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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

November 12, 2015

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Dear Ms. Greenberger and Ms. Larkin:

Thank you for your letter, dated October 8, 2015, regarding the recent decision by the National Collegiate Athletic Association (NCAA) to allow its member schools to award athletic scholarships up to the institution's full cost of attendance. Your letter raises a concern that "some schools' decisions regarding cost of attendance funds will not treat male and female athletes equally as required by Title IX."

As you know, OCR is responsible for enforcing, among other civil rights statutes, Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681-1688, and its implementing regulations at 34 C.F.R. Part 106 (Title IX), which prohibit discrimination on the basis of sex in all education programs or activities, including athletic programs, receiving Federal financial assistance from the Department. OCR is committed to the full, fair, and effective enforcement of Title IX.

Your letter cites specific schools' plans for administering cost-of-attendance awards as evidence that male student athletes may receive a disproportionately larger share of these awards. Each case is fact-specific and each Title IX determination is based on the particular set of facts presented, so this letter does not address specific schools' plans for administering the awards. Although OCR does not give legal advisory opinions, this letter provides general information on how Title IX applies to the cost of attendance awards.

The Department's Title IX regulations prohibit sex discrimination in interscholastic, intercollegiate, club, or intramural athletics offered by a recipient institution, including with

respect to athletic financial assistance. Athletic financial assistance includes any financial assistance expenditures through the institution's athletics program and any other aid that is connected to a student's athletic participation.¹ Thus, cost-of-attendance awards, which are provided to students based on their participation in athletics, count as athletic financial assistance and are subject to the same rules under Title IX as other athletic scholarships.

To comply with Title IX, if an institution offers athletic financial assistance, "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 interscholastic or intercollegiate athletics." 34 C.F.R. § 106.37(c). Since 1979, OCR has interpreted this regulation to mean an institution's "total amount of scholarship aid made available to men and women must be substantially proportionate to their [athletic] participation rates" at the institution, but it "does not require a proportionate number of scholarships for men and women or individual scholarships of equal dollar value."² OCR has explained in policy guidance that there will be a strong presumption that an unexplained disparity of more than 1% between the athletic financial assistance awarded to each sex constitutes a violation of the "substantially proportionate" requirement.³

This substantial proportionality test is conducted on a case-by-case basis, and OCR considers relevant, nondiscriminatory reasons (such as athletes who accepted scholarships but decided to attend different schools at the last minute) when determining whether a disparity in athletic financial assistance between the sexes exists.⁴ After accounting for nondiscriminatory factors, if the disparity between the athletic financial assistance (including cost-of-attendance awards) for each sex is more than 1%, there is a strong presumption that the institution has violated the substantially proportionate requirement.⁵ Thus, in response to your concern, a school must include cost-of-attendance awards in its overall athletic financial assistance calculations to determine its Title IX compliance. Moreover, "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 is direct evidence of discriminatory intent."⁶

¹ For example, exhausted eligibility awards are connected to a student's participation in athletics, so OCR would count them as athletic financial assistance. Similarly, if summer aid is offered because of a student's participation in athletics, it constitutes athletic financial assistance.

² Policy Interpretation: Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71413, 71415 (Dec. 11, 1979), www.ed.gov/ocr/docs/t9interp.html.

³ See Dear Colleague Letter: Bowling Green State University (July 23, 1998), www.ed.gov/ocr/docs/bowlgrn.html.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

Thank you again for bringing this important concern to OCR and for your dedication to ensuring that male and female athletes have equal athletic opportunities. We hope this letter fully responds to your request. If you have any questions, please do not hesitate to contact me.

Sincerely,



Catherine E. Lhamon
Assistant Secretary for Civil Rights
U.S. Department of Education