



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

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July 28, 2015

Robert Barchi
President
Rutgers, The State University of New Jersey
83 Somerset Street
New Brunswick, New Jersey 08901-1281

Re: Case No. 02-08-6001
Rutgers, The State University of New Jersey

Dear President Barchi:

This is to advise you of the resolution of the above-referenced compliance review that was initiated by the U.S. Department of Education (Department), Office for Civil Rights (OCR). The compliance review examined whether Rutgers, The State University of New Jersey (the University) provides male and female students an equal opportunity to participate in the University's intercollegiate athletic program by effectively accommodating their interests and abilities and providing opportunities for athletic financial assistance to members of both sexes in proportion to the participation rate of men and women in the intercollegiate athletics program. The review also examined whether the University provides equal athletic opportunities for male and female students with regard to the benefits and opportunities in all of the components of the University's intercollegiate athletics program.

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 financial assistance from the Department. The University is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate these issues under Title IX.

During the course of the investigation, OCR determined that the University was out of compliance relative to the following components of the University's intercollegiate athletics program: travel and per diem allowances; locker room, practice and competitive facilities; publicity; and support services. On January 20, 2015, OCR entered into a resolution agreement

(Agreement) with the University to resolve the noncompliance noted above. OCR found insufficient evidence of a violation of Title IX regarding the following components of the University's intercollegiate athletics program: the provision of equipment and supplies; scheduling of games and practice times; opportunity to receive tutoring and assignment and compensation of tutors; opportunity to receive coaching and assignment and compensation of coaches; medical and training facilities and services; housing and dining facilities and services; recruitment; the effective accommodation of the interests and abilities of female athletes; and the proportionate provision of athletic financial assistance to men and women in the intercollegiate athletics program. The University has subsequently provided data to OCR regarding academic year 2013-2014, which OCR will further evaluate to determine whether the University was in compliance with respect to accommodation of the interests and abilities of female athletes and the proportionate provision of athletic financial assistance to men and women in the intercollegiate athletics program for academic year 2013-2014. The data are discussed in detail below.

The University has agreed to provide data and other information during OCR's monitoring of the Agreement, and OCR may conduct additional visits and request additional information as necessary to determine whether the University has fulfilled the terms of the Agreement and is in compliance with the regulation implementing Title IX, at 34 C.F.R. § 106.41, which was at issue in this compliance review.

OCR will not close the monitoring of the Agreement until it has determined that the University has complied with the terms of the Agreement and is in compliance with the regulation implementing Title IX, at 34 C.F.R. § 106.41. Should the University fail to fully implement the Agreement and to provide data to OCR in order for OCR to determine compliance with the Agreement, as well as the Title IX requirements relating to the accommodation of athletic interests and abilities and the provision of athletic financial assistance, OCR will take appropriate action to ensure the University's compliance with Title IX.

Background

The University, located in New Brunswick, New Jersey, is comprised of five residential campuses. As of academic year 2013-2014, the University reported that there were 31,630 full time undergraduate students enrolled; 15,908 (50.3%) male, and 15,722 (49.7%) female.

In academic year 2014-2015, the University offered the following nine intercollegiate men's sports: baseball, basketball, cross-country, football, golf, lacrosse, soccer, track and field, and wrestling. The University also offered the following thirteen intercollegiate women's sports: softball, basketball, crew, cross-country, field hockey, golf, lacrosse, soccer, track and field, gymnastics, swimming/diving, tennis, and volleyball. The University is a member of the National Collegiate Athletic Association (NCAA) and competes at the Division I level as a member of the Big Ten Athletic and Academic Conference.¹

¹ At the initiation of this review in 2008, the University was a member of the Big East Conference. The University joined the Big Ten Conference on July 1, 2014. All of the University's intercollegiate teams are now part of the Big Ten Conference.

OCR initiated this compliance review during academic year 2007-2008. OCR reviewed data provided by the University and conducted on-site visits in academic years 2007-2008 and 2012-2013 to inspect the University's facilities, including athletic locker rooms; team rooms; practice and competitive facilities; equipment and supplies; medical and training facilities and services; and support services (office space and equipment). OCR also interviewed student athletes, athletic administrators responsible for the overall operation of the athletic program, athletic support personnel, and coaches. In addition, OCR surveyed equipment managers, coaches and athletes. OCR also obtained updated data throughout the review, including by conducting additional surveys of coaches and athletes during academic year 2013-2014. During the negotiations of the Agreement, OCR discussed the status of various aspects of the athletics program with the University's representatives; and OCR has noted throughout the letter any changes reported by the University.²

Applicable Legal Standards

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

In this review, OCR examined whether the University provides male and female students an equal opportunities to participate in its intercollegiate athletics program by effectively accommodating their interests and abilities, in accordance with the regulation implementing Title IX, at 34 C.F.R. § 106.41(c)(1). The regulation states that in determining whether equal athletic opportunities are provided for males and females, OCR considers whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes.

OCR also examined whether the University provides its athletes opportunities for financial assistance in proportion to the number of students of each sex participating in intercollegiate athletics. The provision of athletic scholarships or grants-in-aid is addressed in the regulation implementing Title IX, at 34 C.F.R. § 106.37(c), which states that "to the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in ... intercollegiate athletics."

The regulation implementing Title IX also requires a recipient to provide equal athletic opportunities for members of both sexes in the provision of equipment and supplies (34 C.F.R.

² As part of the review, OCR also considered information provided in two complaints filed against the University (Case Nos. 02-07-2097 and 02-07-2103). The complaints alleged that the University failed to provide equal athletic opportunities to female athletes in the areas related to athletic financial assistance, scheduling of games and practice times, travel and per diem allowances, medical and training facilities and services, and dining facilities and services. OCR has addressed the complaint allegations as part of its investigation and resolution of this compliance review.

§106.41(c)(2)); travel and per diem allowance (34 C.F.R. § 106.41(c)(4)); scheduling of games and practice times (34 C.F.R. §106.41(c)(3)); opportunity to receive academic tutoring and assignment and compensation of tutors (34 C.F.R. § 106.41(c)(5) & (6)); opportunity to receive coaching and assignment and compensation of coaches (34 C.F.R. § 106.41(c)(5) & (6)); provision of locker rooms, practice and competitive facilities (34 C.F.R. §106.41(c)(7)); provision of medical and training facilities and services (34 C.F.R. § 106.41(c)(8)); provision of housing and dining facilities and services (34 C.F.R. § 106.41(c)(9)); provision of publicity (34 C.F.R. § 106.41(c)(10)); provision of support services (34 C.F.R. § 106.41(c)); and recruitment of student athletes (34 C.F.R. § 106.41(c)).³

Facts and Analysis

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

OCR examined whether the University provides male and female students an equal opportunity to participate in its intercollegiate athletics program by effectively accommodating their interests and abilities, in accordance with 34 C.F.R. § 106.41(c)(1). OCR considered whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes.

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

1. Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
2. Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of that sex; or
3. Where the members of one sex are underrepresented among intercollegiate athletes, and the 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 one part of the Three-Part Test, OCR will determine that the institution provides each sex with equitable opportunities to participate. Each part of the Three-

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

Part Test is an equally sufficient and separate method of complying with the Title IX regulatory requirement to provide nondiscriminatory athletic participation opportunities. If an institution meets any part of the Three-Part Test, OCR will determine that the institution is meeting this requirement. If an institution's athletics program also 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.

Part One: Substantially Proportionate Participation Opportunities

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

In academic year 2011-2012, there were 15,311 (51.5%) males and 14,384 (48.5%) females enrolled at the University as full-time undergraduates. The University provided a total of 697 participation opportunities in its intercollegiate athletics program.⁴ The University provided 364 (or 52.2% of the total) athletic opportunities for male students, and 333 (or 47.8% of the total) athletic opportunities for female students.⁵ Based on this information, OCR determined that in academic year 2011-2012, females had 333 (47.8%) of the athletic opportunities while they represented 14,384 (48.5%) of the overall enrollment. In order to meet Part One of the Three-Part Test, the University would need to provide intercollegiate level participation opportunities for male and female students in numbers substantially proportionate to their respective enrollments. The difference between enrollment and opportunities was a difference of .7%. In order to achieve exact proportionality, female athletic opportunities would need to be increased by approximately 10 for a total of 343. OCR determined that during that school year the University had an average female team size of 24. The underrepresentation of 10 athletes is less

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

⁵ Number of female athletes, by team, in academic year 2011-2012: Softball 16, Basketball 13, Lacrosse 29, Soccer 33, Crew 60, Track-Indoor 34, Track-Outdoor 33, Cross-Country 15, Golf 8, Tennis 9, Field Hockey 23, Gymnastics 20, Swimming 27, and Volleyball 13. Number of male athletes, by team, in academic year 2011-2012: Baseball 37, Basketball 17, Lacrosse 46, Soccer 32, Football 117, Track-Indoor 34, Track-Outdoor 33, Cross-Country 10, Golf 8, and Wrestling 30.

than the average team size of 24, thus the University satisfied Part One for academic year 2011-2012.

In academic year 2012-2013, there were 15,375 (51.4%) males and 14,553 (48.6%) females enrolled at the University as full-time undergraduates. The University provided a total of 694 participation opportunities in its intercollegiate athletics program. The University provided 365 (or 52.6% of the total) athletic opportunities for male students, and 329 (or 47.4% of the total) athletic opportunities for female students.⁶ OCR determined that in academic year 2012-2013, females had 329 (47.4%) of the athletic opportunities while they represented 14,553 (48.6%) of the overall enrollment. The difference between enrollment and opportunities is a difference of 1.2%. In order to achieve exact proportionality, female athletic opportunities would need to be increased by approximately 16 for a total of 345. OCR determined that during that school year the University had an average female team size of 23. The underrepresentation of 16 athletes is less than the average team size of 23, thus the University satisfied Part One for academic year 2012-2013.

Subsequent to the University's signing the Agreement in January 2015, the University provided the following information to OCR. For academic year 2013-2014, the University reported the enrollment of 31,630 full-time undergraduate students, including 15,908 (50.3%) males and 15,722 (49.7%) females. The University explained that as of July 1, 2013, it merged with the University of Medicine and Dentistry of New Jersey; and that as a result of this merger, its enrollment of undergraduate students increased and a significant number of new students were female. The University's overall percentage of female full-time undergraduate students increased by 1.1% (1,169 students) from academic year 2012-2013 to academic year 2013-2014. The University's data indicated that the University provided 694 athletic opportunities, including 359 (or 51.7% of the total) athletic opportunities for male students, and 335 (or 48.3% of the total) athletic opportunities for female students in academic year 2013-2014.⁷ The difference between the reported enrollment and opportunities for academic year 2013-2014 is 1.4%. In order to achieve exact proportionality, female athletic opportunities would need to be increased by approximately 20 for a total of 354. Based on data the University provided to OCR for that school year, the University had an average female team size of 24. Accordingly, the underrepresentation of 20 athletes is less than the average team size of 24, which would support that the University satisfied Part One for academic year 2013-2014. The University further asserted that it is working to increase the participation rates of new female students in the athletics program. OCR will review and verify the University's reported participation opportunities by examining team rosters and interviewing coaches as part of its monitoring of the Agreement. In addition, if the University was not in compliance with Part One, OCR would

⁶ Number of female athletes, by team, in academic year 2012-2013: Softball 17, Basketball 14, Lacrosse 29, Soccer 29, Crew 52, Track-Indoor 36, Track-Outdoor 38, Cross-Country 12, Golf 10, Tennis 8, Field Hockey 21, Gymnastics 21, Swimming 22, and Volleyball 20. Number of male athletes, by team, in academic year 2012-2013: Baseball 34, Basketball 15, Lacrosse 55, Soccer 32, Football 110, Track-Indoor 34, Track-Outdoor 33, Cross-Country 11, Golf 8, and Wrestling 33.

⁷ Number of female athletes, by team, in academic year 2013-2014: Softball 20, Basketball 21, Lacrosse 32, Soccer 30, Crew 52, Track-Indoor 35, Track-Outdoor 36, Cross-Country 14, Golf 8, Tennis 8, Field Hockey 20, Gymnastics 18, Swimming 21, and Volleyball 20. Number of male athletes, by team, in academic year 2013-2014: Baseball 35, Basketball 16, Lacrosse 53, Soccer 24, Football 115, Track-Indoor 33, Track-Outdoor 36, Cross-Country 10, Golf 10, and Wrestling 27.

examine whether the University met either Part Two or Part Three of the Three-Part Test for academic year 2013-2014.

Equivalent Levels of Competition

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

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

All University teams compete at the NCAA Division I level. Some teams also compete against institutions outside of the Division I level. Men's and women's teams play a similar number of non-Division I events. OCR's investigation did not reveal, and coaches and athletes stated that they did not have concerns, that athletes were not provided genuine athletic participation opportunities or that the opportunities provided were not equivalent based on sex.⁸ Accordingly, OCR determined that the University has provided equitable levels of competition for those students afforded athletic opportunities.

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

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

In determining compliance with this provision, OCR examines whether the 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 amounts of aid available for the members of each sex by the numbers of male and female participants in the athletics program and comparing the results. An institution is considered to be in compliance if this comparison results in substantially equal amounts, or if a resulting disparity can be explained by adjustments to take into account legitimate, nondiscriminatory factors.⁹ If any unexplained disparity in the scholarship budget for athletes of either sex is one percent or less for the entire budget for athletic scholarships, there will be a strong presumption that such a disparity is reasonable and based on legitimate and nondiscriminatory factors. Conversely, there will be a strong

⁸ The scheduling of competitive events for men's and women's teams is discussed below.

⁹ A "disparity" in awarding AFA refers to the 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.

presumption that an unexplained disparity of more than one percent is in violation of the regulation implementing Title IX. OCR evaluates each case in terms of its particular facts. For example, at those colleges where 1% of the entire athletic scholarship budget is less than the value of one full scholarship, OCR will presume that a disparity of up to the value of one full scholarship is equitable and nondiscriminatory. Even if an institution consistently has less than a 1% disparity, the presumption of compliance with Title IX might still be rebutted if, for example, there was direct evidence of discriminatory intent.

OCR determined that the University's policies and procedures relating to the granting of athletic financial assistance are facially neutral and are not discriminatory in language on the basis of sex.

In academic year 2011-2012, a total of 606 athletes participated in the University's athletics program.¹⁰ There were 320 males, representing 52.8% of athletic opportunities; and 286 females, representing 47.2% of opportunities. The University provided a total of \$10,217,931 in AFA.¹¹ Of this amount, \$5,517,626 or 53.9% went to male athletes, who represented 52.8% of participants; and \$4,700,305 or 46.1% went to female athletes, who represented 47.2% of participants. This amounted to a difference of 1.1%, in favor of male athletes. The 1.1% difference amounted to \$122,558 less AFA for female athletes than the \$4,822,863 amount they would have received if their share of the AFA budget had been awarded in proportion to their 47.2% participation rate. This disparity was greater than 1%; and the University did not provide a legitimate, nondiscriminatory justification for the disparity. Therefore, OCR determined that in academic year 2011-2012, female athletes did not receive AFA in an amount that was substantially proportionate to their respective rates of participation in the athletes program.

In academic year 2012-2013, a total of 602 athletes participated in the University's athletics program. There were 322 males, representing 53.5% of athletic opportunities; and 280 females, representing 46.5% of opportunities. The University provided a total of \$10,209,340 in AFA. Of this amount, \$5,438,001 or 53.3% went to male athletes, who represented 53.5% of the participants; and \$4,771,339 or 46.7% went to female athletes, who represented 46.5% of the participants. This amounted to a difference of .2% favoring female athletes. The .2% difference amounted to \$23,996 less AFA for male athletes than the \$5,461,997 amount they would have received if their share of the AFA budget had been awarded in proportion to their 53.5% participation rate. OCR noted that, unlike the previous year, the disparity favored female athletes. OCR also determined that the amount represented by the .2% difference was less than the value of one full scholarship to the University based on tuition, room and board, and other fees for academic year 2012-2013. Thus, OCR presumed that the disparity was equitable and nondiscriminatory. OCR did not obtain any evidence of discriminatory intent with respect to the awarding of AFA that would rebut this presumption. Thus, OCR concluded that to the extent the University failed to comply with the regulation implementing Title IX relating to AFA in

¹⁰ For purposes of analyzing the provision of AFA, athletes are counted only one time even if he or she plays on more than one team.

¹¹ OCR included summer athletic aid in its analysis of AFA information for academic years 2011-2012 and 2012-2013.

academic year 2011-2012, the University took action to correct this violation in academic year 2012-2013.

Subsequent to the University's signing the Agreement in January 2015, the University provided data regarding the AFA provided to athletes in academic year 2013-2014. The data indicated that a total of 593 athletes participated in the intercollegiate athletics program. There were 317 males, representing 53.5% of athletic opportunities; and 276 females, representing 46.5% of athletic opportunities. The University reported that it provided a total of \$10,623,500 in AFA. Of this amount, \$5,556,394 or 52.3% went to male athletes, who represented 53.5% of the participants; and \$5,067,106 or 47.7% went to female athletes, who represented 46.5% of the participants. This amounted to a difference of 1.2%, favoring female athletes. The 1.2% difference amounted to \$127,179 less AFA for male athletes than the \$5,683,573 they would have received if their share of the AFA budget had been awarded in proportion to their 53.5% participation rate. OCR is not making a compliance determination at this time regarding the University's compliance with the Title IX requirements relating to AFA for academic year 2013-2014. There is a strong presumption that the 1.2% difference is in violation of the regulation implementing Title IX. However, this presumption may be rebutted if the disparity can be explained by legitimate, nondiscriminatory factors. The University explained that the disparity was the result of nine male student athletes who were granted AFA but who left the University between the start of class in fall 2013 and spring 2014. OCR will review and verify the University's reported participation numbers as part of its monitoring of the Agreement, including by reviewing team rosters, interviewing team coaches, and assessing the University's justification for any disparity.

III. Other Athletic Benefits and Opportunities

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

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

OCR evaluates compliance with each program component by comparing the availability, quality and kinds of benefits, opportunities and treatment afforded members of both sexes. Institutions will be in compliance if the compared program components are equivalent; that is, equal or equal in effect.

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

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

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

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

In assessing the University's compliance with respect to this component, OCR reviewed the equipment and supplies provided for University athletes at its on-site visits, including its 2012-2013 on-site visit. In academic years 2011-2012, 2012-2013 and 2013-2014, OCR also interviewed and/or surveyed coaches, equipment managers and 115 athletes regarding equipment and supplies.

Quality and Amount

Based on OCR's interviews with coaches, equipment managers and athletes, OCR generally found the quality of equipment and supplies provided by the University to be of high (good to excellent) quality and to be comparable for men's and women's teams. The University's equipment managers and coaches typically rated the quality of the equipment and supplies as "excellent." A majority of male and female athletes surveyed rated the quality of the equipment and supplies as "good" or "excellent."

With respect to the amount of equipment and supplies provided for men's and women's teams, OCR's investigation revealed that the University provided equipment and uniforms in sufficient quantity for all team members for all sports (except for golf and tennis). The men's and women's golf and women's tennis teams provide their own golf clubs and tennis rackets. OCR determined that in academic year 2012-2013, 18 (5.5%) of the 329 female athletes had to provide their own equipment, compared to 8 male athletes (2.2%) of the 365 male athletes. Given that the women's tennis team was the only team (other than the golf teams for men and women) for which players had to supply their own sports equipment, OCR concluded that there was a disparity in favor of men's teams regarding the amount of equipment and supplies provided by the University.

Suitability

All equipment managers, athletes and coaches reported that equipment and supplies met the applicable requirements of the governing/sanctioning body for that sport.

Maintenance and Replacement

None of the coaches or athletes identified any problems with equipment replacement. The equipment managers informed OCR that equipment was generally replaced annually or biannually, with the exception of items such as jackets, warm ups and travel bags, which were replaced less frequently. For same/similar teams,¹² OCR found that men's soccer game uniforms are replaced annually whereas the women's soccer game uniforms are replaced every 2-3 years; however, OCR found that other women's teams were treated preferentially as compared to their same or similar male counterparts with regard to the replacement of game and/or practice uniforms. For example, the softball team has its practice uniforms replaced annually, whereas the baseball team's practice uniforms are replaced every two years. Additionally, the softball team is provided with warm ups, but the baseball team is not. For non-same/similar teams, OCR determined that women's tennis, women's volleyball, women's field hockey and women's crew game uniforms also are replaced more frequently (annually for field hockey and crew; one to two years for tennis and volleyball) than men's wrestling uniforms, which are replaced every three years. Teams generally reported that equipment and supplies were one to two years old. OCR

¹² Same/similar teams are those where the same or similar sport is provided by both the men's and women's program. The University has seven teams that are the same or similar for men and women: baseball/softball, basketball, lacrosse, soccer, track, cross-country, and golf. The University's teams that are not the same or similar include six women's teams (crew, tennis, field hockey, gymnastics, swimming, and volleyball) and two men's teams (football and wrestling).

concluded that the differences in the replacement of equipment and supplies affected both men's and women's teams to a similar extent.

The equipment managers reported that athletes of the women's tennis and swimming teams, and athletes of the men's and women's golf teams laundered their own apparel. OCR determined, however, that in or around April 2014, the University began laundering the women's swimming team's apparel. Additionally, both the men's and women's track and cross-country teams launder their own apparel after use, except at the end of their seasons when it is laundered by the equipment manager. Women's crew launders its own practice clothing, but the University launders the game uniforms and the rest of their clothing. Equipment managers were responsible for laundering equipment for all other teams. Thus, while five of the thirteen women's teams (38.5%) and three of the nine men's teams (33.3%) laundered their own practice and/or game uniforms, OCR found that the only non-same/similar teams responsible for laundering their own practice and/or game uniforms were the women's crew and tennis teams. OCR determined that, in academic year 2012-2013, 178 (54.1%) of the 329 female athletes had to launder their own practice and/or game uniforms, compared to 86 male athletes (23.6%) of the 365 male athletes. OCR concluded that there was a disparity favoring men's teams regarding the maintenance of equipment and supplies.

Availability

OCR found that some women's teams and some men's teams had their equipment stored away from their practice/competitive facility. Specifically, the men's baseball, soccer, golf, and lacrosse teams and the women's tennis, volleyball, golf, lacrosse and softball teams had their equipment stored near their locker rooms rather than the practice or competitive facility. OCR determined that it was more convenient and therefore a benefit for a team to have its equipment and supplies stored near the team's practice or competitive facility since the teams would not have to transport their equipment and supplies to practice or competition. However, athletes and coaches did not report any concerns about availability of equipment and supplies. In academic year 2013-2014, eight of the thirteen women's teams (61.5%) had their equipment stored near their practice/competitive facility and four of the nine men's teams (44.4%) had their equipment stored near their practice/competitive facility. OCR noted that while five of the nine men's teams did not have their equipment stored near their practice/competitive facility, four of these teams had their equipment stored near their locker rooms. Of the five women's teams that did not have their equipment stored near their practice/competitive facility, four of these teams had their equipment stored near their locker room. OCR determined that in academic year 2013-2014, 98 (29.3%) of the 335 female athletes did not have their equipment stored near their practice/competitive facility, compared to 240 (66.9%) of the 359 male athletes. OCR determined that there was a disparity in favor of women's teams with regard to the availability of equipment and supplies to athletes.

Program Component Conclusion

OCR found the quality, suitability and replacement of equipment and supplies provided by the University to be comparable for men's and women's teams. OCR concluded that there was a

disparity in favor of men's teams regarding the amount of equipment and supplies provided by the University, as the women's tennis team was the only team, other than the men's and women's golf teams, that had to supply its own sports equipment. OCR also found a disparity in favor of men's teams regarding the maintenance of equipment and supplies, as the women's crew and tennis teams were the only non-same/similar teams responsible for laundering their own practice and/or game uniforms. However, OCR found that there was a disparity in favor of women's teams regarding the availability of equipment and supplies because more women's teams had their equipment stored near their practice/competitive facility. OCR concluded that the disparities favoring men's teams regarding the amount and maintenance of equipment and supplies and the disparity favoring women's teams in the storage of equipment and supplies had the same relative impact within the equipment and supplies program component; thus, the disparities offset each other. Accordingly, OCR concluded that there was insufficient evidence to establish that the University failed to provide equal athletic opportunities to students of both sexes with respect to the provision of equipment and supplies.

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

In assessing compliance in this component, OCR considers the following factors: (a) the number of competitive events per sport; (b) the number and length of practice opportunities; (c) the time of day that competitive events and practice opportunities are scheduled; and (d) the opportunity to engage in available pre-season and post-season competition.

In assessing the University's compliance with respect to this component, OCR considered the information provided by the University regarding the scheduling of games and practice times in academic year 2011-2012. In addition, OCR considered the results of its interviews with coaches and administrators, the on-site conducted in 2012-2013, and the 2014 surveys of coaches and athletes.

Number of Competitive Events per Sport

OCR considers the total number of competitive events provided for each intercollegiate athletics team, and compares the number of competitive events allowed under NCAA guidelines for each sport.¹³ OCR found that the length of the competitive season was comparable for both men's and women's teams at the University. For academic year 2011-2012, OCR determined that with respect to same/similar sports, men's teams participated in a greater percentage of allowable competitive events (90.3%) as compared to women's teams (83.6%). Men's teams played 130 contests out of a possible 144 contests, whereas women's teams played 122 contests out of a possible 146 contests. This disparity was not offset by the number of competitive events in other sports; on the contrary, the disparity increased when all sports were considered (91.9% for men's teams as compared to 83.6% for women's teams). Overall, for all sports, men's teams played 158 contests out of a possible 172 contests, whereas women's teams played a total of 228 contests out of a possible 272 contests. OCR noted that only three men's teams and two women's teams played the maximum allowed contests for their sports. OCR determined that in

¹³ This information includes pre-season and post-season competition to the extent dictated by the NCAA's Playing and Practice Season Rules.

academic year 2011-2012, 297 (89.2%) of 333 female athletes did not play the maximum number of allowed contests, while 200 (54.9%) of the 364 male athletes did not play the maximum number of allowed contests. OCR found that men's teams could have played 14 more competitive events if they played the maximum allowed, while women's teams could have played 44 more competitive contests.¹⁴ Therefore, OCR determined that there was a significant disparity favoring men's teams regarding the number of competitive events scheduled.¹⁵ OCR found that the reason provided by the University for the disparity, that coaches of women's teams did not schedule the maximum number of games permitted under NCAA rules, was not a legitimate, nondiscriminatory reason for this disparity. The University did not provide any information indicating that the disparity was eliminated in subsequent academic years or that the reason for the disparity had changed.

Number and Length of Practice Opportunities

All men's and women's teams had regularly scheduled practices. For same/similar sports, both men's and women's teams practiced, on average, the same amount of time per week in the fall and spring. OCR determined that in academic year 2011-2012, there was a disparity regarding the length of baseball practices in the fall (3 hours vs. 2 hours for softball); length of women's basketball practices in the spring (4 hours vs. 3 hours for men's basketball); length of men's lacrosse practices in the fall and spring (3 hours fall/4 hours spring vs. 2 hours fall/2.75 hours spring for women's lacrosse); and length of women's soccer practices in the fall (3 hours vs. 2 hours for men's soccer). Taken together, OCR determined that in academic year 2011-2012, 49 (49.5%) of the 99 female athletes had longer practices than male athletes of same/similar sports, while 83 (59.3%) of the 140 male athletes had longer practices than female athletes of the same/similar sports. Accordingly, OCR determined that there was a disparity favoring men's teams regarding length of practice opportunities. Information from the athletes and coaches surveyed by OCR in academic years 2012-2013 or 2013-2014 did not indicate that the practice opportunities had changed in any significant way.

Time of Day Competitive Events and Practice Opportunities Are Scheduled

OCR examined the time of day of competitive events and practice opportunities for same/similar sports. OCR took into account the preferred day and time, or "prime time", for competitive events; considering the convenience for student athletes, opinions as to appropriateness expressed by the coaches, and conduciveness to audience attendance.

As explained in further detail below, the University provided teams with exclusive use of their competitive or practice facilities, but did not reserve any facility specifically for one program. Teams practicing in the same facility in the same season received priority scheduling based on

¹⁴ OCR determined that most women's teams played 80% or more of their permitted contests. The three women's teams that played fewer contests were women's golf, softball and crew. These three teams accounted for 33 of the 44 potential games that were not played.

¹⁵ One complainant alleged that women's teams had more limited competition than men's teams due to budgetary constraints. Although OCR found a significant disparity favoring men's teams with regard to the scheduling of competitive events, OCR did not find any evidence that coaches of women's teams did not schedule more events due to budgetary constraints.

their traditional season and the number of people on a team. Moreover, OCR determined that multiple teams had to share the use of practice facilities during winter months when they were unable to practice outside. The shared use of these facilities was arranged by the University's Facilities Department. Coaches had sole responsibility and control over the scheduling of their team's practices, subject to the availability of facilities as approved by the Athletics and Facilities Departments. As noted above, in-season teams had priority scheduling for facilities during their traditional season.

OCR determined that the Big East conference dictated the schedule for conference games when the University was a member of that conference (until the University joined the Big Ten Athletics Conference in academic year 2014-2015 for all intercollegiate sports). Each coach generally had control over all non-conference scheduling.¹⁶ The coaches worked with their sport administrators, as well as the coaches of their opposing teams, to create the competitive schedules, which were subject to the availability of facilities.¹⁷ Most coaches stated that they play the same teams each year, so they could anticipate their competitive schedules and coordinate with the opposing coaches. OCR determined that approximately three times per year, coinciding with the various playing seasons, coaches submitted competition schedules to the Facilities Department, which reviewed the schedules for conflicts.

Baseball had games scheduled on weekday evenings¹⁸ while softball had games scheduled on weekday afternoons and some weekend mornings. When asked what their preferred time was for games, xxxxxxxxxxxxxx both baseball and softball reported that their preferred time or "prime time" for games was weekday afternoons. Women's lacrosse played all of their games on weekday afternoons or evenings, while men's lacrosse played some games on weekday afternoons and some on weekend mornings. xxxxxxxxxxxxxx women's and men's lacrosse reported that prime time was weekday afternoons. xxxxxxxxxxxxxx of the men's and women's soccer teams indicated that prime time for games was weekday evenings. Women's soccer played all games on weekday evenings, but men's soccer sometimes played on weekday mornings or afternoons. OCR determined that there was no disparity regarding the scheduling of competition for men's and women's basketball or men's and women's golf, which had events scheduled at equivalent times.¹⁹ Women's teams of all same/similar sports (100% of female athletes) played more games in prime time than their male counterparts. Seventy-three (73%) percent of all female athletes surveyed in 2014 stated that their competitive schedule was

¹⁶ Some sports programs also participated in the Eastern Collegiate Athletic Conference (ECAC) and its affiliates, which may have had other scheduling requirements. For example, men's lacrosse played other ECAC opponents during its regular season schedule, but there was no ECAC championship event. The Eastern Association of Women's Rowing Colleges (EAWRC) requires members to compete against other EAWRC members for at least 50% of the regular season schedule. None of the other teams that participated in the ECAC or its affiliate conferences (gymnastics, men's and women's track and field, and wrestling) had a regular season scheduling requirement.

¹⁷ Women's gymnastics, women's swimming, women's volleyball and men's wrestling all used a Recreation Department Facility as their primary competitive facility. None of the coaches reported any difficulties with scheduling competitive events due to lack of priority use of the competitive facility.

¹⁸ Neither the baseball nor softball facilities have lights; therefore, evening competition occurs while daylight permits.

¹⁹ OCR excluded cross-country and track from its analysis, because the men's and women's cross-country and track teams compete at the same events.

convenient as it did not conflict with class times, meals or other scheduled activities; whereas, 60% of male athletes surveyed said it was convenient. Based on all of the above, OCR determined that with respect to same/similar sports, there was a significant disparity favoring women's teams with regard to time of day of competitive events; as both men's and women's teams had games scheduled during prime time, but women's teams had more games scheduled during prime time as compared to the same/similar men's sports.

OCR found that men's football, women's field hockey and women's volleyball teams all began practice in the beginning of August, while the men's and women's soccer teams began practice in mid-August. Cross-country male and female athletes began practice about one week prior to the first day of the academic year. All other sports began practice on or after the first day of the academic year. Accordingly, three men's teams and four women's teams were required to be on campus prior to the start of the academic year. OCR also found that men's basketball and track as well as women's basketball, crew, gymnastics, lacrosse, swimming and track were required to be on campus during winter and/or spring breaks for practice and/or competition. OCR reviewed the practice schedules for all sports and determined that all sports had comparable season lengths, subject to NCAA rules.

OCR reviewed the practice times for all same/similar sports and found no differences, except that men's soccer practiced in the morning, while women's soccer practiced in the afternoon (in the fall); and softball, women's basketball and women's lacrosse (in the spring) practiced in the morning (or sometimes later at night for softball); while baseball, men's basketball and men's lacrosse practiced in the afternoon. OCR determined that all sports practiced to the maximum permitted by the NCAA. xxxxxxxxxx women's sports reported that their morning practice times were preferable, as the times allowed the women to schedule classes in both the morning and the afternoon; xxxxxxxxxx men's teams indicated that the team's afternoon practice times were scheduled around the players' academic schedules to avoid conflicts. The majority of female and male athletes surveyed, including those surveyed in 2014, were satisfied or very satisfied with their practices schedules; as the schedules, generally, did not conflict with class times, meals or other scheduled activities. University officials informed OCR that they try to limit the amount of academic class time missed by student athletes. Some male and female student athletes acknowledged their athletic schedules sometimes impact their academic schedules.

Based on the above, OCR determined that there was a difference based on sex with regard to time of day of practices for same/similar sports, in that the women's teams generally practiced in the morning and the men's teams generally practiced in the afternoon. The men's and women's soccer teams had the reverse practice schedule. The evidence obtained by OCR did not reveal that the difference in practice times disadvantaged or advantaged either the women's or men's teams. The coaches and athletes identified these times as preferred practice times, and a majority of the athletes surveyed by OCR expressed satisfaction with their practice schedules. All sports practiced to the maximum permitted by the NCAA. Thus, OCR concluded that the evidence was insufficient to establish that the difference in practice times favored either men or women. Because the differences did not negatively impact male or female athletes with respect to their opportunity to participate in intercollegiate athletics, OCR did not find a disparity in the time of day for practices.

Opportunities to Engage in Available Pre-Season and Post-Season Competition

During academic year 2011-2012, four teams engaged in pre-season competition – two men’s teams (basketball and soccer) and two women’s teams (field hockey and soccer). Both the men’s teams and the women’s teams scheduled three pre-season events. OCR determined that in academic year 2011-2012, 56 (16.8%) of the 333 female athletes engaged in pre-season competitions, compared to 49 (13.5%) of the 364 male athletes. Therefore, OCR determined that there was a slight disparity favoring female athletes regarding opportunities to engage in pre-season competition. The evidence established that any team that wanted to schedule NCAA-permitted pre-season competition was allowed to do so. OCR thus found that the opportunity to engage in pre-season competition was equivalent for men’s and women’s teams.

With respect to post-season competition, University Policy provides that all teams will have the opportunity to compete in the championship in their primary conference. All men’s and women’s teams that qualified for post-season competition participated. OCR’s surveys of coaches and athletes in academic years 2011-2012, 2012-13 and 2013-2014 revealed that there had not been any change to University Policy or practice. More women’s teams participated in post-season events in academic years 2010-2011 and 2011-2012, because more women’s teams qualified for post-season competition than men’s teams; nevertheless, OCR determined that in academic year 2011-2012, 268 (80.5%) of the 333 female athletes engaged in post-season competitions, compared to 318 (87.4%) of the 364 male athletes. Based on the numbers, more male athletes had an opportunity to engage in post-season competition; however, no team eligible to participate was prevented from participating in a postseason opportunity.

Program Component Conclusion

OCR determined that there was no disparity favoring men or women regarding the number of practice opportunities for same/similar teams. OCR found that, based on the evidence in this review, differences in the time of day for practices for same/similar teams did not favor either men’s or women’s teams. Additionally, OCR determined that although more male athletes had an opportunity to engage in post-season competition, no team eligible to participate was prevented from participating in a postseason opportunity. Similarly, OCR determined that although there was a disparity favoring women regarding the opportunity provided to engage in pre-season competition, no team was prevented from participating in pre-season competition. OCR determined that there was a significant disparity favoring men’s teams regarding the number of competitive events and length of practices, and a significant disparity favoring women’s teams in same/similar sports regarding the opportunity to compete in “prime-time”. OCR determined that the disparities affected the quantity and the quality of the practice and competitive opportunities for male and female athletes; however, OCR found that the disparities offset each other. Accordingly, OCR concludes that the evidence is insufficient to establish that the University failed to provide equal athletic opportunities to students of both sexes with respect to the scheduling of games and practice times.

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

In assessing compliance in this component, OCR considers the following factors: (a) modes of transportation; (b) housing furnished during travel; (c) length of stay before and after competitive events; (d) per diem allowances; and (e) dining arrangements.

Except where noted, the following describes the data provided by the University regarding its transportation and per diem practices for regular season travel in academic year 2012-2013. OCR verified with the University in academic year 2014-2015 that these practices have continued, except as noted with respect to the use of charter planes for both the men's and women's basketball teams.

Modes of Transportation

Generally, the distance to the event governs the mode of transportation used by each team for travel. Other factors taken into account are: (1) geographic location; (2) size of the travel party; (3) the logistics of traveling to the location; and (4) internal policies governing transportation. Each team's coach, in consultation with the business office and travel coordinator, makes the decision as to the mode of transportation the team uses. University coaches stated that the general "rule of thumb" regarding travel is that teams fly to any competition more than a five (5) or six (6) hour bus-ride or over 300 miles away.²⁰ The University does not set a limit on the number of flights a team may take; however, air travel is limited by a team's travel budget. Many coaches stated that, for convenience, they prefer to take buses even to competitions to which they could fly; noting that air travel often takes longer overall than bus travel. All teams use the same buses for bus travel. The University also has a policy governing the use of vans for travel, which requires a qualified driver; no more than 9 travelers; and limitations on mileage and travel time.

OCR reviewed trips during the regular season to events within specified distances. For academic year 2012-2013, for trips within 300 miles, men's teams took 57 trips, using buses 91% of the time and vans 9% of the time; while women's teams took 97 trips, using buses 65% of the time and vans 35% of the time. OCR determined that the comfort of buses and vans was comparable, and that the University's use of a van or bus depended upon the number of athletes being transported (vans were used predominantly for men's and women's golf and women's tennis events). For trips over 300 miles, OCR determined that there was a negligible disparity in the use of air travel (men's teams traveled by air 75% of the time, while women's teams traveled by air 73% of the time, a difference overall of only one flight). Thus, except as noted below, the University met the needs of men's and women's teams equivalently with respect to the mode of travel used.

²⁰ For some teams (track/cross-country, golf), OCR determined that the men's and women's teams traveled together for many events and thus shared the same mode of transportation.

Two men's teams (football and men's basketball) and one women's team (women's basketball) used charter flights. The University explained that the football team used chartered flights for all air travel because of the large size of the travel party (more than 125-130 people, with 110 or more athletes and with coaches and trainers) and the fact that commercial flights could not accommodate the entire travel party along with the equipment. With regard to basketball, for academic year 2012-2013, the men's basketball team used charter flights for ten flights and the women's basketball team used charter flights for nine flights. The xxxxxx explained that in order to stay competitive regarding recruiting for basketball, the University uses charter flights for away contests. OCR determined that the University has provided a legitimate, nondiscriminatory reason for the use of charter flights for the football team and has eliminated the disparity in the use of charter flights by the basketball teams. Beginning in academic year 2014-2015, the University instituted a new policy requiring the use of charter flights for all air travel for the men's and women's basketball teams.²¹

Housing Furnished During Travel

OCR determined that male and female athletes stayed in hotels of comparable quality. For example, both men's and women's teams stayed at Holiday Inn, Comfort Inn, Embassy Suites, Hilton or Marriott hotels. Both female and male athletes OCR interviewed and surveyed were satisfied with the quality of hotels used during travel. Therefore, OCR determined that there was no disparity with regard to the quality of housing furnished.

Although the number of athletes per room varied, OCR determined that most teams, regardless of sex, typically housed two athletes per room with a third athlete being added on occasion. OCR determined that three of nine (33.0%) men's teams (basketball, football and soccer) and six of thirteen (46.2%) women's teams (basketball, crew, cross country, lacrosse, tennis, track) routinely had only two athletes per room. OCR determined that in academic year 2012-2013, 152 (46.2%) out of 329 female athletes stayed in a room that had only two athletes, compared to 157 (43.0%) out of 365 male athletes. Therefore, OCR determined that there was a disparity favoring female athletes with respect to the number of athletes per room.

Length of Stay Before and After Competitive Events

The University's policy is that any team wishing to leave for competition more than 48 hours prior to an event must get University approval. Generally, if a team is traveling by plane, the team leaves one day prior to the event. If the timing of competition and availability of flights allow it, teams fly back the same day. Otherwise, teams fly back the next morning on the earliest flight. Additionally, the football team and the men's and women's basketball teams use of chartered flights allowed them to return the same day of competitions that ended late.

OCR determined that the length of stay before and after competitive events was substantially similar for men's and women's teams. OCR also determined that the reasons used in determining length of stay, i.e., the required travel time, mode of transportation used, and

²¹ OCR will monitor the University's implementation of this new policy as part of the Agreement.

whether teams played single or multiple events during a single trip, were consistent for men's and women's teams.

Per Diem Allowances

The University's per diem allowance was \$32, broken down to \$8 for breakfast, \$9 for lunch, and \$15 for dinner. There was no policy and no standard practice for distributing the meal per diem to athletes. OCR determined that each coach had discretion to decide how to spend the per diem. Some coaches provided the per diem money directly to students for all meals, some provided the per diem for some meals, and some coaches arranged and paid for all the athletes' meals. OCR noted no disparities that favored either men or women.

Dining Arrangements During Travel

OCR's review of the data submitted by the University and OCR's survey of coaches and students in academic year 2013-2014 revealed that during travel both men's and women's teams ate at comparable hotel, chain, and local restaurants. Both the men's and women's golf teams ate at the golf course. For football, the University explained that when traveling with 125-130 people, it is not possible to eat at local restaurants; so all meals have to be catered by the hotel, which costs more than the average team and more per person than eating in a restaurant because of the number of people to feed. The University informed OCR that the catered meals were served buffet style and chosen by the coaches; and that the type of catered meals was generally comparable to the type of meals available at the restaurants used by other teams. Given the exclusivity of the catered meals provided for the football team, OCR determined that there was a significant disparity favoring the men's teams with regard to the dining arrangements during travel. OCR further determined that this disparity related to the specific needs of the men's team, namely the size of the team, which was a legitimate, non-discriminatory reason.

Total and Average Travel and Per Diem Budgets

For academic year 2010-2011, men's teams spent \$1,940,634 (66.8%) of the total regular season travel expenditures of \$2,906,417, although they represented 238 or 48.9% of travelers; whereas women's teams spent \$965,783 (33.2%), although female athletes made up 249 or 51.1% of travelers. OCR determined that the disparity in travel expenditures resulted in \$519,388 less in travel funds for female athletes than the \$1,485,179 they would have received if their share of the travel funds had been awarded in proportion to their 51.1% of travelers. OCR determined that the average amount spent on female athletes for travel was \$3,878.65, which was \$4,275.27 less than the average amount of \$8,153.92 spent on male athletes. OCR found that the disparity was due largely to the amount of money spent on the football team's travel. These costs included the additional cost of the team's use of charter flights rather than commercial flights for air travel and the additional dining costs relating to the catering of the team's meals during travel. The disparity between the average travel costs for men's teams and women's teams was not entirely due to the travel costs for the football team as, not including these costs, the total amount spent on male athletes was \$690,249 (41.7%), who then made up 159 or 39.0% of the travelers,

compared to the total amount spent on female athletes, \$965,783 (58.3%), who then made up 249 or 61.0% of the travelers. OCR determined that the disparity in travel funds, without these costs, resulted in \$37,772.39 less in travel funds for female athletes than the \$1,003,555.39 they would have received if their share of the travel funds had been awarded in proportion to their 61.0% of travelers. Under this calculation, the average amount spent for travel per female athlete was \$3,878.65, compared to the average amount of \$4,260.80 spent per male athlete, a difference of \$382.15 less per female athlete over the course of a team's season, and a total of \$95,155.35 less for the women's teams than the men's teams. Therefore, OCR determined there was a significant disparity in the amount of money spent for regular season travel favoring men's teams. The University did not provide a justification for this disparity or information to OCR indicating that this disparity was eliminated in subsequent academic years.

Program Component Conclusion

OCR determined that the modes of travel (with the exception of the football and basketball teams that used charter flights), length of stay before and after competitive events, and per diem allowances for men's and women's teams were equivalent. With respect to the use of charter flights for air travel, the University has instituted a new policy that both men's and women's basketball teams, as well as the football team, will use charter flights for air travel. As stated above, the University provided a legitimate, nondiscriminatory reason for the football team using chartered flights for all air travel; namely, the large size of the travel party (more than 125-130 people, with 110 or more athletes and with coaches and trainers) and the fact that commercial flights could not accommodate the entire travel party along with the equipment. OCR determined that there was a significant disparity between the men's and women's teams with regard to the dining arrangements during travel; the disparity related to the size of the football team, which was a legitimate, non-discriminatory reason for the disparity. OCR determined that the dining arrangements did not provide an added benefit to the football team as they were restricted in what they could eat (coaches chose the menu), and OCR did not find that they received food of a superior quality to that arranged for other teams. Thus, the University met the needs of men's and women's teams equivalently with respect to the dining arrangements during travel. OCR found that there was a disparity favoring women's teams with respect to the number of athletes allotted to hotel rooms. OCR determined that there was a significant and unjustified disparity favoring men's teams with respect to the amount of travel funds expended, and that this disparity was not offset by the disparity favoring women's teams with respect to the number of athletes per room.²² OCR determined that, overall, there was a significant disparity favoring the men's teams regarding the travel and per diem component. Accordingly, OCR concludes that there is sufficient evidence to support a conclusion that the University has not provided equal athletic opportunities to students of both sexes with respect to the provision of travel and per diem allowance.

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

²² One complainant alleged that men's teams traveled to the Midwest and west coast, whereas women's teams were limited to local travel. Based on the information analyzed above, OCR found no merit to this allegation.

Compliance in the opportunity to receive academic tutoring and the assignment and compensation of tutors' component is determined by examining 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 following information reflects the information provided by the University regarding the opportunity to receive tutoring, and the assignment and compensation of tutors for academic year 2011-2012. In assessing compliance with this component, OCR also surveyed and/or interviewed coaches and administrators in academic years 2011-2012 and 2012-2013. OCR verified with the University in academic year 2014-2015 that these practices have continued.

Procedures and Criteria for Obtaining Tutorial Assistance

The University encouraged all athletes to use tutoring services provided by the athletics program. There were several ways by which athletes could obtain tutoring services: (1) freshman student athletes determined to be academically at-risk were automatically scheduled for approximately five hours per week of tutoring (one hour per class); (2) student athletes majoring in math or the sciences or other rigorous programs were automatically scheduled for one hour of tutoring per week for each of their major subjects (approximately three to five hours per week) until the advisor was certain that the student athlete was able to succeed academically; (3) all student athletes were informed at an informational event about the availability of tutoring and were able to sign up for tutoring at the event; (4) academic advisors reviewed student athlete grades to determine whether they needed tutoring; and (5) anytime, by request. OCR found no differences between male and female athletes regarding the procedures and criteria for obtaining tutorial assistance.

Availability of Tutoring

With respect to availability of tutoring, OCR analyzes the amount of time that tutors are available for athletes. The athletic department provided tutoring to student athletes through the Office of Academic Support Services for Student-Athletes. Each team was assigned an Athletic Academic Advisor responsible for coordinating tutoring services; a pool of tutors was always available to both male and female athletes; and tutors were generally assigned based on subject matter, not by team or sex. The xxxxxxxxxxxxxxx stated that no athlete had ever been denied tutoring services. Accordingly, there was no disparity between men and women regarding the availability of tutors.

Qualifications, Training and Experience

Approximately three-quarters of the approximately 40 tutors the University employed were undergraduate students who had to have a minimum of a 3.325 grade point average or a B+ in order to be hired. The remaining one-quarter were graduates, graduate students, or professionals. Graduate students were typically recommended by the academic department with which they were affiliated. Professional tutors were current or retired teachers.

OCR reviewed a 6-day snapshot of 521 tutoring sessions provided to male and female athletes during the spring 2012 semester. OCR determined that the results of this snapshot were representative of the assignment of tutors more generally to male and female athletes. OCR determined that of 521 tutoring sessions, 60% of tutors assigned to female athletes were undergraduate students; 17% were graduate students; and 23% were professional tutors. OCR determined that 41% of tutors assigned to male athletes were undergraduate students; 12% were graduate students; and 47% were professional tutors. Thus, with respect to the qualifications of tutors, OCR found that there was a disparity favoring male athletes. The University explained that the assignment of tutors was based on the academic needs of students, not based on the sex of the student or the team on which student plays; and that the more experienced tutors were provided to students with academic difficulties that required more intensive academic support. The University also explained that more male student athletes experienced academic difficulties requiring more intensive academic support than female student athletes. OCR determined that the University provided a legitimate, nondiscriminatory reason for the disparity favoring males (i.e., that more male athletes required more experienced tutors because they needed more intensive academic support with respect to the qualifications of assigned tutors during the period reviewed). Moreover, female athletes and coaches did not raise concerns about the qualifications of the tutors assigned.

Rates of Pay and Employment Conditions

Tutor rates of pay are based on whether the tutor is an undergraduate or graduate student, college graduate, or professional; and the number of years the tutor had tutored at the University. Undergraduate students received \$10.00 per hour; graduates or students in graduate school received \$15.00-20.00 per hour; and professional tutors were paid \$25.00-60.00 per hour, depending upon the number of years they had tutored at the University. There was no difference in the rates of pay for tutors based on whether the tutored student was a male or female athlete.

The number of students assigned to a tutor was based on student schedules. Generally, student athletes were tutored in groups of up to eight students, with six being the ideal; however, for math and science, typically there were two to three students receiving tutoring services from a tutor. One-on-one tutoring was typically not provided, unless there was only one student who required or requested tutoring in a specific subject area or if a student athlete with a disability required one-on-one tutoring. OCR reviewed tutoring schedules and found that there were no differences in pupil load based on the sex of the athletes.

Program Component Conclusion

OCR found that 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, and that no teams were provided special tutoring services. OCR also found that tutors were available to athletes regardless of sex; and, that the pupil load per tutor was comparable for both men and women. OCR found that tutors' pay rates were based on the tutor's level of education and experience in the tutoring program, not on whether a male or female athlete was being tutored. OCR determined that there was a

disparity favoring male athletes with respect to the qualifications of tutors, in that male athletes were more likely to be assigned professional and more experienced tutors; however, OCR determined that this disparity was based on the academic needs of the students, which was a legitimate, nondiscriminatory reason for the disparity. Additionally, coaches of female teams and female athletes themselves did not express concerns about the qualifications of assigned tutors. Thus, the University met the needs of men's and women's teams equivalently with respect to the qualifications of tutors. Accordingly, OCR concludes that the evidence is insufficient to establish that the University failed to provide equal opportunities to students of both sexes with respect to the provision of tutoring.

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

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

In general, a violation will be found relating to coaching only where compensation denies male or female athletes coaching of equal quality, nature or availability. In assessing the University's compliance with respect to this component, OCR examined data provided by the University with respect to the opportunity to receive coaching, and the assignment and compensation of coaches in 2011-2012, and interviewed coaches and administrators. OCR verified that the information in this section is still accurate through interviews and surveys of coaches and students in academic year 2013-2014.

Availability of Coaches

For intercollegiate athletics programs, OCR's analysis of the availability of coaches consists of determining the full-time equivalence (FTE)²³ of coaches in both the men's and women's programs; computing the ratio of the FTE of coaches to the number of participants in each program; and finally comparing the ratio between men's and women's programs to determine any inequity.

²³ FTE is based on the full calendar year. A full time coach is someone with 100% coaching duties for 12 months; a half time coach is someone with 100% coaching duties for 6 months or 50% coaching duties for 12 months; a quarter time coach is someone with 100% coaching duties for 3 months or 25% coaching duties for 12 months, etc.).

of total athletes, and received 42.5% of the funds. The University explained that the significantly larger salary amount for xxxxxxxx xxxxxxxx was the result of the larger number xxxxxxxxxxxxxxxx for the xxxxxxxxxxxx than other teams, the larger number xxxxxxxxxxxx, and the known competitiveness of salaries for xxxxxxxxxxxxxxxxxxxx, among other factors.

OCR concluded that there was a significant disparity favoring men's teams regarding the overall compensation of coaches. OCR recognizes that nondiscriminatory factors can affect the compensation of coaches. In determining whether differences are caused by permissible 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, and the level of competition are considered. OCR found that the number of participants on the University's xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx constitute legitimate, nondiscriminatory factors. And as stated above, the differences in salaries between coaches of men's and women's teams of the same or similar sport were justified by differences in years of experience coaching at the intercollegiate level and record of achievement.

Program Component Conclusion

OCR determined that the evidence did not establish that men's or women's teams were disadvantaged by the qualifications or experience of coaches. OCR found a slight disparity favoring female athletes with regard to availability of head coaches; however, OCR found a slight disparity favoring male athletes with regard to the availability of assistant coaches. These disparities offset one another. OCR also found a significant disparity that favored male athletes with respect to the compensation of coaches; however, OCR determined that the University provided legitimate, non-discriminatory reasons that explained the disparity in the men's and women's coach salaries. Additionally, the evidence does not reveal that these compensation practices resulted in the denial of benefits, services or opportunities for female athletes; namely, OCR found that the women's teams had access to coaching of equivalent quality, nature and availability despite the disparity in coaches' salaries. Accordingly, OCR concludes that the evidence is insufficient to establish that the University failed to provide equal opportunities to students of both sexes with respect to the opportunity to receive coaching, and the assignment and compensation of coaches.

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

OCR assesses six factors in determining compliance with this component: (a) quality and availability of the facilities provided for practice and competitive intercollegiate events; (b) exclusivity of use of facilities provided for practice and competitive events; (c) availability of locker rooms; (d) quality of locker rooms; (e) maintenance of practice and competitive facilities; and, (f) preparation of facilities for practice and competitive events.

In assessing the University's compliance with respect to this component, OCR reviewed the University's locker rooms, team rooms, and practice and competitive facilities during its on-site visits, including its 2012-2013 on-site visit. All of the University's athletics facilities are located

on campus (which is made up of five adjacent “campuses”), except for the Boathouse used for women’s crew; this facility is located just off campus on the Raritan River. In academic years 2011-2012, 2012-2013 and 2013-2014, OCR also interviewed and/or surveyed coaches, administrators and athletes regarding the athletic facilities. In 2013-2014, the University informed OCR that there had been no changes in facilities; amenities; or in the quality, availability, maintenance, and preparation of the facilities since OCR’s 2012-2013 on-site inspection. In academic year 2014-2015, the University advised OCR that there had been changes in the assignments of teams to locker/team rooms.²⁷

Quality of Practice and Competitive Facilities

OCR first compared the facilities used by men’s and women’s teams of the same or similar sports. Men’s and women’s basketball, lacrosse, soccer, indoor track, outdoor track, and golf used the same facilities for practice and competition; accordingly, OCR determined that the quality of the facilities used by these teams of the same/similar sport was equivalent. Where coaches of these teams noted issues with competitive or practice facilities, OCR determined that men’s teams and women’s teams were equally affected as the same/similar sports shared the same practice and competitive facilities.

Baseball and softball were the only same/similar team that did not always share facilities. While both teams used the Rutgers Athletic Center (the RAC)²⁸ and the Bubble for practice, baseball used the baseball complex for practice and competition, and softball used the softball complex for practice and competition. Both complexes are located across the street from the RAC. OCR determined that the baseball complex is newer and in better condition than the softball complex, but the softball complex was in excellent condition. Each field had batting cages; softball had 2 batting cages while baseball had 3 batting cages. The University explained that the baseball team was larger than the softball team and required an additional batting cage. In 2012-2013, there were 34 baseball players and 17 softball players. Thus, there was one batting cage available for 11 or more baseball players and one batting cage available for 8 or more softball players.²⁹ Each field also had dugouts, bleachers, scoreboards, speakers, and press boxes; however, softball’s press box was contained within an enclosed “zip tent,” while baseball’s press box was exposed. Neither facility had lights. The softball bleachers have spectator capacity of 315, while the baseball complex has spectator capacity for 500. Seating was adequate for the number of spectators who typically attend the games, and there were no complaints from coaches or athletes regarding adequate seating at either facility. OCR did not find any evidence that the lower spectator capacity of the softball bleachers limited the potential for softball to rise in spectator appeal. OCR determined that the baseball complex had more batting cages than the

²⁷ OCR will examine these changes as part of the monitoring of the Agreement.

²⁸ The RAC is located on Livingston campus, and was in good condition. The RAC has spectator seating of 8,000. Men’s and women’s basketball also used the main gym at the RAC for practice and competition; men’s wrestling also used the main gym at the RAC for competition; and, women’s field hockey used the main gym at the RAC for practice.

²⁹ There were also twice as many baseball players as softball players in the 2010-2011 and 2011-2012 academic years. Specifically, in 2010-2011, there were 33 baseball players and 20 softball players. In 2011-2012, there were 37 baseball players and 16 softball players. OCR determined that the number of participants on each team was consistent with NCAA regulations.

softball complex; however, fewer softball players than baseball players shared the batting cages, and the softball complex had a tented press box where the baseball complex did not, which offset. Additionally, the University offered a legitimate, nondiscriminatory reason why the baseball team had more batting cages; namely, the baseball team is larger than the softball team.

OCR also reviewed facilities used by men's and women's teams of dissimilar sports and determined that all teams used regulation size competitive facilities of similar quality, whether athletic or recreation facilities. OCR concluded that any differences in the quality of facilities provided for practice and competitive events for similar teams generally related to the size of the teams (baseball and softball) and that differences related to dissimilar teams affected teams of both sexes, and that the differences offset each other.³⁰

Availability and Exclusivity of Use of Practice and Competitive Facilities

The University provided teams with exclusive use of their competitive facilities for competition. While the conference scheduled conference competition, coaches were responsible for scheduling all non-conference competition. Three times per year, corresponding with the respective seasons, coaches submitted competition schedules to the Facilities Department for review and approval. Accordingly, there was no disparity regarding the exclusivity of use of competitive facilities.

The University provided teams with priority scheduling of practices for a particular facility based on their traditional season and the number of people on a team. OCR determined that multiple teams had to share the use of practice facilities during winter months when they were unable to practice outside. The use of facilities shared by multiple teams was arranged by the University's Facilities Department. Coaches had sole responsibility and control over the scheduling of their team's practices, subject to the availability of facilities, as approved by the Athletics and Facilities Departments. OCR determined that where two teams share a practice facility, priority goes to the in-season team. Where two in-season teams are in conflict, the Facilities Department tries to resolve the conflict by reviewing the number of people on each team and determining which teams can practice in a facility at the same time. As noted above, in-season teams had priority scheduling for facilities during their traditional season. OCR determined that every team that used an outdoor field for practice (men's/women's lacrosse, soccer, baseball, softball, men's/women's track, and football) also used the Bubble for indoor practice when the teams could not practice outside (such as during the winter and/or period of inclement weather). The use of the Bubble by these teams sometimes causes scheduling issues. The xxxxxxxxxxxx indicated that the team had limited weekends to schedule indoor practices at the Bubble; this also affected the men's track team. The xxxxxxxxxxxx indicated that due to the number of teams that use both the RAC and the Bubble, the xxxxxxxxxxxx team was required to split their practices into several segments. The xxxxxxxxxxxx team also indicated an issue with accommodating the entire team for practice in the College Avenue gym due to the size of the team. OCR did not

³⁰ OCR noted recent news articles discussing possible upgrades to certain practice, competitive and locker/team room facilities, including football, baseball, softball, and men's and women's basketball. OCR reminds the University of its ongoing obligation to consider the Title IX implications for any future improvements in its facilities.

find evidence of a pattern favoring teams of a certain sex for priority use of the Bubble. OCR determined that scheduling issues in the Bubble affected both men's and women's teams. Accordingly, there was no disparity regarding the exclusivity of use of practice facilities.

Most teams reported no problems with regard to the availability of facilities for practice and competition, as these were located on campus. Both xxxxxxxxxxxxxxxx coaches reported that a lack of indoor practice facilities affected the teams' ability to practice in inclement weather. Three women's teams (gymnastics, swimming and volleyball) and one men's team (wrestling) used recreation department facilities as their main practice and competitive facility.³¹ OCR determined that in academic year 2012-2013, 43 (13.1%) of the 329 female athletes used recreation facilities, compared to 33 (9.0%) of the 365 male athletes. Accordingly, OCR determined that there was a disparity favoring male athletics regarding the availability of practice and competitive facilities.

Maintenance and Preparation of Practice and Competitive Facilities

The athletic department facilities are maintained by athletics department staff, and recreation department facilities are maintained by recreation department staff. The majority of coaches indicated that the facilities were prepared adequately for practice and competition. The xxxxxxxxxxxx indicated that the xxxxxxxxxxxx practice and competitive space is maintained by recreation/janitorial staff, but the team is responsible for maintaining the equipment and the team prepares the facility for competition. Accordingly, OCR found a disparity favoring men's teams regarding the maintenance and preparation of practice and competitive facilities.

Quality and Exclusivity of Use of Locker Rooms

All men's and women's teams had locker/team rooms that were in good to excellent condition. Three men's teams (baseball, football and soccer) had locker/team rooms that were in excellent condition, while four women's teams (basketball, gymnastics, lacrosse and swimming) had locker/team rooms that were in excellent condition. OCR determined that in academic year 2012-2013, 86 (26.1%) of the 329 female athletes used locker/team rooms that were in excellent condition, compared to 176 (48.2%) of the 365 male athletes. No men's teams shared restroom and shower facilities except for the baseball team, which shares its restroom and shower facilities with visiting teams. Three women's teams (softball, gymnastics and soccer) shared restroom and shower facilities rather than each team having these facilities located in their respective locker rooms. OCR determined that in academic year 2012-2013, 67 (20.4%) of the 329 female athletes shared restroom and shower facilities, compared to 34 (9.3%) of the 365 male athletes. All teams, with the exception of women's track and tennis, had exclusive use of their official locker rooms.³² The University did not offer any justifications for the differences relating to the quality and exclusive use of locker rooms. The University reported that effective 2014-2015, due to

³¹ Crew also uses a recreational facility for practice (the Boathouse) which is shared with the men's club rowing team, but each team has its own separate space.

³² Although the tennis team does not regularly use its assigned locker room, the women's cross-country, indoor and outdoor track teams' competitive schedules overlap with the tennis team's fall and spring competitive schedules. For purposes of this analysis, indoor and outdoor track and cross-country are referred to collectively as "track."

changes in the assignment of locker rooms, only field hockey and women's soccer now share restroom and shower facilities.

The xxxxxxxxxxxxxxxxxxxxxx reported that xxxxxx locker/team room space was not sufficient in size: women's crew (Boathouse locker room), softball, women's soccer, men's and women's track, and women's field hockey. OCR compared the square footage of the locker and team rooms for men's teams to that of women's teams, as well as the number of lockers for men's and women's teams. In 2011-2012, although men were 52.2% of athletes, they had 79.7% of the total locker and team room space; whereas women, who were 47.8% of athletes, had 20.3% of the locker and team room space. Thirteen women's teams of twenty-two teams or 59.1% of teams had 20.3% of the locker and team room space; while nine men's teams of twenty-two teams or 40.9% had 79.7% of the locker and team room space.

OCR determined that two men's teams (basketball and soccer) and one women's team (basketball) had video/film areas within their locker rooms with tiered seating. OCR determined that in academic year 2012-2013, 14 (4.3%) of the 329 female athletes had video/film areas within their locker room with tiered seating, compared to 66 (18.1%) of the 365 male athletes. Football, women's tennis and women's swimming also had separate team rooms and/or lounges. OCR determined that in academic year 2012-2013, 30 (9.1%) of the 329 female athletes had separate team rooms and/or lounges, compared to 110 (30.1%) of the 365 male athletes. The football team also used the tennis house for media coverage. OCR noted that the football team had seven meeting rooms, an auditorium, player lounge and game room; with combined space totaling 8353.8 ft.², almost half the overall space available to men's teams. In 2011-2012, women had 47.8% of the participation opportunities and 49.5% of the number of lockers.

The University did not offer any justifications for the disparity relating to the size of locker and team rooms. During negotiations, the University indicated that it is in the process of modifying access to the football meeting rooms for use by other teams.

Based on the above, OCR found more male athletes used locker rooms that were in excellent condition and fewer male athletes had to share restroom and shower facilities; but, female athletes had a higher percentage of the lockers compared to their participation opportunities. Additionally, with regard to the exclusivity of use of the locker rooms, there was a disparity favoring men's teams at the time of OCR's investigation, as two women's teams (tennis and track) did not have exclusive use of their locker room facilities. The University has since advised OCR that effective academic year 2014-2015, the tennis and track teams no longer share a locker room. OCR found a significant and unjustified disparity favoring men's teams regarding the quality and size of the locker and team rooms.

Availability of Locker Rooms

OCR determined that the availability of locker rooms was the same for male and female teams of the same or similar sport. Some women's teams and some men's teams had to travel up to 2.5 miles from their locker room facilities to practice or competitive facilities. Four of the nine (44.4%) men's teams (baseball, basketball, football and wrestling) and five of the thirteen

(38.5%) women's teams (softball, basketball, crew, swimming and volleyball) had locker room facilities located in the same facilities where they practiced and competed. OCR determined that in academic year 2012-2013, 125 (38.0%) of the 329 female athletes had locker rooms located in the same facilities where they practiced and/or competed, compared to 192 (52.6%) of the 365 male athletes. Accordingly, OCR determined that there was a disparity favoring male athletes regarding the availability of locker room facilities.

Program Component Conclusion

OCR determined that differences in the quality of facilities provided for practice and competitive events for similar teams either generally related to the size of the team (baseball and softball) or offset one another. OCR determined that there was a disparity favoring men's teams regarding the exclusivity of use of the facilities provided for practice and competitive events, and a disparity favoring women's teams regarding the numbers of lockers. OCR determined that there was a disparity favoring men's teams regarding the availability of facilities provided for practice and competitive events, and there were significant disparities favoring male athletes with regard to the quality, availability and exclusivity of use of locker/team rooms; specifically, with regard to the size of locker rooms and team rooms provided for men's teams as compared to women's teams, required sharing of shower and restroom facilities between some women's teams, and required sharing of locker rooms between the tennis and women's track teams. There was also a disparity favoring men's teams regarding the preparation and maintenance of practice and competitive facilities. Overall, OCR determined that there were significant and unjustified disparities favoring men's teams for this component. Accordingly, OCR concludes that there is sufficient evidence to support a conclusion that the University has not provided equal opportunities to students of both sexes with respect to the provision of locker rooms, practice and competitive facilities. The University has informed OCR of steps taken in academic year 2014-2015 to address these disparities, including the reassignment of locker/team rooms. OCR will evaluate the sufficiency of the University's actions as part of its monitoring of the Agreement.

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

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

In assessing compliance with this component, OCR reviewed the University's policies and procedures; interviewed coaches, athletes and trainers; and, visited medical and training facilities. OCR also conducted follow-up surveys of coaches and athletes.

All student athletes are required to pass an athletic pre-participation physical examination performed by a member of the University's sports medical team prior to participating in any of the University's sports programs. Such an examination is required for all freshman student athletes and new transfer students. In addition, the University requires a brief pre-participation

medical re-evaluation before the beginning of the junior year. Additional examinations are scheduled when warranted; all athletes are required to see a trainer first to determine whether a physician's examination is warranted.

Availability of Medical Personnel³³

The xxxxxxxxxxxxxxxxxxxx is responsible for assigning medical coverage for games and practices, and based this assignment on the NCAA data on the rate or risk of catastrophic injury. The xxxxxxxxx stated that in accordance with this data, xxxxxxxxxxxx attended games and practices of the teams that are high-risk and require the presence of an onsite physician. Accordingly, a physician was onsite at home games for men's and women's basketball; men's and women's soccer; football; men's wrestling; and men's lacrosse. OCR determined that in academic year 2012-2013, 43 (13.1%) of the 329 female athletes had a physician onsite at home games, compared to 264 (72.3%) of the 365 male athletes. For all other teams' home games, a physician was always available by telephone. There also was an EMS squad on-site for all games, except golf and tennis. Only the football team had medical personnel attend practice; again, due to the high risk of injury. No coaches or athletes expressed any issues with the quality of medical personnel assigned to cover games.

Based on all of the above, OCR determined that there was a disparity favoring men's teams regarding the availability of medical personnel and assistance at games; however, the University equivalently provided medical personnel at practices and games for teams considered to have a high-risk of injury. OCR found this reason to be related to the needs of each team and thus a legitimate, non-discriminatory reason for the disparity.

Health, Accident and Injury Insurance Coverage

The University provides accident insurance to its student athletes. The Student Accident Insurance Policy provides "excess type" coverage, in which all claims must first be submitted to the student athlete's own (or parent's or guardian's) insurance for payment. The accident insurance will then pay any unpaid portion of the bill within the limits of the policy. If a student athlete does not have insurance, the accident insurance will be the primary coverage. The policy coverage is the same for all student athletes, regardless of sex, on all of the University's intercollegiate teams.

Availability and Quality of Training Facilities

There were three training locations: the Hale Center,³⁴ the RAC³⁵ and the College Avenue Gym.³⁶ The majority of the University's practice/competitive facilities and lockers rooms are

³³ The complainants alleged that medical and training services were not available to one women's team during practice. OCR determined that, overall, the University provided equivalent medical and training facilities and services to all athletes.

³⁴ The Hale Center, which is adjacent to the football stadium, is located on Busch campus.

³⁵ The RAC is located on Livingston campus.

³⁶ The College Ave Gym is located on the College Avenue campus.

located in or around each of these facilities. Assignments to training rooms were made by the xxxxxxxxxxxxxxxxxxxxxxxx and xxxx staff, who took into account the location of the team's practice facility, and the convenience of the team and trainer. Teams had exclusive use of their training facility during their scheduled times. The equipment available at the Hale Center included training tables, treadmills, bicycles, stretch machines, benches with dumbbells, and more. The equipment available at the RAC included training tables, one bicycle, leg press, and muscle stimulation (stim) machines. The College Ave gym contained training tables, stim machines, free weights and Hydrocollator, as well as other equipment.

During OCR's investigation, four of ten (40.0%) men's and five of fourteen³⁷ (35.7%) women's teams were assigned to the Hale Center training facility, the University's main athletic training facility, where the team xxxxxxxxxxxx office was located. These teams included: men's football, soccer, lacrosse, indoor track; and women's field hockey, lacrosse, swimming, tennis and indoor track. OCR determined that in academic year 2012-2013, 116 (35.3%) of the 329 female athletes were assigned to the Hale Center, compared to 231 (63.3%) of the 365 male athletes. It was the best training facility at the University, as it was equipped with a large range of state of the art equipment and was spacious and well stocked. It was open five days a week during mornings and afternoons. All teams had access to the Hale Center if their assigned training room did not have the needed equipment. Trainers were responsible for arranging use of this facility.

Four of ten (40.0%) men's and seven of fourteen (50.0%) women's³⁸ teams were assigned to the RAC training facility. The teams included: men's basketball, baseball, golf and outdoor track; and women's basketball, softball, golf, outdoor track, gymnastics, soccer, and crew. OCR determined that in academic year 2012-2013, 181 (55.0%) of the 329 female athletes were assigned to the RAC, compared to 90 (24.7%) of the 365 male athletes. The RAC's training facility was crowded and had less equipment that was older and only in fair condition; however, the facility was considered adequate by most training staff and athletes at the University. The RAC was open five days a week, usually between 8 a.m. and 5 p.m. On most days, it stayed open later since the xxxxxxxxxxxxxxxx was usually there after 5 p.m., which allowed some flexibility as to the end time.

Two of ten (20.0%) men's and two of fourteen (14.3%) women's teams were assigned to the College Avenue Gym training facility. The teams included: men's cross-country and wrestling; and women's cross-country and volleyball. OCR determined that in academic year 2012-2013, 32 (9.7%) of the 329 female athletes were assigned to the College Avenue Gym, compared to 44 (12.1%) of the 365 male athletes. The College Avenue training room was small and substantially less well equipped than either of the other two training facilities. The College Avenue training facility was generally open during afternoons only; however, hours varied by team, season and semester.

OCR determined that more male athletes were assigned to the most desirable training facility: the Hale Center; more female athletes were assigned to the less desirable, but still adequate training

³⁷ For this analysis, track was considered two separate teams for both women and men since indoor and outdoor track had different assignments.

³⁸ The volleyball team was also assigned to the RAC for its non-traditional season.

facility: the RAC; however, more male athletes were assigned to the least desirable training facility: the College Avenue Gym. Accordingly, OCR determined that these disparities offset.

Availability and Quality of Weight and Conditioning Facilities

All strength and conditioning coaches were certified as Strength and Conditioning Specialists by the National Strength and Conditioning Association. The xxxxxxxxxxxxxxxxxxxxxxxx was responsible for making the specific assignments to each facility. The University had three weight and conditioning facilities for athletes, which were located at the Hale Center, the RAC, and the College Avenue Gym facility. All teams reported being supervised by either the xxxxx or xxxxxxxxxxxxxxxxxxxxxxxx during their workouts in the weight room. Teams had exclusive use of their weight and conditioning facilities during their assigned times.

During OCR's investigation, three of ten (30.0%) men's teams and six of fourteen (42.6%) women's teams were assigned to the Hale Center weight and conditioning facility. The teams included: men's football, lacrosse and soccer; and women's crew, field hockey, gymnastics, lacrosse, swimming and tennis. OCR determined that in academic year 2012-2013, 153 (46.5%) of the 329 female athletes were assigned to the Hale Center, compared to 197 (54.0%) of the 365 male athletes. The Hale Center weight room which contained numerous treadmills, bicycles, squat machines, benches, weights, televisions, and specialized football equipment, was far better equipped than the weight rooms at the RAC or the College Avenue facility. The Hale Center had more equipment and a wider range of equipment, was more spacious, and was a new, state of the art facility.

Six of ten (60.0%) men's teams and seven of fourteen (50.0%) women's teams were assigned to the RAC weight and conditioning facility. The teams included: men's basketball, baseball, golf, indoor track, outdoor track, and cross-country; and women's basketball, softball, golf, soccer, indoor track, outdoor track and cross-country. OCR determined that in academic year 2012-2013, 156 (47.4%) of the 329 female athletes were assigned to the RAC, compared to 135 (37.0%) of the 365 male athletes. The RAC, which contained treadmills, bicycles, shoulder and leg press machines, benches, and weights, had less equipment overall, and a smaller variety of types of equipment. The facility was also more crowded and older than the Hale Center, with equipment only in fair condition. University staff generally described the RAC as crowded but well maintained and essentially adequate.

One of ten (10.0%) men's teams and one of fourteen (7.1%) women's teams were assigned to the College Avenue weight and conditioning facility. The teams included: men's wrestling and women's volleyball. OCR determined that in academic year 2012-2013, 20 (6.1%) of the 329 female athletes were assigned to the College Avenue Gym, compared to 33 (9.0%) of the 365 male athletes. OCR's inspection of the College Avenue weight room determined that it was smaller, older and had much less equipment than either of the other two facilities. It contained a Universal machine, free weights and some benches. Staff and student athletes described it as poorly equipped, crowded, and "less than adequate."

Based on the above, OCR determined that more male athletes were assigned to the better equipped weight and conditioning facility; more female athletes were assigned to the less desirable, but still adequate training facility; and more male athletes were assigned to the least desirable weight and conditioning facility. Accordingly, OCR determined that these disparities offset.

Availability and Qualifications of Athletic Trainers

All University trainers are certified by the National Athletic Trainer's Association (NATA); none of the information OCR reviewed indicated any problems with the qualifications of available trainers. OCR noted no disparity in the quality of trainers assigned to work with men's and women's teams. With respect to the assignment of trainers to particular teams, the xxxxxxxxxxxx stated that the University conducted a risk assessment to determine what sports needed trainers; it considered which teams had a high rate or risk of catastrophic injury, and how other schools apportion trainers for their teams.

During OCR's investigation, six of nine (66.7%) men's teams and seven of thirteen (53.8%) women's teams were assigned trainers for traditional season practices: men's and women's basketball; men's and women's lacrosse; men's and women's soccer; baseball; softball; football; women's field hockey; men's wrestling; women's gymnastics; and women's volleyball. OCR determined that in academic year 2012-2013, 151 (45.9%) of the 329 female athletes were assigned trainers for traditional season practices, compared to 279 (76.4%) of the 365 male athletes. Two men's and two women's teams also had trainers for non-traditional practice: men's and women's basketball, football and women's gymnastics. OCR determined that in academic year 2012-2013, 35 (10.6%) of the 329 female athletes were assigned trainers for non-traditional season practices, compared to 125 (34.2%) of the 365 male athletes.

Six of nine (66.7%) of men's teams and nine of thirteen (69.2%) women's teams were assigned trainers for traditional season home events: men's and women's basketball; men's and women's lacrosse; men's and women's soccer; baseball; softball; football; women's field hockey; men's wrestling; women's gymnastics; women's swimming; women's tennis; and women's volleyball. OCR determined that in academic year 2012-2013, 181 (55.0%) of the 329 female athletes were assigned trainers for traditional season home games, compared to 279 (76.4%) of the 365 male athletes. Five of nine (55.6%) men's teams and seven of thirteen (53.8%) of women's teams were assigned trainers for non-traditional home games: men's and women's basketball; men's and women's lacrosse; men's and women's soccer; baseball; softball; football; women's field hockey; women's tennis; and women's volleyball. OCR determined that in academic year 2012-2013, 138 (41.9%) of the 329 female athletes were assigned trainers for non-traditional season home games, compared to 246 (67.4%) of the 365 male athletes.

Six of nine (66.7%) men's teams and seven of thirteen (53.8%) women's teams were assigned trainers for traditional away games: men's and women's basketball; men's and women's lacrosse; men's and women's soccer; baseball; softball; football; men's wrestling; women's field hockey; women's gymnastics; and women's volleyball. OCR determined that in academic year 2012-2013, 151 (45.9%) of the 329 female athletes were assigned trainers for traditional season

away games, compared to 279 (76.4%) of the 365 male athletes. No teams received trainers for non-traditional travel.

The University also used student athletic trainers; the trainers were primarily assigned to work with the football team. Football was assigned xxxxxxxxxxxxxxxx, and xxxxxxxxxxxxxxxxxxxxxxxx had football athletes as their primary responsibility. The University explained that football required more trainers due to the number of athletes on the team and the higher risk of injury.

Based on the above, OCR determined that there was a disparity favoring men's teams regarding the assignment of trainers for practices and competitive events.

Program Component Conclusion

The University provided accident insurance to all of its student athletes, and the qualifications of athletic trainers was substantially equal for male and female athletes. OCR determined that there was a disparity favoring men's teams regarding the availability of medical personnel and assistance, and assignment of trainers, for practices and games; however, OCR determined that the University provided medical personnel and trainers at games for teams considered to have a high-risk of injury and requiring the presence of an onsite physician, which was a legitimate, nondiscriminatory reason for the disparity. Thus, the University met the needs of men's and women's teams equivalently with respect to the availability of medical personnel and trainers at practices and games. OCR determined that disparities regarding assignments to training, weight and conditioning facilities off-set. Accordingly, OCR concludes that the evidence is insufficient to establish that the University failed to provide equal opportunities to students of both sexes with respect to the provision of medical and training facilities and services.

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

In assessing compliance in this component, OCR considers the following factors: the equivalence for men and women of the (a) housing and (b) dining facilities and services or other related special services provided for student athletes.

In making a determination regarding the University's compliance with respect to this component, OCR reviewed documentation relating to the housing provided by the University in academic year 2011-2012. For dining facilities and services, OCR reviewed data provided by the University relating to academic year 2012-2013. OCR also conducted a follow-up survey of coaches and students in 2013-2014.

Housing

The Athletics Department is responsible for procuring housing for all athletes who live on campus. The xxxxxxxxxxxxxxxxxxxxxxxx works with the coaches to determine the number of students who need housing. The coaches are given the opportunity to request specific dorms, but the xxxxxxxxxxxxxxxxxxxxxxxx allocates the dormitories to the individual teams. The coaches then decide how to distribute the students among the housing that is available to them. OCR

determined that no special services are provided to either male or female athletes as part of housing arrangements.

OCR identified seventeen dormitories where one or more student athletes were housed: seven of these dormitories are suites or apartments; the rest are traditional dormitories. The dormitory suites are six person suites (2 persons each in three rooms); with a micro-fridge and a private bathroom in each room, and a suite living room. The dormitory apartments house four students per apartment (2 persons each in two rooms); with a private bathroom in each room, and a kitchen and living room for the apartment. The traditional dormitories house two students per room; with a micro-fridge unit in each room, and two bathrooms and a lounge on each floor. Stonier dormitory is one of the traditional dormitories open to all students; but unlike other traditional dorms, it is air-conditioned and has a bathroom in each room and a lounge with a kitchen on each floor. Coaches and students interviewed agreed that this is considered a highly desirable dormitory, in part because it stays open during school breaks. According to coaches and students, the three most desirable types of dormitories are the dormitory suites, the dormitory apartments,³⁹ and Stonier Dormitory.⁴⁰

Regular School Year Housing for Freshmen Athletes

Since most upper-class students have the option of living off-campus, OCR analyzed the housing provided to freshman athletes of each sex. OCR determined that in academic year 2011-2012, 50.0% of male freshman athletes were in the most desirable housing (dormitory apartments and Stonier Dormitory); whereas 58.5% of female freshman athletes were in the most desirable housing (dormitory suites and Stonier Dormitory). Based on OCR's interviews with athletes and the layout of the three types of housing, OCR determined that all of these types of housing were equally desirable. Accordingly, OCR determined that there was no significant disparity regarding regular school year housing for freshmen athletes.

Regular School Year Housing for Non-Freshmen Athletes

All of the continuing (non-freshman) athletes who lived on campus, regardless of sex, lived in the desirable dormitory apartments or dormitory suites. The remaining athletes lived off-campus in housing of their own choosing. Accordingly, OCR determined that there was no disparity regarding regular school year housing for non-freshmen athletes.

Pre-Season and Post-Season Housing

The following teams were required to be on campus pre-season or post-season when the dormitories were otherwise closed: baseball; football; men's soccer; women's soccer; women's crew; women's volleyball; and women's field hockey. If an athlete on one of these teams lived on campus and the dormitory was closed during the pre-season or post-season, the athletes on the following teams were provided housing paid for by the University: baseball; men's soccer;

³⁹ Coaches and athletes identified seven desirable dormitory suites and/or dormitory apartments. OCR determined that two were located on the College Avenue campus and five were located on Busch campus.

⁴⁰ Stonier dormitory is located on the College Avenue campus.

women's soccer; and women's field hockey team members were housed in a hotel (all of comparable quality); football and women's crew team members were housed in on-campus dormitories; and women's volleyball team members were housed in a sorority house. Based on all of the above, OCR determined that there was no significant disparity regarding pre-season and post-season housing as equivalent numbers of male and female athletes were housed in hotels or on-campus.

Housing During Breaks During the Regular Academic Year

Two men's teams (basketball and track) and six women's teams (basketball, crew, gymnastics, lacrosse, swimming and track) were required to be on-campus during winter and/or spring breaks. The freshmen members of the men's and women's basketball teams were housed in a hotel during winter break, paid for by the University. For all other teams, with the exception of women's lacrosse and crew, athletes who lived off-campus stayed in their off-campus residences and all other students who could not remain in their on-campus residence were housed in an off-campus residence with other members of the team. For women's lacrosse, student athletes who could not remain in their on-campus residences for spring break were provided with a temporary on-campus housing assignment or stayed with upperclassmen in off-campus apartments. For the crew team, any student who did not live off-campus and who could not remain in their on-campus residence for spring break, stayed at home. Based on the above, OCR determined that only the men's and women's basketball teams were provided hotel accommodations for housing during breaks when required to be on campus. Accordingly, there were no differences favoring either sex regarding housing during breaks.

Meals

Regular Meal Plans

All University freshmen, athletes included, are required to live on campus. All students who live on-campus are required to have a meal plan. Upper-class students who live off campus are allowed to buy meal plans if desired. Students may pick from a range of standard options, which allow them a set number of meals at any of the numerous dining locations on campus. All full scholarship athletes, regardless of gender, are given the monetary equivalent of a full meal plan each semester, which allows them to purchase one of several campus meal plan options.⁴¹ OCR found no difference in the types of meal plans, the number of meals per week, or the adequacy of the meal plans provided to male and female athletes.

Pre-game Meals and Training Tables

Pre-game meals are meals that are eaten together as a team before home games. One complaint alleged that men's teams were provided with catered meals and special access to dining halls. In academic year 2013-2014, seven (53.8%) of the thirteen women's teams (basketball, field hockey, softball, lacrosse, soccer, swimming and tennis) were provided with pre-game meals; whereas four (44.4%) of the nine men's teams (basketball, football, lacrosse, soccer) were

⁴¹ The University defines a full meal plan as one with 285 meals for the semester.

provided with pre-game meals. However, OCR determined that in academic year 2013-2014, 140 (42.6%) of the 329 female athletes were provided with pre-game meals, compared to 212 (58.1%) of the 365 male athletes. Accordingly, OCR concluded that there was a disparity favoring men's teams with respect to the provision of pre-game meals. OCR found that the football team and the women's basketball team were given pre-game meals at the hotels in which they stayed the night before the game.⁴² The disparity in the numbers of male and female athletes receiving pre-game meals related to the fact that the football team stayed at a hotel before home games and the size of the football team, which required that catered meals be provided. None of the athletes or coaches of these teams had any complaints about the quality of this food.

Training tables are meals that are provided to the entire team in a separate area for team-related discussions. OCR determined that all teams were allowed to have training tables, as long as the students using the training tables had a meal plan, because the cost of training table meals is deducted from each student's meal plan. The food at the training tables is the same as is offered in the regular dining halls. OCR determined that only the women's basketball team and the football and men's basketball teams were provided with a training table. OCR determined that in academic year 2012-2013, 14 (4.3%) out of the total 329 female athletes were provided a training table, compared to 125 (34.2%) out of a total of 365 male athletes. Accordingly, there was a disparity favoring male teams regarding training tables.

OCR found no differences in the quality of pre-game meals and training tables provided to athletes on the basis of sex.

Meals Provided During Breaks

With respect to meals provided during breaks in the academic year when athletes are required to be on campus, during academic year 2012-2013, a per diem of \$32 was provided to men's basketball; women's basketball; men's lacrosse; and women's lacrosse. A per diem of \$20 was provided to football; men's track; and, women's track. A per diem of \$15 was provided to men's wrestling; women's crew; and, women's swimming. Although the per diem rates ranged from \$15 per day to \$32 per day, since men's and women's basketball both received the higher rate of \$32, and women's swimming and men's wrestling both received the second-lowest rate of \$15, OCR concluded that the male and female athletes received equivalent benefits in this regard in academic year 2012-2013. For academic year 2013-2014, the University provided all athletes with a per diem of \$32.

Program Component Conclusion

Accordingly, OCR determined that there were no disparities regarding regular school year housing, pre and post-season housing or housing during breaks provided for men's and women's

⁴² OCR noted that in academic year 2012-2013, only the football team and women's basketball team stayed at a hotel before home games. OCR reminds the University of its obligation to ensure that the opportunity to receive this benefit (housing on the night before home games) is equivalently available to male and female athletes and their teams.

teams. OCR found no difference in the types of meal plans, the number of meals per week, or the adequacy of the meal plans provided to male and female athletes. OCR found no disparity with respect to meals provided during breaks. OCR found disparities favoring men's teams with regard to the provision of pre-game meals and training tables. The disparity regarding the provision of pre-game meals related to the fact that the football team stayed at a hotel before home games and the size of the football team, which required that catered meals be provided. OCR concluded that the disparity was justified. OCR determined that the disparity related to the training tables did not provide an added benefit to male athletes as they received the same food as provided in the dining halls. Accordingly, OCR concludes that the evidence is insufficient to establish that the University failed to provide equal opportunities to students of both sexes with respect to the provision of housing and dining facilities and services.

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

In assessing compliance regarding the provision of publicity, OCR considers the following factors: (a) availability and quality of sports information personnel; (b) access to other publicity resources for men's and women's programs; and (c) quantity and quality of publications and other promotional devices featuring men's and women's programs.

In assessing the University's compliance with respect to this component, OCR surveyed coaches and interviewed sports information personnel, and reviewed the University's practices and procedures relating to publicity. Data described below generally relates to the provision of publicity in academic year 2012-2013; although, as specifically noted, the University has since updated its publicity practices.

Availability and Quality of Sports Information Personnel

Sports Information Personnel (SIP) assigned by the University to each team were generally responsible for game statistics and recaps; social media updates; managing the team's website, including posting competition results and team photographs; and liaising with media. OCR determined that men's and women's teams received similar services from their assigned SIPs.

All sports except men's and women's basketball, and football, had one SIP assigned. Women's and men's basketball each had xxxxxxxx, and football had xxxxxxxxxxxxxxxx.⁴³ The University explained that the number of SIPs was determined by the amount of reporting required for the particular sport. OCR's investigation revealed that the football team had all of its games televised nationally, while the men's basketball team had the majority of its games televised nationally, and women's basketball team had eight of its games televised nationally.

Women's and men's basketball, and football had SIPs at all home, away, and post-season games. Five other women's teams (women's softball, women's field hockey, women's swimming,

⁴³ During academic year 2012-2013, the University hired a new xxxxxxxxxxxxxxxx who established Sports Action Committees (SAC) for each Olympic sport whose purpose is to promote each sport during their respective seasons. The SACs include participation from coaching staff, marketing, ticket sales, development, and communications staff.

women's soccer, and women's lacrosse) and three other men's teams (men's wrestling, men's soccer, and men's lacrosse) had SIPs at all home games, some away games, and post-season games; however, most teams had SIPs only at home games (women's volleyball, women's tennis, women's crew, women's track, women's cross-country, women's golf, and women's gymnastics, men's baseball, men's track, men's cross-country, and men's golf). Accordingly, six of the thirteen women's teams and five of the nine men's teams had SIPs at all or some of the away games, and the remaining teams only had SIPs at home games. Therefore, OCR determined that these disparities were not significant.

SIPs assigned to women's teams averaged 4.7 years of post-graduate experience in the sports information field; whereas SIPs assigned to men's teams averaged 8 years of post-graduate experience. The difference in experience levels was generally due to the fact that the SIPs assigned to seven women's teams had no post-graduate experience, whereas only one men's team was assigned an SIP with no post-graduate experience. The SIPs with no post-graduate experience, however, had interned for several years in their colleges' athletics communications office; so they had some related experience prior to being hired by the University. No coaches raised concerns regarding the quality of SIP services. The University did not provide a justification for the disparity in the experience of SIPs assigned to men's and women's teams.

Access to Other Sports Information Services

The University has a website page dedicated to its intercollegiate program, with links to each of the team websites.⁴⁴ Each of the team website pages included competition schedules; statistics; rosters; coaching staff; news; upcoming events; press releases; a digital media guide; team photographs; and videos. The webpages for each team were of similar quality and included similar types of information, regardless of sex. Additionally, all teams utilized social media such as Facebook and Twitter to publicize events.⁴⁵ Earlier in OCR's investigation, the University's "Events" webpage gave visitors the option of purchasing tickets for three men's and one women's team (men's basketball, football, men's wrestling, and women's basketball); the website now includes links to ticket information for football, men's and women's basketball, men's wrestling, men's and women's lacrosse, men's and women's soccer, and women's gymnastics. Men's and women's teams received equivalent coverage in the University's newspaper.

All football games were televised on national television. Additionally, 22 men's basketball games were televised on national television, and 3 were televised on RVision (the University's television); and 8 women's basketball games were televised on national television, and 11 were televised on RVision. All football, and men's and women's basketball games are also broadcast on the radio. The men's basketball team also had an 8-episode TV show televised on national TV; and the

⁴⁴ <http://www.scarletknights.com/index-main.html>.

⁴⁵ The University advised that effective academic year 2014-2015, it revamped its athletics website to showcase highlight packages, interviews, and videos for all teams. The University stated that it also now provides extensive coverage of every sport via Twitter, with many games being live Tweeted, and short video interviews of student athletes and coaches posted immediately following some games. OCR will review and monitor the changes during the monitoring of the Agreement.

football team had a 12-episode weekly show on television, as well as a weekly coach's show streamed on the web and broadcast on radio.

OCR found that there was a disparity in the national television coverage, other TV shows, radio broadcasts, and web streaming favoring men's teams. The University explained that football, and men's and women's basketball were the only sports for which it received requests to broadcast games on television or radio and requests for television, radio or web streaming programs. The University explained that it had no control over what TV, radio and web broadcasters chose to report or stream.

Quantity and Quality of Publications and Other Promotional Devices

OCR examined the University's team-related publications; including media guides, game-day programs, and posters. The only printed publications provided for athletic teams were Game Day Programs and media guides. Football was the only team with Game Day Programs. Two men's teams (basketball and football) and one women's team (basketball) were provided with printed media guides that were of comparable quantity and quality. Accordingly, OCR determined that there was a disparity favoring men's teams with regard to the quantity and quality of publications. The University explained that Game Day Programs and printed media guides were produced based upon fan and media demands.

Women's basketball and gymnastics, and men's basketball and football were provided with color posters of the team and their schedules. The posters for women's basketball and gymnastics and men's basketball were of comparable size, type and quality. The football team's poster was larger, made in the shape of the letter "R", and had multiple action shots of the players. The University has stopped using larger "R" shaped posters for the football team, and uses posters comparable to those for the other three teams.

The men's and women's basketball, and the football teams used billboard advertising, which promotes ticket sales. The band, dance team, and cheerleaders were provided only to football and men's and women's basketball.

Based on the above, OCR determined that there was a disparity favoring men's teams with regard to the quantity and quality of publications and other promotional devices used for men's and women's teams. The University explained that billboard advertising is provided to the teams that consistently draw the largest crowds and for which the University can charge admission. The University explained that the band, dance team, and cheerleaders were only provided to the University's three revenue-producing sports.

Program Component Conclusion

Based on all of the above information, OCR determined that men's and women's teams received similar services from their assigned SIPs. OCR determined that there was a disparity favoring men's teams regarding the number of SIPs assigned, but that the disparity was justified by which sports had more televised games. OCR determined that there was an unjustified disparity

favoring men's teams with respect to the quality of sports information personnel. Specifically, SIPs assigned to men's teams averaged more years of post-graduate experience in the sports information field. OCR determined that all teams had a website with similar information; all teams utilized social media similarly; and, all teams received equivalent coverage in the University's newspaper. OCR also found that there were disparities favoring men's teams in the national television coverage, other TV shows, radio broadcasts, and web streaming, and with regard to the quantity and quality of publications and other promotional devices used for men's and women's teams. The University used billboard advertising and provided the band, dance team, and cheerleaders only to the three "revenue producing teams": football and men's and women's basketball. The University asserted that the disparities regarding television, radio and web streaming coverage related to its lack of control over the games and programs that TV, radio and web broadcasters choose to report or stream; differences in fan attendance and interest in specific teams; and the fact that only the football team and men's and women's basketball teams produce revenue for the University. OCR has recognized that these reasons may be legitimate and nondiscriminatory; however, universities have an obligation under Title IX to not only react to interest in their most popular teams, but also to market and promote interest in all of their teams equivalently. OCR notes that the University is working to promote interest in all of its teams through its xxxxxxxxxxxxxxxxxxxxxxxx and SACs, and that the University's revised website includes comparable coverage for all of its teams. While the University may not have control over local and national broadcasting decisions, it has control over certain campus productions, such as web-streaming of its games and programs. Additionally, OCR determined that other promotional devices, including media guides, game day programs, and posters are not used for all of the University's teams.

Based on the evidence obtained in this review, OCR does not find that the University's justifications adequately account for the disparities in its promotion of its men's and women's teams. Accordingly, OCR determined that there was a significant disparity overall favoring men's teams with respect to publicity; and, sufficient evidence to support a conclusion that the University has not provided equal athletic opportunities to students of both sexes with respect to publicity.

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

In assessing compliance in this component, OCR considered the following factors: (a) the amount of administrative assistance provided to men's and women's programs; (b) the amount of secretarial and clerical assistance provided to men's and women's programs; and (c) other amenities.

During its investigation, OCR inspected the support services (office space and equipment) provided for the University's men's and women's intercollegiate athletics programs. OCR also surveyed and interviewed University administrators and coaches, mostly recently in a 2014 survey.

Amount of Administrative Assistance

All teams have the same number of administrators assigned to the team, who work exclusively full-time for the team to which they are assigned. Each team has an assigned sports administrator, budget administrator, and academic administrator. Each team also has individuals responsible for facilities, training, strength and conditioning, athletic communications, and fundraising/development.⁴⁶ Based on the above, OCR determined that the University provided equivalent administrative assistance.

Amount of Secretarial and Clerical Assistance

Every coach reported that he/she performs some clerical duties as part of his/her coaching position. All teams other than football, men's basketball, women's basketball, and women's swimming share secretarial services with other teams. Football had xxxxxxxxxxxxxxxxxxxx devoted to the team. The University explained that because of the number of athletes on the team, the team has increased administrative and clerical work. Coaches of most men's and women's teams indicated that they received a few hours of secretarial work per week; although coaches for women's soccer and women's swimming reported receiving 10+ hours per week, while softball reported receiving no secretarial services. Based on all of the above, OCR determined that the needs regarding secretarial and clerical assistance were met equivalently in both the men's and women's programs.

Office Space and other Amenities

In academic year 2012-2013, some teams had their own coaches' offices or office suites located in one of the athletics/recreation facilities, while others had their offices located in cubicles in the RAC. Sixty-three percent (63%) of men's teams coaches and sixty-seven percent (67%) of women's teams coaches had office space as opposed to cubicles. The men's and women's golf and men's and women's track coaches' offices were located in adjacent cubicles, with separate areas designated for each head coach and assistant coach (if applicable). The xxxxxxxxxxxxxxxxxxxx was the only coach without designated office space or a cubicle, who stated that she did the majority of work from her home office. Overall, coaches of women's teams had approximately 175.72 ft.² per coach, while coaches of men's teams had approximately 285.32 ft.² per coach; a difference of 109.60 ft.² per coach favoring men's teams. The University did not provide an explanation for this difference.

OCR determined that all coaches had access to the same office equipment (fax, telephone, and computers) and that all offices were equipped with equivalent office supplies. Amenities varied between the offices – many offices had televisions, couches and mini-fridges. The football program had a suite that included a high-end kitchenette area and a reception/lounge area with artwork. Overall, the quality of the amenities for other teams was equivalent between the men's and women's program. In response to our request for an explanation, the University told us that it was in the process of revamping all of the team office space, including providing additional

⁴⁶ Academic support (tutoring), facilities, training, strength and conditioning, athletic communications (publicity) are addressed above in their respective sections.

amenities such as televisions. OCR will review the changes as part of OCR's monitoring of the Resolution Agreement.

Program Component Conclusion

Based on the above, OCR determined that there were disparities favoring coaches of men's teams regarding the amount of secretarial and clerical assistance as a result of the additional clerical staff assigned to the football program; however, OCR determined that the disparity was justified by a legitimate and nondiscriminatory reason, the size of the team and resulting need for additional secretarial and clerical assistance. OCR found that the University provided equivalent administrative assistance to men's and women's teams. OCR determined an equivalent percentage of coaches of men's and women's teams had offices; and that although some teams' offices were in cubicle spaces, men's and women's teams were affected equivalently. However, OCR found a significant disparity regarding office space that favored men's teams; the only assistant coach without an office or cubicle was the xxxxxxxxxxxxxxxx. In addition, men's teams had access to substantially more office space and to better amenities than the women's teams. As a result, men's teams were afforded greater access to space in which to conduct meetings and other team-related activities. Accordingly, overall, OCR determined that there was a significant disparity favoring men's teams regarding the provision of support services.⁴⁷ Therefore, OCR concludes that there is sufficient evidence to support a conclusion that the University has not provided equal opportunities to students of both sexes with respect to the provision of support services.

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

In assessing compliance in this component, OCR considered the following factors: (a) whether the coaches or other professional athletic personnel in the programs serving male and female athletes are provided with substantially equal opportunities to recruit; (b) whether the financial and other resources made available for recruitment in male and female athletic programs are equivalently adequate to meet the needs of each program; and (c) whether the differences in benefits, opportunities, and treatment afforded prospective student athletes of each sex have a disproportionately limiting effect upon the recruitment of students of either sex.

In assessing the University's compliance with respect to this component, OCR reviewed data provided by the University and interviewed administrators, and surveyed coaches and athletes in academic year 2011-2012. OCR updated this information through surveys of coaches and athletes in academic year 2013-2014.

Opportunities to Recruit

All head coaches and some assistant coaches are responsible for recruiting within the guidelines set forth by the NCAA. Coaches reported spending 40% to 50% of their time on recruitment, with it often being part of their daily duties. All coaches reported recruiting mainly in the mid-

⁴⁷ In academic year 2014-2015, the University advised OCR that it revamped its coach office space for all teams. OCR will review and monitor the changes during the monitoring of the Agreement.

Atlantic region, but also recruiting nationally and internationally. No coaches reported that they did not have sufficient time to recruit. OCR found no disparities favoring either sex with regard to opportunities to recruit.

Financial Resources

For academic year 2011-2012, the University's recruitment budget was \$768,100; with \$505,700 budgeted (65.8% of the total amount) for the men's program and \$262,400 budgeted (34.2% of the total amount) for the women's program. Through its review of data provided by the University as well as responses to OCR surveys and interviews, OCR determined that the University consistently budgeted more, and spent more, for the men's program than the women's program. The proportion of recruitment funds allocated to the women's program was significantly less than the proportion of female participants. OCR determined that the disparity was due to recruitment for football. The University advised OCR that the number of athletes needed to fill the football team was considerably higher than for any other sport; accordingly, money needed to recruit a sufficient number of quality athletes for football was far greater than that needed for any other sport, male or female. If the football team is removed from the analysis of the 2011-2012 data, women's teams spent 65.0% of the recruitment budget, but were 57.4% of participants; while men's teams spent 35.0% of the recruitment budget, but were 42.6% of participants. No coaches reported being unable to recruit athletes of Division I caliber or fill the team's roster with these athletes as a result of the team's recruitment budget.

Based on the above, while OCR found a significant disparity favoring men's teams with regard to recruitment budgets and expenditures, the evidence did not support that the financial and other resources for recruitment of male and female athletes was not equivalently adequate to meet the needs of each program. OCR determined that the disparity was justified by the needs of the men's and women's programs, i.e., the unique nature of recruiting a large number of athletes to fill the roster for the football team. As discussed above, OCR determined that the University provided equal athletic participation opportunities for male and female athletes in academic years 2011-2012 and 2012-2013. However, OCR has not made a compliance determination regarding the University's provision of equal athletic participation opportunities for academic year 2013-2014.

Campus Visits

Pursuant to University policy, all official visits, which cover lodging, meals, entertainment and transportation expenses, must be approved in advance by either the University's NCAA Compliance Office or the Director of Athletics.⁴⁸ "Unofficial" visits, which are not financed in any way by the athletics department, do not require advance approval. In academic year 2011-2012, women's teams sponsored 110 official visits compared with men's teams, which sponsored 106. Accordingly, OCR found a slight disparity favoring women's teams with respect to official campus visits for this year. In surveys, coaches reported that the quality of these subsidized visits was equivalent for male and female prospective athletes.

⁴⁸An official visit is a campus visit by a prospective student athlete paid in whole or in part by the athletics department in accordance with NCAA rules.

Program Component Conclusion

OCR found a disparity favoring men's programs with respect to financial resources available for recruitment; however, OCR determined that the disparity was justified and did not result in teams not being able to recruit or fill the team's roster with Division I caliber athletes. OCR did not find evidence of disparities favoring either sex with respect to: opportunities to recruit; other resources made available for recruitment; and, benefits, opportunities and treatment afforded prospective student athletes of each sex. OCR found a slight disparity favoring women with regard to official campus visits, but this disparity was not significant. Accordingly, OCR concludes that the evidence did not establish a conclusion of noncompliance with respect to this component.

Overall Conclusion

OCR found insufficient evidence of a violation of Title IX with respect to the following components of the University's intercollegiate athletics program: the provision of equipment and supplies; scheduling of games and practice times; opportunity to receive tutoring and assignment and compensation of tutors; opportunity to receive coaching and assignment and compensation of coaches; medical and training facilities and services; housing and dining facilities and services; and recruitment.

With regard to travel and per diem allowances; locker room, practice and competitive facilities; publicity; and support services, OCR found that disparities in these individual segments of the University's program, with respect to benefits, treatment, services, or opportunities, were substantial enough in and of themselves to deny equality of athletic opportunities. Specifically, OCR determined that there was a significant and unjustified disparity favoring men's teams with respect to the amount of travel funds expended. OCR also determined that there was a significant disparity favoring men's teams with regard to locker room facilities; specifically, the quality and size of locker rooms and team rooms provided for men's teams as compared to women's teams, the required sharing of shower and restroom facilities between some women's teams, and required sharing of locker rooms between the tennis and women's track teams. Additionally, OCR determined that there was a significant disparity favoring men's teams with regard to the publicity component; specifically, with respect to the quality of sports information personnel and in the quantity and quality of publications and other promotional devices used for men's and women's teams. Finally, OCR determined that there was a significant disparity favoring men's teams with regard to the support services component; specifically, with regard to the amount of office space per coach; that the xxxxxxxxxxxxxxxx without an office or cubicle was the xxxxxxxxxxxxxx; and that coaches of the football team had more and better amenities in their office space. OCR considered the number and significance of disparities in the program components in which nonequivalence was found, and found that the disparities were greater for men's teams, and that the difference resulted in a lack of equal opportunity for female athletes, in violation of the regulation implementing Title IX.

On January 20, 2015, the University submitted the enclosed Agreement that addresses the identified noncompliance. Pursuant to the Agreement, the University will take specific actions to ensure that it provides equal athletic opportunities for members of both sexes in the provision

of travel and per diem allowances; the provision of its locker rooms, practice and competitive facilities; in the provision of publicity; and, in the provision of support services.

Specifically, the University agreed to, effective academic year 2014-2015: provide its women's athletics teams with locker and team rooms of equivalent quality, size, amenities, and proximity to competitive facilities as provided to its men's athletics teams. The University also agreed to ensure that it will take steps to provide equivalent publicity for men's and women's teams, including but not limited to the assignment of sports information personnel with comparable experience; and, equivalent publicity resources (such as game highlights, press conferences, and other promotional activities, such as band, dance team and/or cheerleaders at games) and media coverage. The University also agreed to provide office space for the coaches and administrative staff of men's and women's teams that is equivalent in availability, size and amenities. Finally, the University agreed to continue implementing its new policy of providing charter flights for all air travel for the women's basketball team, and provide equivalent travel expenses to members of its men's and women's teams.

Information provided by the University during negotiations with OCR indicates that the University has already taken steps to address concerns brought to the University's attention by OCR. Additionally, the University has begun to implement the Agreement; including providing charter flights to the women's basketball team, modifying coach office space and locker/team room assignments, and revising the athletics program website to ensure more coverage for women's teams. OCR appreciates the University's responsiveness to addressing equity concerns relating to its intercollegiate athletics program. OCR will evaluate the sufficiency of the actions already taken by the University as well as those still to be taken as part of its monitoring of the Agreement. OCR encourages the University to continue this responsiveness and to address any additional or new equity concerns that are brought to its attention.

As stated above, during the course of monitoring the Agreement, OCR will also obtain information from the University to ensure compliance with the regulation implementing Title IX with respect to the effective accommodation of the interests and abilities of athletes, and the proportionate provision of AFA to men and women in the intercollegiate athletics program.

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 (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.

This 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.

It is unlawful to harass, coerce, intimidate or discriminate against any individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights.

Thank you for your cooperation during this compliance review. If you have any questions regarding this letter or during the monitoring of the University's implementation of the Agreement, please contact Anna Moretto Cramer, Compliance Team Attorney, at (646) 428-3826 or anna.moretto.cramer@ed.gov; or Jocelyn Panicali, Compliance Team Attorney, at (646) 428-3796 or jocelyn.panicali@ed.gov; or Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Enc.

cc: Monica Barrett, General Counsel
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