UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

April 14, 2017

Christopher E. Hogan, Esq.
Newhouse, Prophater, Kolman & Hogan, LLC
5025 Arlington Centre Boulevard, 4th Floor
Columbus, Ohio 43220

Re: OCR Docket #15-16-2230

Dear Mr. Hogan:

This is to notify you of the disposition of the above-referenced complaint that was filed on August 26, 2016, with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against your client, Ohio Dominican University (the University). The complaint alleged that the University discriminated against female students on the basis of sex. Specifically, the complaint alleges that the University is denying equal athletic opportunity to female students, because both men's and women's basketball games are held on the same days and at the same locations and the women's basketball games are always scheduled prior to the men's basketball games.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the University is subject to Title IX.

Based on the complaint allegation, OCR opened an investigation into the legal issue of whether the University is providing equal athletic opportunity for members of both sexes as required by the Title IX implementing regulation at 34 C.F.R. § 106.41(c).

Background

In the complaint, the Complainant alleged that the University discriminates against female students on the basis of sex by denying equal athletic opportunity to female students, because both men's and women's basketball games are held on the same days and at the same locations and that the women's basketball games are always scheduled

prior to the men's basketball games. The University admits that when men's and women's basketball games are scheduled on the same day and at the same location, the women's game is always scheduled first and the men's game second. OCR reviewed the 2016-2017 schedules for the University's men's and women's basketball teams and confirmed that this is the case.

Applicable Legal Standards

The Title IX implementing regulation, at 34 C.F.R. § 106.41(a), states, in relevant part, 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. The regulation, at 34 C.F.R. § 106.41(c), requires a recipient which operates or sponsors interscholastic, intercollegiate, club, or intramural athletics to provide equal athletic opportunity for members of both sexes. In determining whether a recipient is providing equal opportunity in intercollegiate athletics, the regulation requires the Department to consider, among others, the following athletic program components: provision of equipment and supplies; scheduling of games and practice time; travel and per diem allowance; opportunity to receive coaching and academic tutoring; assignment and compensation of coaches and tutors; provision of locker rooms, practice and competitive facilities; provision of medical and training facilities and services; provision of housing and dining facilities and services; and publicity.

To assess whether a recipient is providing equal athletic opportunities, OCR also references the Department's "Intercollegiate Athletics Policy Interpretation," issued December 11, 1979, and found at 44 Fed. Reg. 71,413 (Policy Interpretation). The Policy Interpretation addresses the additional program components of recruitment of student athletes and provision of support services that are to be considered, and sets forth factors to assess compliance within each program component. For example, compliance in the program component of scheduling of games and practice times is assessed by examining, among other factors, the equivalence for men and women of:

1) the number of competitive events per sport;

2) the number and length of practice opportunities;

3) the time of day competitive events are scheduled;

4) the time of day practice opportunities are scheduled; and

5) the opportunities to engage in available pre-season and post-season competition.

The Department assesses compliance of the institution's athletic program by comparing the availability, quality and kinds of benefits, opportunities, and treatment afforded members of both sexes. Institutions will be in compliance if the compared program

components are equivalent. Under this standard, identical benefits, opportunities, or treatment are not required, provided the overall effect of any differences is negligible. If comparisons of program components reveal that treatment, benefits, or opportunities are not equivalent in kind, quality or availability, a finding of compliance may still be justified if the differences are the result of nondiscriminatory factors.

The Department bases its overall compliance determination upon an examination of the following: whether the policies of an institution are discriminatory in language or effect; or whether disparities of a substantial and unjustified nature exist in the benefits, treatment, services, or opportunities afforded male and female athletes in the institution's program as a whole; or whether disparities in benefits, treatment, services, or opportunities in individual segments of the program are substantial enough in and of themselves to deny equality of athletic opportunity.

Voluntary Resolution Prior to Conclusion of Investigation

Before OCR completed its investigation, the University expressed interest in resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual* (the *Manual*). The *Manual* provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient expresses an interest in resolving the complaint. This does not constitute an admission of liability on the part of a recipient such as the University, nor does it constitute a determination by OCR that the University has violated any of the laws that OCR enforces. The provisions of the resolution agreement are to be aligned with the complaint allegations or the information obtained during the investigation and consistent with applicable regulations.

The University has signed the enclosed resolution agreement, which, once implemented, will resolve the allegation in the complaint. The agreement requires the University to conduct a self-evaluation of all aspects of its general athletic program components, and develop and implement a plan of action steps it will take to address any inequity based on sex in any area of its athletic program.

In light of this agreement, OCR considers the allegations in the complaint to be resolved, and we are closing our investigation as of the date of this letter. OCR will, however, monitor the University's implementation of the agreement. Should the University fail to fully implement the agreement, OCR will reopen the case and take appropriate action to ensure the University's full compliance with Title IX.

Conclusion

This concludes OCR's investigation of the complaint and should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, a complainant may file another complaint alleging such treatment.

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

We appreciate the cooperation of University staff during the resolution of this complaint. We look forward to receiving the University's first monitoring report, which is due by March 31, 2018. Please send the first monitoring report to Vincent Cheverine, who will be monitoring the University's implementation of this agreement. Mr. Cheverine may be reached by telephone at (216) 522-2676 and by e-mail at Vincent.Cheverine@ed.gov. If you have any questions about this letter, you may contact Donald S. Yarab, Supervisory Attorney/ Team Leader, at (216) 522-7634.

Sincerely,

/s/

Meena Morey Chandra
Director

Enclosure