCR that both the quality and the availability of the new weight and conditioning facility in the Plaster Center were excellent, with the remaining coaches rating it as good.

During the 2014-15 school year, the director of strength training and one graduate assistant provided all the strength and conditioning services for the University's intercollegiate athletic program. During the 2015-16 school year, he and two graduate assistants provided strength and conditioning services for University's athletic program. During the 2015-16 school year, the director of strength training oversaw the strength training and conditioning for all teams. The director worked specifically with the football and men's basketball teams by writing the strength and conditioning programming for these two teams and supervising their workouts. During the 2015-16 school year, one graduate assistant worked primarily with women's basketball, softball and volleyball; the other worked primarily with baseball and men's and women's track and field. The director of strength training reviewed the strength and conditioning programming prepared by the graduate assistants for their assigned teams. He also handled the pre-season workouts for the men's and women's cross country teams, which is all the cross country coach requested.

Team workouts were scheduled on a first come, first served basis. Coaches identified the time slots they prefer for their team work outs. If the time was available, the team's workout was posted on the schedule in the weight room. There were no scheduling conflicts between teams because the facility is large enough to accommodate multiple teams working out at the same time. Coaches did not supervise workouts for any athletic teams.

The director of strength training and the graduate assistants did much of the maintenance in the weight training facility, including the daily maintenance on the equipment such as oiling the treadmills, aligning belts, cleaning bars, tightening legs, and sweeping and mopping the floor. All athletes regardless of team or gender were expected to return equipment back to where they found it.

During OCR's August 2015 onsite visit, OCR inspected the new weight training facility in the Plaster Center. OCR was unable to inspect the old weight training facility in the Weede Physical Education Building as it had already been dismantled and the space renovated for another use. Based on OCR's onsite inspection of the new weight training facility in the Plaster Center, OCR found the size of the new facility, the number and quality of workout stations in the new facility,

and the maintenance of the new facility, sufficient to address all of the concerns identified by coaches and student athletes regarding the facility used during 2014-15 school year.

*Availability and Qualifications of Athletic Trainers*

During the 2014-15 school year, the University employed three athletic trainers—the head trainer, the assistant athletic trainer, and one graduate assistant to provide athletic training services in the University’s intercollegiate athletics program. During the 2015-16 school year, the University continued to employ the head athletic trainer and the assistant athletic trainer, and increased the number of graduate assistants from one to three. All of the trainers, including the graduate assistants, were certified by the National Athletic Trainer Association Board of Certification (NATABOC) and licensed by the state.

During the 2014-15 school year, the head trainer worked with the football and softball teams. The assistant trainer worked with the men’s and women’s basketball teams. The graduate assistant worked with the volleyball and baseball teams. During the 2015-16 school year, the head trainer continued to work with the football and softball teams. The assistant trainer continued to work with the men’s and women’s basketball teams. One graduate assistant was responsible for men’s and women’s track and field and cross country; one graduate assistant was responsible for volleyball in the fall and baseball in the spring; and one graduate assistant served as a rover, assisting in providing coverage to the football team in the fall and to the men’s and women’s basketball teams when the teams were competing in different locations at the same time.

The certified trainers were assigned to teams based on two factors. One factor was the contact collision injury potential of the sport. The head athletic trainer explained that, according to research from the NCAA, the rate of injury associated with football and with men’s and women’s basketball is higher than any other sport offered at the University. The second factor impacting trainer assignments was the season of the sport. The head athletic trainer, for example, was responsible for football and softball because they are opposite, non-conflicting seasons, enabling him to provide full training coverage for each sport. The University’s most experienced trainers, the head trainer and the assistant trainer, were each assigned to one men’s and one women’s team based on the nondiscriminatory factors described by the head trainer. The University assigned the roving graduate assistant to work with the football team because of the large numbers of football players on the team and the high rate of injury in the sport of football, and to work with the men’s and women’s basketball teams because due to the relatively high rate of injury in the sport of basketball.

During interviews with OCR, coaches for all teams indicated that during the 2014-15 school year, a certified trainer attended all of their competitive home events. Regarding away events, coaches for all teams except men’s and women’s track and field and cross country indicated a certified trainer attended all of their competitive away events. A certified trainer only traveled with the men’s and women’s track and field and cross country teams to their conference championships and NCAA nationals. Regarding practices, coaches for football and the men’s and women’s basketball teams reported that a certified trainer always attended their practices. Coaches for baseball, softball and volleyball indicated a certified trainer attended all in-season

practices, but no off-season practices. A certified trainer never attended the practices of the men's and women's track and field and cross country teams.

During interviews with OCR, coaches for all men's and women's teams except baseball rated the quality of their assigned trainers as good or excellent. All of the coaches rated the availability of their assigned trainer as good or excellent.<sup>11</sup> The head baseball coach explained that he rated the trainer assigned to the baseball team as average because the trainer was inexperienced. The coach noted, however, that whenever their assigned trainer was uncertain about a particular situation, he always consulted the head trainer to ensure an appropriate training response.

A number of student athletes from the men's and women's track and field and cross country teams expressed concern with the availability of trainers for their teams, however, the concerns identified by the men's and women's track and field and men's and women's cross country teams impact two men's teams and two women's team, and thus did not create a disparity in the University's provision of training services and facilities in the men's and women's athletic program.

#### *Availability and Quality of Athletic Training Facilities*

All men's and women's intercollegiate athletic teams at the University use the same training facility, located in the Weede Physical Education Building. The facility was renovated during the 2014-15 school year. OCR was unable to inspect the training facility used by athletes during the 2014-15 school year because that facility had already been renovated. OCR did, however, inspect the renovated training facility. The official hours of operation for the training facility were 6:30 a.m. to 6:30 p.m., but the facility was open for 30 to 45 minutes after the last practice each day was done, without regard to the team or gender of the team practicing.

The use of the University's training facility and services, including treatment and evaluation, were scheduled on a first come-first served basis and student athletes generally used the training facilities and services at their own discretion. Specific rehabilitation was scheduled with the trainer assigned to the athlete's team with the exception that shoulder injuries were usually assigned to the assistant athletic trainer because he was highly skilled in that area.

During interviews with OCR, coaches for all men's and women's teams rated the availability of the training facility used by their respective teams during the 2014-15 school year as good or excellent. Coaches for the men's and women's track and field and cross country teams rated the quality of the training facility used by their respective teams during the 2014-15 school year as good or average. Coaches consistently commented that the old training facility in the Weede building was old, small, and outdated. Coaches also noted that the new training facility alleviated all of the concerns they expressed about the facility used during the 2014-15 school year, and most told OCR that the quality of the new training facilities were good or excellent. Student athletes did not identify specific concerns with the training facilities used by their teams.

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<sup>11</sup> The coaches for the men's and women's track and field and cross country teams did not provide a rating since they had no assigned trainer during the 2014-15 school year. As noted above, commencing in 2015-16, a certified trainer was assigned to these teams.

OCR found no disparities in the availability of medical personnel and assistance; health, accident and injury insurance coverage for athletic participants; weight and conditioning facilities; availability and qualifications of athletic trainers; and quality and availability of training facilities. In addressing the five factors detailed above, OCR noted minor differences. Any such differences, however, did not favor one sex or the other, and/or were attributable to nondiscriminatory factors (e.g., the unique nature of contact sports, frequency of injuries, and the number of participants). OCR determined that the University's provision of medical and training facilities and services were equivalent or equivalent in effect for the men's and women's athletic programs in compliance with 34 C.F.R. § 106.41(c)(8).

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

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

According to coaches and student athletes, the University provided no special housing facilities and related services to student athletes during the 2014-15 school year. Student athletes were housed in the same facilities as the general student body. Teams that required housing when the University was not regularly in session had equal access to on-campus residential facilities at a modest daily fee, paid from the applicable team's budget.

With regard to dining services provided to student athletes during the 2014-15 school year, 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 were available at the same cost to the general student body. All coaches who required their student athletes to report to campus prior to the first day of classes and during breaks stated that dining costs were paid out of the applicable team's budget. Coaches either made dining arrangements for their student athletes during breaks or provided a per diem for meals. No coaches or student athletes expressed any concern over the dining arrangements made for student athletes when the University is not in session. No coaches reported the availability of training table meals for student athletes during the 2014-15 academic year, and while there were differences in those teams provided pre-home game meals, OCR determined that these differences sufficiently offset each other, as the same number of men's teams and women's teams were provided with pre-home game meals.

OCR determined that the University was providing female and male student athletes with equivalent housing and dining benefits under 34 C.F.R. § 106.41(c)(9).

#### **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, access to other publicity resources, and the quality and quantity of publications and other promotional devices featuring men's and women's programs.

*The Availability and Quality of Sports Information Personnel*

There are no written policies and procedures for providing sports information services to men's and women's intercollegiate athletic teams at the University. During the 2014-15 school year, the University had three sports information staff members: the associate athletic director for communication (AADC), the director of media relations and promotions (DMRP), and the sports photographer and designer. Although the University usually has a graduate assistant working in sports information, during the 2014-15 school year, sports information did not have a graduate assistant.

The AADC and the DMRP shared responsibility for providing sports information services at home and away competitive events for the men's and women's athletic teams, providing similar sports information services at all home games for football, men's and women's basketball, volleyball, baseball, and softball including keeping statistics, updating social media sites during the game(s), preparing pre- and post-game write-ups for the University's website, and facilitating coach and player interviews with media. At home meets for the men's and women's track and field teams and the men's and women's cross country teams, the AADC provided sports information services including preparing pre- and post-meet write-ups for the University's website and preparing individual press releases when a student athlete qualifies for post-season competition or sets a record.

During the 2014-15 school year, the AADC traveled to all away events for the football team. The AADC and the DMRP shared responsibility for providing sports information services at all away conference games and post-season games for the men's and women's basketball teams. The DMRP traveled to three away events for volleyball; the AADC traveled to one away baseball event; the DMRP traveled to four away softball events and to post-season softball events. Neither the AADC nor the DMRP traveled to any away events for the men's and women's track and field teams or the men's and women's cross country teams. According to the AADC, he did not travel often with the baseball team because the NCAA requires the home team to keep statistics during the game and provide them to the visiting team.

*Access to Other Publicity Resources*

OCR visited the University's website for athletics, including the webpages containing the archived stories for each of the University's intercollegiate athletic teams during the 2014-15 school year. OCR reviewed the archived stories and found that the University posted the following numbers of stories about each men's and women's team during the 2014-15 school year:

- Baseball - 56 stories
- Football - 63 stories
- Men's basketball - 64 stories
- Men's cross country - 14 stories
- Men's track and field - 41 stories
- Softball - 58 stories
- Volleyball - 55 stories

- Women’s basketball - 70 stories
- Women’s cross country - 13 stories
- Women’s track and field - 42 stories.

Overall, the men’s and women’s teams received comparable coverage on the University’s webpage.

During the 2014-15 school year, a regional radio station had a contract with the University to broadcast every University football game and all of the men’s and women’s basketball games. In addition, the football team usually has one televised game each season. All home games for football, volleyball, and men’s and women’s basketball were livestreamed on the internet. The radio and TV coverage received by the football team and the men’s and women’s basketball teams created a disparity favoring the men’s program. However, the radio and TV stations, not the University, determined which University athletic events they aired. The University has attempted, unsuccessfully to date, to secure more broadcast coverage for its men’s and women’s athletic teams, but cannot effectively demand that stations air additional sporting events unless the stations can sell advertising to support those broadcasts. Thus, the limited radio and TV coverage for men’s and women’s athletic events was the result of broadcaster preference and broadcast marketability which are nondiscriminatory factors beyond the University’s control.

#### *Quality and Quantity of Publications and Other Promotional Devices*

The University 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 University did not print any team’s 2014-15 media guide except for football. The football media guides were printed for sale as a fundraiser to benefit the entire athletics program.

OCR reviewed the media guide the University provided for each men’s and women’s team and noted the following:

- All of the media guides were between approximately 50 and 70 pages in length, except the football media guide which was approximately 200 pages in length.
- The media guides for all the men’s and women’s teams except baseball contained team rosters by name, number and home town, as well as the current season’s competitive schedule.
- All of the media guides, except the baseball media guide, included profiles and photographs of coaching staff and student athletes. Although OCR noted differences in the profiles and photographs of coaches and athletes by team, OCR found no disparities in the photographs and profiles favoring either the men’s or the women’s programs.
- All of the media guides included information to varying degrees about the team’s history; team highlights such as conference championships and NCAA post-season competition; individual and team statistics; individual and team records; all-Americans, all conference honorees, and letter winners; coaching records; and series history or records against conference opponents. The historical and statistical content in the media guide for the

football team was the most detailed and extensive of all the media guides with some information dating back to 1908 when the program originated. The historical and statistical content in the media guides of the remaining men's and women's athletic teams varied by team, but overall, was comparable.

All men's and women's teams had their own team poster for the 2014-15 school year, except for men's and women's track and field which shared a poster and men's and women's cross country which also shared a poster. All of the posters included the team's competitive schedule, were in full color, featured photographs of athletes, and were comparable in size and quality. The men's and women's track and field poster included action photos of both male and female track and field athletes.

During the 2014-15 school year, the University printed the competitive schedules for each men's and women's team, except for men's and women's cross country, on a pocket schedule. Football and volleyball shared one pocket schedule, men's and women's basketball shared another pocket schedule, and baseball, softball, and track and field shared a third pocket schedule. All three of the pocket calendars were comparable in size and quality.

During the 2014-15 school year, the University provided all men's and women's teams, except men's and women's track and field and men's and women's cross country, game day programs. The game day programs of the men's and women's teams were comparable with the exception of the football game day program. The game day program for the football team was 68 pages in length, containing a combination of full color pages with a few black and white pages. The front cover featured a football athlete and the back cover was a full page advertisement. The football program contained 40 pages of advertisements, including 28 full page ads. The program included information about the University's football coaching staff, the stadium, historical information about the football team, records set by University football athletes, a small color photograph of each player on the football team, rosters and depth charts for the home and opposing teams, and photographs and participant names of the spirit squad and the crimson and gold dancers. The remaining pages included information about the University's athletic staff, the president and board of regents, recognition of athletic donors and scholarships, as well as general information about the University. The football game day program surpassed the game day programs of all other men's and women's teams in length, content and quality creating a disparity favoring the men's program. In this instance, the football team's game day program, with its 40 pages of advertising, was a vehicle for fundraising for the benefit of the entire athletic department, as all proceeds from the sale of the advertising in the program were deposited in the general athletics account to be used by any men's or women's athletic team as needed. As such, the disparity was justified by a legitimate, nondiscriminatory factor.

Promotional activities for all men's and women's teams during the 2014-15 school year were organized by the assistant athletic director (AAD) for strategic partnerships and community outreach. In an interview with OCR, the AAD said she was responsible for selling football game day sponsorships and club room basketball sponsorships, as well as advertising on the outfield signs on the softball and baseball fields and the basketball scoreboard, and for advertising in game day programs. All of the proceeds from any of the sponsorships and advertising she secured were deposited into the general athletic fund to be used for the benefit of any of the

men's and women's athletic teams as needed. The AAD said she did not actively promote football games because the University has not had any difficulty filling the stadium on game days. The AAD said she organized the same promotional activities for the men's and women's basketball conference games. The University had a variety of races and contests at the halftime of each basketball game. In addition, the University had an ugly sweater contest in December and a buy one get one promotion for concessions at basketball games in February. The AAD told OCR the volleyball team did a "pink game" for breast cancer awareness; a Samaritans' Feet game to collect shoes for charity; and an international student night that included international cuisine. The AAD said she also organized joint promotional activities for the softball and baseball teams when they were both competing in town, including an Easter egg hunt that was promoted at local elementary schools and a cookout sponsored by the athletic department to get students out to the games. Softball also had a melanoma awareness game at which a cancer prevention organization gave away free tubes of sunscreen. The AAD said she generally did not do any promotional activities for men's and women's track and field and men's and women's cross country.

Regarding publicity, although there were slight differences in the services provided to the men's and women's athletics teams at home and away events during the 2014-15 school year, OCR determined overall the University provided comparable sports information and promotional services for the men's and women's athletics programs at competitive events. OCR noted that the University provided web-stories of comparable number and quality for the men's and women's teams throughout the 2014-15 school year. Although the radio and TV coverage of the football team created a disparity favoring the men's program, that disparity was the result of nondiscriminatory factors. The football media guide was longer and contained more detailed and extensive information about the University's football program than all the other teams' media guides. In contrast, however, the media guide for the men's baseball team lacked a number of significant features contained in other media guides, such as a team roster, competition schedule, coaches' profiles and photographs, and player profiles and photographs, offsetting the differences in the football media guide. Although OCR noted some differences between the media guides for the men's and women's basketball teams, and the softball and volleyball teams, overall the media guides for both the men's and women's teams were comparable in length, content and quality.

OCR noted no differences between the team posters and pocket schedules the University provided for the men's and women's athletic teams. All of the game day programs for the men's and women's teams were comparable in quality and availability except for the football team's game program. As noted above, although the football game program surpassed all of the other teams' game day programs in length, content and quality, the resulting disparity favoring the men's program was due to a nondiscriminatory reason. Based on the above, OCR determined the University was providing publicity equivalent or equivalent in effect for the men's and women's athletic programs in compliance with 34 C.F.R. § 106.41(c)(10).

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

In assessing compliance in this area, OCR considers 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.

During the 2014-15 school year, the responsibilities of the athletic department's administrative officer included overseeing special events, general office management, ordering office supplies (not team specific supplies); and scheduling the use of classrooms and meeting spaces for athletics. Additionally, she assisted with organizing team banquets for all teams and with game days for football, and men's and women's basketball. She was available to assist any intercollegiate team, but these three teams generally requested her assistance on game days because they have "bigger" game days. She said she did not assist coaches with travel arrangements, recruiting activities, or NCAA reporting.

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

All coaches for the men's and women's teams were provided a stipend for a cell phone for personal and business use during the 2014-15 school year. All head and assistant coaches indicated they were provided a laptop computer. Three coaches were also provided tablets—the head football coach, the head men's and women's track and cross country coach, and an assistant men's and women's track coach which is a slight difference favoring the men's athletic program. All of the coaches interviewed by OCR confirmed they had access to office equipment including printers, copiers and scanners, and had no unmet needs for office equipment. During OCR's August 2015 site visit, OCR confirmed that all coaches in the University's men's and women's athletics program had landlines in their offices with long distance services, and a computer and monitor, and that they had access to office equipment including printers, copiers and scanners.

All coaches for the men's and women's teams have private office space, except for four assistant coaches in the football program who share two offices. During OCR's onsite visit, OCR confirmed the sharing of offices by these teams, which was a slight difference between the men's and women's athletic program that favored the women's program and offset the slight difference regarding the provision of tablets that favored the men's program.

Based on the information analyzed, OCR determined that the University provided equivalent support services to the University's men's and women's intercollegiate athletic teams as required by 34 C.F.R. § 106.41(c).

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

In assessing compliance in this area, OCR considers the following: 1) whether coaches or other professional athletic personnel in the University's programs serving male and female athletes are provided with substantially equal opportunities to recruit; 2) whether the financial and other

resources made available for recruitment in the University's men's and women's teams are equivalently adequate to meet the needs of each program; and 3) whether the differences in benefits, opportunities, and treatment afforded to prospective student athletes of each sex have a disproportionately limiting effect upon the recruitment of athletes of either sex.

#### *Opportunities to Recruit*

During interviews with OCR, all head and assistant coaches reported that they participate in recruiting for their respective teams. During the 2014-15 school year, there were a total of 186 reported recruitment trips taken by men's and women's coaches. Coaches of men's teams took 125 recruiting trips, which comprised 67.2% of the total recruiting trips taken by coaches for men's and women's teams. Coaches of women's teams took 61 recruiting trips, which was 32.8% of the total recruiting trips taken by coaches for men's and women's teams. Although coaches for the men's teams took a substantially greater number of recruiting trips (primarily due to football) than coaches for the women's teams, the percentage of recruiting trips for women's teams was higher than the participation rate (26.9%) for the women's program. This result is consistent with the athletic director's stated objective (as discussed under Athletic Financial Assistance) of working to build the softball and women's track teams.

According to information provided by coaches, all teams generally recruit student athletes from the same regional area, including Kansas, Missouri, Oklahoma, Arkansas, Nebraska, and Texas. During the 2014-15 school year, coaches for two teams made recruiting trips outside the regional area described above. The softball coach made recruiting trips to Indiana and Colorado, and one of the football coaches made a recruiting trip to Arizona. Although none of the coaches interviewed by OCR quantified the amount of time they spent recruiting, all of them indicated they had adequate time to identify prospects, contact and communicate with prospects, and make recruiting trips to the locations of their choice.

#### *Financial and Other Resources*

As previously noted, each men's and women's athletic team received an annual allocation of funds for the operation of the team. There was no line item in the funding allocation for recruitment; rather, the head coach had discretion to determine how much of the team's allocated funds were used for recruiting student athletes.

Coaches of all men's and women's teams reported using a variety of methods to recruit prospective athletes, including written correspondence, email, social media, and the telephone. All coaches confirmed that the University provided the necessary resources and equipment to contact prospects, including laptops, cell phone stipends (discussed more fully under Support Services), landlines, and access to printers, copiers, and scanners. None of the coaches received any clerical or administrative support to assist them with recruiting activities.

All coaches interviewed by OCR stated that all travel expenses for recruiting trips were covered by the University, generally out of each team's allocated operating funds. Coaches reported using a variety of modes of transportation for recruiting trips, most often a courtesy car or program vehicle which were the least expensive modes of transportation available for recruiting and staying overnight at moderately priced hotels when needed. None of the coaches

interviewed by OCR indicated their team lacked the financial resources, or other resources, to recruit effectively for their team.

*Benefits, Opportunities, and Treatment of Prospective Athletes*

In the University’s response to OCR’s data request, the University provided the information in the chart below regarding the number of official recruiting visits for each team and the expenditures for official visits for each team during the 2014-15 school year. According to the University, during the 2014-15 school year, a total of \$11,094.17 was spent on official visits for recruitment. The chart below compares the amount of money spent on official recruiting visits for the men’s and women’s athletic programs to the participation rates of men and women in the University’s intercollegiate athletics program.

**2014-15 Comparison of Spending on Official Visits and Participation Rates**

<b>Program</b>	<b>Rate of Participation</b>	<b>Rate of Spending on Official Visits</b>
<b>Men</b>	<b>286 (73.1%)</b>	<b>\$8,944.75 (80.6%)</b>
<b>Women</b>	<b>105 (26.9%)</b>	<b>\$2,149.42 (19.4%)</b>
<b>Total</b>	<b>391</b>	<b>\$11,094.17</b>

During the 2014-15 school year, the men’s teams spent \$8,944.75, which comprised 80.6% of the total expenditures for official visits during the 2014-15 school year. The women’s teams spent \$2,149.42, which comprised 19.4% of the total expenditures for official visits. The lower percentage of expenditures for official visits for women’s teams is the result of the small numbers of official visits hosted by the softball and volleyball teams. The softball head coach told OCR that during the 2014-15 school year, even though only one prospect made an official visit to campus, 25 softball prospects made unofficial visits to campus. The head softball coach did not believe her ability to recruit effectively for softball was limited by her use of unofficial rather than official visits by prospects. The head volleyball coach said ten prospects visited campus during the 2014-15 school year, but only two visits were official visits. She explained that many volleyball players live within one and a half hours away from campus. They visit the campus during the day on a weekday, usually in the morning and early afternoon because they have volleyball club practice in the evenings and tournaments on the weekend. As a result, she said the volleyball team hosts few official visits. The head volleyball coach expressed no concerns about her ability to recruit effectively for the volleyball team with minimal use of official visits.

During the 2014-15 school year, as part of official campus visits by prospects for their respective teams, men’s and women’s teams paid for several types of expenses, including meals, lodging, transportation, and entertainment. OCR reviewed the expenses covered by each team during official visits and found no disparities between the men’s and women’s teams. Official visits for football, men’s and women’s basketball, and men’s and women’s track and field and cross country included on- and off-campus meals, off-campus lodging, and \$30.00 for the student host to cover entertainment. These five teams occasionally covered transportation costs for prospects.

Official visits by prospects for the baseball and softball teams included only off campus meals. Official visits for volleyball prospects included only on-campus meals and on-campus lodging. OCR noted a difference favoring the men’s program with regard to the type of expenses covered during official visits, but found that it did not create a disparity due to the small number of official visits hosted by the softball and volleyball teams.

OCR determined that coaches of both the men’s and women’s teams were provided with substantially equal opportunities to recruit, that the financial and other resources available for recruitment were equivalently adequate to meet the needs of each of the men’s and women’s teams, and that the benefits, opportunities and treatment afforded to prospective student athletes of each sex did not have a disproportionately limiting effect upon the recruitment of either male or female athletes. OCR determined that the University provided equivalent recruitment opportunities and services to the University’s men’s and women’s intercollegiate athletic teams in compliance with 34 C.F.R. § 106.41(c).

### **Issue III Overall Analysis and Conclusion of Other Athletic Benefits and Opportunities Components**

Based on a preponderance of the evidence, OCR determined there was insufficient evidence to support a finding of a violation of Title IX in the following components of the University’s intercollegiate athletics program: equipment and supplies; scheduling of games and practice times; opportunity to receive coaching and assignment and compensation of coaches; opportunity to receive tutoring and assignment and compensation of tutors; travel and per diem allowance; locker rooms, practice and competitive facilities; medical and training facilities and services; housing and dining facilities and services; support services; publicity; and recruitment.

As noted above, in the area of equipment and supplies, OCR found a disparity favoring the men’s program regarding the maintenance of equipment. Neither the softball nor baseball team had an equipment manager. The softball coaches laundered the student athletes’ practice clothes and game uniforms during the 2014-15 school year. During fall 2014, the baseball coaches laundered the baseball team’s practice and competitive uniforms, but during the spring, which is the team’s competitive season, a student worker laundered their uniforms. OCR determined the University’s failure to provide the softball team with an equipment or student manger to launder practice clothes and game uniforms – particularly during the team’s competitive season – was a disparity with regard to the maintenance of equipment and supplies favoring the men’s program.

As noted in the area of travel and per diem, OCR found a disparity favoring the women’s program regarding the number of athletes staying in each hotel room at away events. All men’s and women’s teams slept two to three athletes to a room with the exception of baseball, which slept four athletes to a room.

In the other nine components listed above, OCR found either no differences, minor differences that did not represent disparities, or disparities favoring one sex over the other which were offset by other disparities favoring the other sex or were justified by a legitimate, nondiscriminatory reason.

As stated above, once the determination has been made for each program component, OCR then analyzes all of the program components together to determine if there is compliance with the Title IX regulation. OCR considers the number and significance of disparities in the program components and compares the disparities to determine if these disparities offset each other. OCR determined that neither the disparity regarding maintenance of equipment and supplies favoring men under the equipment and supplies component nor the disparity regarding housing favoring women in the travel and per diem component were significant enough to constitute a violation, although both had the potential to negatively impact student athletes.

Where more than one program component involves a disparity not significant enough to result in a denial of equal opportunity, OCR will consider whether the combined disparities for these program components may result in a denial of equal opportunity when viewed overall. In this case, the disparities noted by OCR constituted a single disparity within their respective program components; however, one disparity favored the men's athletic program and one disparity favored the women's athletic program. OCR concluded the disparity regarding maintenance of equipment and supplies favoring men under the equipment and supplies component and the disparity regarding lodging favoring women in the travel and per diem allowance component offset one another. Thus, based on a preponderance of the evidence, OCR concluded there was insufficient evidence to support a finding that the University was in violation of 34 C.F.R. § 106.41 with regard to the other athletic benefits and opportunities afforded to female students participating in the University's athletic program.

### **Notice of Nondiscrimination**

The regulation implementing Title IX, at 34 C.F.R. §§ 106.8(a) and 106.9, requires that recipients publish a notice of nondiscrimination stating that the recipient does not discriminate on the basis of sex in its education programs and activities and that Title IX requires it not to discriminate in such a manner. The notice must state that questions regarding Title IX may be referred to the recipient's Title IX coordinator or to OCR, and include the name or title, office address, telephone number, and email address for the Title coordinator. The notice must be widely distributed to all students, employees, applicants for admission and employment, and other relevant persons.<sup>12</sup>

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<sup>12</sup>Additionally, the regulation implementing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, at 34 C.F.R. § 104.8(a) requires a recipient to notify participants, beneficiaries, applicants and employees, including those with impaired vision or hearing and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of disability in admission or access to, or treatment or employment in, its program or activity. The notice must also identify the individual designated to coordinate the recipient's compliance with Section 504. The regulation implementing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, at 28 C.F.R. §§ 35.106 and 107(a) requires public entities employing more than 50 persons to make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of Title II and its applicability to the services, programs, or activities of the public entity in a manner necessary to apprise such persons of the protections against discrimination provided by Title II. The regulation also requires public entities employing more than 50 persons to make available to all interested individuals the name, office address, and telephone number of the employee designated to coordinate and carry its responsibilities under Title II. The regulation implementing the Age Discrimination Act (Age Act), 42 U.S.C. § 6101, at 34 C.F.R. § 110.25(a) and (b) requires a recipient to notify its beneficiaries of the provisions of the Age Act and of the identity of the individual responsible for coordinating its

The University's notice of nondiscrimination states:

*Pittsburg State University prohibits discrimination on the basis of race, color, religion, sex, national origin, sexual orientation, age, marital status, ancestry, genetic information, or disabilities. The following person has been designated to address inquiries regarding the nondiscrimination policies: Director of Institutional Equity/Title IX Coordinator, 218 Russ Hall, 1707 S. Broadway, Pittsburg, KS 66762-7528, equity@pittstate.edu.*

OCR reviewed the University's website during the course of OCR's investigation and discussed revisions to the notice. OCR located the University's notice of nondiscrimination on the University's website for institutional equity by searching the University's website using the term "nondiscrimination." When OCR last reviewed the website, a link to the notice was located at the bottom of the University's main webpage, as well as the main webpages for housing and academic programs; however, OCR was unable to find the University's notice of nondiscrimination, or a link to it, posted on other University webpages that are likely to be visited by students and prospective students such as admissions and online applications, financial aid, and student life. OCR has not obtained printed copies of University publications to review the University's notice of nondiscrimination.

The University stated it is in the process of reviewing its notice of nondiscrimination and where the notice is published to ensure required information is consistently included. Based on this information, OCR determined it is appropriate to resolve this component with an Agreement pursuant to Section 302 of the CPM.

## **Conclusion**

On August 24, 2017, the University signed the enclosed Resolution Agreement (Agreement) which when fully implemented will ensure compliance in the accommodation of interests and abilities, the provision of athletic financial assistance, and the notice of nondiscrimination. The Agreement requires the University to provide athletic opportunities to its male and female athletes that are substantially proportionate to each sex's enrollment at the University, or to demonstrate that the interests and abilities of female students are fully and effectively accommodated by the University's current athletics program. The Agreement also requires the University to provide reasonable opportunities for each sex to receive athletic financial aid in proportion to the number of students of each sex participating in the University's athletics program. Finally, the Agreement requires the University to complete the revisions to its notice of nondiscrimination and to include the revised notice in electronic and printed publications that provide information about the University's programs, services, or policies to applicants, students, and employees.

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responsibilities under the Age Act by name or title, address, and telephone number. The regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, at 34 C.F.R. § 100.6(d) requires a recipient to make available to participants, beneficiaries, and other interested persons information about the applicability of Title VI to its programs in a manner that will apprise them of the protections against discrimination under Title VI.

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

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

The letter sets forth OCR's determination in an individual OCR compliance review. 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.

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.

Thank you for cooperation during this compliance review. If you have any questions, please contact XXXXX XXXXX, attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXX@ed.gov.

Sincerely,

Kelli Douglas  
Supervisory Attorney

Enclosure