

2019

Earlham

COLLEGE

[GENDER EQUITY IN ATHLETICS AUDIT]

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Title IX and Gender Equity Specialists

INTRODUCTION

Earlham College (Earlham) retained Good Sports, Inc., Title IX and Gender Equity Specialists, to review the intercollegiate athletics program and identify potential concerns in complying with Title IX of the Education Amendments of 1972. Title IX is a federal law that prohibits sex discrimination in education programs receiving federal financial assistance.

Scope of the Review

Good Sports, Inc., conducted a modified review of Earlham's intercollegiate athletics program. There are 13 program areas reviewed for compliance under Title IX. The provisions governing athletics programs are contained in the Title IX regulation and the 1979 Intercollegiate Athletics Policy Interpretation (Policy Interpretation). Copies of the Title IX regulation and the Policy Interpretation are appended to this report, and pertinent sections are highlighted for convenient reference. Title IX is enforced by the Office for Civil Rights (OCR) of the U.S. Department of Education. Good Sports, Inc., has followed OCR's published policies, including the guidance contained in OCR's Title IX Athletics Investigator's Manual and the 1996 "Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test," in reviewing Earlham's athletics program.

Questionnaires addressing each of the 13 Title IX areas were completed by the head coaches. Additionally, athletics staff members completed questionnaires addressing those Title IX program areas pertinent to their positions. Assistant coaches completed questionnaires regarding their individual qualifications. Other information necessary for identifying compliance concerns was requested. Locker rooms, practice and competitive facilities, equipment rooms, weight and training rooms, and coaches' offices were reviewed via skype in May 2019. The review focused on student-athletes' benefits for the 2018-19 academic year, but information for 2017-18 has been analyzed as well.

The opinions and recommendations of Good Sports, Inc., are based upon information

provided by staff. Inconsistencies in information were anticipated due to the extensive detail collected, and Good Sports, Inc., attempted where reasonable to confirm information. Corrections were made in all areas where differences in data were apparent and would affect conclusions. Also, as expected, there were differences in opinions and perceptions regarding student-athletes' benefits. Good Sports, Inc., sought to verify information where the differences would affect conclusions and/or recommendations regarding compliance.

Organization of the Report

The section immediately following summarizes the compliance issues identified during this review and options / strategies for resolving them. The remainder of this report is divided into sections addressing each of the 13 Title IX program areas, and information is summarized in a manner consistent with federal government letters of findings. The 13 program areas are:

1. Accommodation of interests and abilities
2. Athletic financial assistance
3. Equipment and supplies
4. Scheduling of games and practice time
5. Travel and per diem allowances
6. Tutoring
7. Coaching
8. Locker rooms, practice and competitive facilities
9. Medical and training facilities and services
10. Housing and dining facilities and services
11. Publicity
12. Support services
13. Recruitment of student-athletes

Each of the 13 sections lists the factors identified in the Policy Interpretation to be reviewed for

compliance. This is followed by a summary of information provided to Good Sports, Inc., regarding Earlham’s athletics program, opinions as to Earlham’s compliance status, and strategies / options for resolving those compliance concerns identified. Recommendations and/or suggestions about a particular course of action are included where appropriate.

EXECUTIVE SUMMARY

EARLHAM COLLEGE TITLE IX ATHLETICS REVIEW

BACKGROUND

Earlham College (Earlham) retained Good Sports, Inc., Title IX and Gender Equity Specialists to review the intercollegiate athletics program and identify potential concerns in complying with Title IX of the Education Amendments of 1972. Title IX prohibits sex discrimination in education programs that receive federal funds. As a federal law, Title IX takes precedence over state law and athletic association by-laws.

The Office for Civil Rights (OCR) of the U.S. Department of Education has nationwide enforcement authority for Title IX. OCR has the legal authority to issue policies elaborating on the regulations it enforces. OCR’s major policy documents concerning athletics include the 1979 Intercollegiate Athletics Policy Interpretation; the 1990 Title IX Athletics Investigator’s Manual (co-authored by the founder of Good Sports, Inc.); the “Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test,” issued in 1996; and a policy clarification for athletic scholarships, issued in 1998. The 1979 Policy Interpretation is the most significant policy document for Title IX athletics requirements and remains current policy.

Civil rights laws have two basic provisions: equal access to the program, and equal treatment once in the program. The Title IX athletics policy for equal access is addressed by the program component of the “accommodation of interests and abilities,” which incorporates the much debated and litigated three-part test. The policies for equal treatment of those who have become participants are addressed by 12 other program components.

The Policy Interpretation outlines factors within the 13 program components, which are separated into three major categories for compliance findings, namely: 1) the Accommodation of Interests and Abilities; 2) Athletic Financial Assistance; and 3) Other Athletic Benefits and Opportunities, which includes the 11 program components of – equipment and supplies; scheduling of games and practice times; travel and per diem allowances; tutoring; coaching; locker rooms, practice, and competitive facilities; medical and training facilities and services; housing and dining facilities and services; publicity; support services (administrative and clerical support, and office space); and recruitment of student-athletes.

The Title IX athletics provisions protect student-athletes, not coaches or administrators; employees are protected by another subpart of the Title IX regulation covering employment. The Title IX athletics requirements regarding coaches' salaries, coaches' contracts, working conditions, courtesy cars, and coaches' office space and clerical support are reviewed only to the extent that, by enhancing coaches' availability and efficiency, they allow coaches to better serve the student-athletes.

Title IX does not require equal funding or dollar-for-dollar matching in the women's and men's programs, but lack of funds cannot justify sex discrimination. Title IX does not prohibit private funding, revenue production, fundraising, booster club or other donations from subsidizing athletics. Title IX does not impose any requirements for budgeting procedures or specify into which account donated dollars must be deposited. Nevertheless, institutions are not absolved of their obligation to comply if donors choose to donate only to men's teams, the booster club supports only football, or institution staff make poor choices about how to spend the available money. This means that whatever benefits are provided for student-athletes (improved facilities, new uniforms, better travel accommodations, scholarships, etc.) via donated monies, tangible gifts, guarantees, and endowments, are all viewed under Title IX as benefits provided by the institution. This principle of institutional responsibility is the same under all civil rights laws so

as to prohibit actions that would circumvent those laws.

There are only two program components where dollar amounts are key to compliance findings: athletic scholarships and recruitment. Awarding dollars proportionate to participation is required for scholarships, while it is a compliance target, not a requirement, for recruitment. Under certain circumstances, disproportionate funding may be justified under both program components. Compliance with most other program components is determined by the tangible benefits provided to students – the quality of equipment, availability and quality of coaches, modes of transportation, practice schedules, the quality of facilities, the availability of trainers, the publications provided – and not the dollar amount spent for each benefit.

Title IX does not require identical programs for men and women or identical benefits for women's and men's teams in the same sports. Different sports may be emphasized for men and women. Differences in benefits between women's and men's teams are not compliance concerns until students of one sex are at a disadvantage, and this disadvantage is not offset elsewhere in the program. In accordance with OCR's 1979 Policy Interpretation, offsetting benefits refers to situations where students of one sex are provided an advantage in some aspect of the program, while students of the other sex are provided an advantage in a different aspect of the program. If the benefits are of equivalent weight or importance, they may "offset" each other or provide a balance of benefits; in effect, comply with Title IX. Offsetting benefits may be provided within a factor, within a program component, or among the eleven program components combined under the finding for Other Athletic Benefits and Opportunities. Compliance findings for the accommodation of interests and abilities, which incorporates the three-part test, are independent of all other findings. Findings for athletic scholarships are also independent of all other findings. Sport-to-sport comparisons are useful for analysis and identifying differences in benefits, but compliance determinations are dependent upon comparing the total women's program to the total men's program. For example, for a program with ten men's teams and eleven women's teams,

the benefits provided to all ten men’s teams must be compared to those provided to all eleven women’s teams before a compliance determination can be made. A review of benefits for the more popular sports, Olympic sports, revenue-producing sports, highest tier sports or any other subdivision is incomplete, and therefore, inaccurate.

In general, OCR classifies compliance problems by different levels of severity. A “violation” of Title IX represents compliance problems so severe as to deny equal athletic opportunity on the basis of sex program-wide. An institution found in violation of Title IX – and that refuses to remedy the violation – risks losing federal funding. A “disparity” represents a difference in benefits where students of one sex are at a disadvantage, but not to the extent of a violation. A minor disparity usually represents situations where only one or two teams representing a small percentage of the participants for one sex, such as 20% or less, are at a disadvantage for a minor benefit. A significant disparity generally refers to situations where several teams for one sex are at a disadvantage.

For both the accommodation of interests and abilities and scholarships, failure to comply with either program component may violate Title IX. Compliance problems within the other eleven program components do not by themselves violate Title IX unless the problems are egregious. However, disparities are reviewed collectively to determine whether they create a pattern and practice of discrimination. If so, a series of disparities may rise to the level of a violation. Many institutions, even when avoiding a violation in a single program component such as the accommodation of interests and abilities or scholarships, have a series of disparities that creates a pattern and practice of discrimination that violates Title IX. Consequently, administrators should remedy any minor disparity that is identified as soon as possible to reduce the potential for a violation.

There are no-cost solutions to all Title IX compliance problems, and most problems can be resolved within a year. Significant remedies that institution officials may choose, such as

renovating or constructing facilities, hiring staff, or adding teams, should be completed as quickly as possible, but officials should plan on two or three years at the most. Interim compliance measures, such as reassigning existing facilities, should be implemented while significant long-term remedies are in progress. Delaying any relief for the disadvantaged sex for three years or more might be viewed as dilatory. Officials who choose to delay compliance for as long as five years invite speculation regarding their intentions to comply.