



Office of the General Counsel

120 Jessup Hall
5 W. Jefferson Street
Iowa City, Iowa 52242-1316
319-335-3696
Fax 319-335-2830

September 24, 2020

Sent by Electronic Mail to: James.Larew@LarewLawOffice.com

James C. Larew
Larew Law Office
504 E. Bloomington Street
Iowa City, IA 52245

Dear Jim:

President Bruce Harreld and Athletic Director Gary Barta requested that I respond to your letter dated September 17, 2020, regarding Title IX. First of all, let me assure you that the University of Iowa is very aware of and focused on compliance with Title IX of the Education Amendments of 1972 ("Title IX"). Since your letter specifically references compliance with Title IX in Iowa intercollegiate athletics, I will limit the University's response to compliance just in that area.

You claim that the University of Iowa Athletic Department has not been in compliance with Title IX for a period of time. We respectfully disagree. Although you mention the Office of Civil Rights (OCR) investigation in purported support of your claim, it is clear that you are not aware of the comprehensive scope of the review conducted by the OCR for the Department of Education. The OCR is the Department of Education's agency charged with the enforcement of Title IX. The media widely reported the pendency of the OCR investigation, but provided little if any coverage of its conclusion; after a four-year intensive review, the OCR closed its investigation with no finding of any violation of Title IX. I included below a brief summary of the OCR's review conducted from 2015-2019.

The Iowa Athletic Department was the subject of an exhaustive and complete four-year investigation by OCR started by a complaint filed on September 2, 2015, alleging discrimination against women in the intercollegiate athletic program at the University of Iowa. The complaint alleged that Iowa failed to provide equal opportunities to men and women under Title IX in thirteen categories:

- Accommodation of athletic interests and abilities;
- Provision of athletic financial assistance;
- Provision and maintenance of equipment and supplies;
- Scheduling of games and practice times;

- Provision of travel and per diem expenses;
- Opportunity to receive coaching and the assignment and compensation of coaches;
- Opportunity to receive tutors and assignment and compensation of tutors;
- Provision of locker rooms and practice and competitive facilities;
- Provision of medical and training services and facilities;
- Provision of housing and dining services and facilities;
- Provision of publicity;
- Recruitment of student-athletes; and
- Provision of support services.

In December 2015, the University responded to OCR's request for documents and data in 41 separate categories. The Iowa response amounted to many thousands of pages of documents, including squad lists, statistics, data about each intercollegiate sport, survey results, assessments, research, copies of all publications and promotional materials for each intercollegiate sport, management plans, budgets, written policies and procedures, financial assistance or grants-in-aid provided in each intercollegiate sport, expenses of the Athletic Department, lists of participants in all club sports, competitive and practice schedules for each intercollegiate sport, post-season participation by each intercollegiate sport, participation in exhibition or scrimmage games, transportation used by each team for each competition in the prior year, size of travel squads, per diem allowance by team, list of all coaches at all levels for all teams and information regarding their experience and qualifications, listings of all locker rooms and practice and competitive facilities and schedules showing when each team used each facility, list of all weight training and conditioning facilities available, information about trainers and medical personnel assigned to each team, health accident and injury policies available to student-athletes, housing and dining information, publicity and promotional services, organizational charts, recruiting budgets and expenses, personnel who receive courtesy cars and other information that Iowa perceived might help OCR understand the intercollegiate athletic program.

As a part of the complete review by OCR, in April 2016, OCR also sent four investigators to the University for 5 days for personal interviews with athletic administrators and provided questionnaires for all the head coaches with the option to visit personally with them, if any wanted to. The investigators met with groups of students from each of the University's intercollegiate teams. They toured every performance and practice facilities, toured and examined all academic support areas, tutoring spaces, practice areas, and all workout areas; they made lists and took notes; and they measured sizes of locker rooms and lockers for comparison. For two days the team of four spent hours with the equipment managers for each intercollegiate sport, inspecting each item of apparel, footwear, and equipment provided to the student-athletes in each intercollegiate sport, and reviewed the laundry process for all team apparel. They felt the texture of each piece of clothing, counted who got how many of each piece of clothing. The Athletic Department answered all their questions and provided them full access to any University facility they wanted to go inspect.

In June 2016, OCR requested updated information and answers to additional questions and the University timely provided responsive documents and answers in early August. Mostly, the supplemental request sought updated information for the most recent academic year on publications, budgets, squad lists, post-season competition each intercollegiate sport, modes of transportation used by each team, size of travel squads, number of recruiting trips, information on tutoring (to whom was it offered and who used it). The June 2016 supplemental request included three new questions. These were about bonuses based upon academic performance; whether shoes or supplies and/or locker placement was awarded based upon performance; and what food options were offered when Iowa was not in session.

On June 7, 2017, OCR again presented a supplemental request, this time seeking a biographical summary describing each assistant coach's experience and qualifications. The Athletic Department again timely provided the requested information later that month.

On September 29, 2017, Jeff Turnbull of the Chicago office of OCR called me and suggested that the University enter into a proposed voluntary resolution with the OCR and said he was sending a draft agreement for our review. He stated to me that with respect to half of the areas that the OCR had investigated, they had discovered no issues. He proposed the voluntary resolution without any finding and wanted to work to resolve any open issues. The draft agreement sent by OCR reflected that OCR had no concerns in the categories of coaches, assistant coaches, or salaries; games and practice times; travel and per diem; medical training, publicity, and support services. In the other areas, the OCR proposed to obtain another year's updated data and agree to move forward and achieve certain goals. If we agreed to the voluntary resolution, the matter would be considered resolved but remained in monitoring mode until their additional questions were answered. They had not found any violations but wanted further updated information.

On December 29, 2017, I sent the resolution agreement signed by the University to the OCR. On January 10, 2018, the University received a response letter from OCR accepting the agreement. The Resolution Agreement called for reports from Iowa on certain dates.

The first report under Resolution Agreement was due by January 30, 2018, to show compliance for 1) athletic interests and abilities by showing that participation opportunities for female and male students were substantially proportionate to their respective enrollment numbers and 2) to show that athletic scholarships and grants-in-aid were in proportion to the number of students of each sex participating in intercollegiate athletics. On April 25, 2018, OCR responded and agreed that UI met the Title IX goals of providing participation and athletic scholarship in proportion with the requirements of Title IX.

April 30, 2018, Iowa submitted the next report which included data regarding 1) equipment and supplies, 2) opportunities to receive tutoring and assignment and compensation of tutors, 3) housing and dining and 4) recruitment and retention. On May 21, 2018, the UI submitted additional information regarding locker rooms, practice, and competition facilities.

On July 13, 2018, the OCR notified Iowa that it had accepted the information on tutoring and closed that portion of their investigation. It requested additional information on equipment and supplies, housing and dining and recruiting for the fall of 2019. Iowa continued to gather data to substantiate compliance and sent additional information.

On June 28, 2019 Iowa, received a letter from the OCR that found Iowa satisfied the requirements for equipment and supplies, for locker rooms and practice facilities and competitive facilities, and for housing and dining. The only remaining category was recruiting. Iowa gathered additional data and provided it to OCR. On October 29, 2019, the OCR notified Iowa that it had complied with all the terms of the voluntary resolution and that OCR had closed its investigation.

I have provided this summary to show that we recently had a very complete and thorough four-year review by the OCR on every aspect of Title IX compliance in the Athletic Department. The University worked closely and cooperatively with OCR transparently providing accurate and exhaustive information. In the end, OCR presented no findings of any violations of Title IX, nor imposed any requirements on Iowa or the Athletic Department. I know of no other major university that can make that claim.

In your letter, you cite as proof of violations data from the annual Equity in Athletics and Disclosure Act (EADA) report. This report is required under a different federal law than Title IX and uses a different set of numbers than OCR does in its calculations of participation opportunities and athletic scholarship. For EADA the University is required to report the number of students who, as of the day of a varsity team's first scheduled contest:

- a. Are listed by the institution on the varsity team's roster
- b. Receive athletically related student aid (including 5th year aid)
- c. Practice with the varsity team and receive coaching from varsity coach(es).

A student who satisfies one or more of the above criteria is a participant, including a student on a team the institution designates or defines as junior varsity, freshman, or novice, or a student withheld from competition to preserve eligibility (red shirt), or for academic, medical, or other reasons. This includes:

- Students receiving athletic aid and who have exhausted their athletics eligibility (post-eligibility)
- Students receiving athletic aid although not an active participant with the team
- Male practice players with a female program. The males are included in the participant number for the program, with a note in the caveat box indicating that the women's team's participants include the number of applicable male students.

OCR has strict rules about participant counts and calculations or proportionality between male and female students. To make calculations for Title IX compliance OCR does not adopt the EADA participant definition. Instead it defines a participant to include those student-athletes:

- a. Who are receiving the institutionally sponsored support normally provided to athletes competing at the institution involved (for example, coaching, equipment, medical and training room services, on a regular basis during a sport's season); **and**
- b. Who are participating in organized practice sessions and other team meetings and activities on a regular basis during a sport's season; **and**
- c. Who are listed on the eligibility or squad lists maintained for each sport; **or**
- d. Who, because of injury, cannot meet a, b, or c above but continue to receive financial aid on the basis of athletics ability.

All athletes who are listed on a team's squad or eligibility list and are on the team as of the team's first competitive event are (non-traditional or traditional) counted as participants by OCR. Your calculations as presented in your letter do not use the correct data. Iowa believes that under OCR rules we are in compliance with Title IX.

You claim that there is insufficient monitoring of Title IX issues in the Athletic Department. Again, we disagree. Compliance is monitored by the Deputy Title IX coordinator and the Compliance Officer in the Athletic Department. In addition there is a university committee, the Presidential Committee on Athletics that includes the Equity Subcommittee that annually reviews Title IX compliance issues. Your additional claim of non-compliances suggests that you incorrectly believe that Title IX requires equal amounts of money be paid in the aggregate to all women's teams as men's teams. That is not accurate. Title IX prohibits discrimination on the basis of sex but OCR recognizes that different amounts may be spent on men's and women's sports as long as there is a non-discriminatory justification for that difference. We are confident that the UI is in compliance with Title IX.

You demand immediate reinstatement of the women's swimming and diving programs. The programs are still ongoing and functioning so there is nothing to reinstate at this time. The decision to eliminate these sports programs was made by President Harreld and Athletic Director Gary Barta after a review of the financial situation in the Athletic Department and after consideration, including ongoing compliance with Title IX. It will not be reversed based upon your demand. I have attached a list of the FAQ regarding the terminations of the four programs and the rationale for those decisions for your review.

Sincerely,



Carroll J. Reasoner
Vice President for Legal Affairs
and General Counsel

Attachment

Iowa Athletics Sports Sponsorship FAQ

September 16, 2020

Why are we making the announcement now?

The COVID-19 pandemic has resulted in a financial exigency which threatens Iowa Athletics continued ability to adequately support 24 intercollegiate athletics programs at the desired championship level. In March, the NCAA and Big Ten Conference announced the cancellation of their basketball tournaments and all other competitions for the remainder of the year. On August 11th, the Big Ten Conference announced a postponement of fall competitions (including football). **Iowa Athletics now projects lost revenue of approximately \$100M and an overall deficit of \$75M this fiscal year.** A loss of this magnitude will take years to overcome. In collaboration with the Board of Regents, State of Iowa, and UI President Bruce Harreld, we determined the current circumstances require us to adjust our sports sponsorship offerings. There is never a good time to make this announcement. We will assist each student-athlete with making the decision they feel is best for their future education and athletic endeavors.

With the Big 10’s decision to return to play, what impact with this have on the current year Athletics budget and sport sponsorship decision?

- Previous departmental budget reduction decisions and requirements related to sport eliminations, salary reductions, unpaid furlough days, position eliminations, hiring freezes and reduction in biweekly employee expenses will not change as a result of this news.
- We anticipate additional revenue related to the return to football in addition to increased expenses. The overall financial impact, due to the pandemic, remains significant and will take years to overcome. Any realized revenue from this decision will potentially adjust our financing/repayment plan that allows continued success for our remaining sports.
- We are also experiencing significant increased costs associated with our COVID-19 medical procedures and protocol, including the testing of our student-athletes, coaches and staff.
- The institutional decision to reduced our sports sponsorship remains final and was affirmed by the Board of Regents, State of Iowa.

UI Athletics Financial Timeline

January 2020 Anticipated FY21 Budget Revenue - \$127,882,971
January 2020 Anticipated FY21 Budget Expenses - \$123,882,971
Excess 2020 Revenue to University transfer and reserve fund- \$4M

Prior to COVID-19 the anticipated FY21 budget was forecasting a \$3M increase in revenue over the previous year.

May 2020 Anticipated FY21 Budget Revenue - \$112,589,125
May 2020 Anticipated FY21 Budget Expenses - \$112,589,125

On March 12 & 13th the B1G and Men's and Women's NCAA Basketball Tournaments were canceled due to COVID-19. UI Athletics implemented \$15 million in budget reduction including operating expenses and compensation adjustments.

August 2020 Anticipated FY21 Budget Revenue	- \$23,223,130
August 2020 Anticipated FY21 Budget Expenses	- \$97,974,696
FY21 Anticipated Deficit	- (\$74,751,566)

On August 11th, the Big Ten Conference announced the postponement of fall sports (including football). That announcement led to a drop in anticipated revenue for the Iowa Athletics Department of more than \$100 million compared to our pre-COVID budget. On September 16, the Big Ten Conference announced the resumption of the football season. We anticipate additional revenue related to the return to football in addition to increased expenses and will update these numbers as information becomes available.

Meanwhile, despite best efforts, Athletics expenses can only be reduced so much in a given year. The athletics department's continuing expenses go towards student-athlete scholarships and services, facilities debt, sport operations, and now-reduced salaries for department employees.

How much money will be saved with the elimination of the four sports selected?

The direct and indirect cost to support the four sports is approximately \$5 million per year.

- Direct Costs (salaries, scholarships, medical, sport operations)
 - Men's Swimming & Diving \$1,284,814
 - Women's Swimming & Diving \$1,479,323
 - Men's Gymnastics \$761,673
 - Men's Tennis \$749,479
 - \$4,275,289

- Indirect Costs
 - Academic Services
 - Athletic Training
 - Strength and Conditioning
 - Nutrition/Fueling Stations
 - Facility/Major Maintenance - (2020-21 cost is more than \$3 million)

Only some of these expenses are recoverable in 2020-2021 (for example, salaries and student-athlete scholarships will remain in place), but the future savings of approximately \$5 million per year will help to close the long-term debts cause by COVID-19.

What will the resources allocated towards these programs be utilized for?

The \$5 million per year will assist the athletics department in creating a long-term debt repayment plan that allows continued success for our remaining sports.

Did the athletic department consider all other options prior to discontinuing sports?

Yes. The Athletic Department made several other cuts prior to discontinuing sports.

- Salary reductions were implemented across the department in July 2020
- 40 positions within the department were either not filled or eliminated
- Operating budgets were cut across the board for the current fiscal year.
- A second round of compensation reductions were made in the form of mandatory 15 days of unpaid leave between September 1 and December 31st 2020.

<https://now.uiowa.edu/2020/07/university-iowa-announces-budget-reductions-begin-fiscal-year-2021>

The decision to discontinue sports was the last choice in the plan to move forward in recovery from the fiscal challenges created by the COVID-19 pandemic. Despite these cuts, Iowa Athletics is still anticipating a \$75 million deficit in 2020-21.

Were any fundraising campaigns considered prior to sport elimination, and could a group of donors raise the money to reverse the decision?

While we are grateful for our many loyal and generous donors, our past experience would indicate private support won't be able to overcome the \$75 million deficit created by the COVID-19 pandemic. Our decision to reduce the number of sports programs offered is final.

The following two examples summarize fundraising campaigns previously conducted by Iowa Athletics in an effort to provide context as to the magnitude of the challenge.

- o UI Campus Recreation and Wellness Center (Opened 2010)
 - Overall Facility Cost Including Pool - \$69,125,000
 - Pool Cost - \$9,000,000 – paid for by Athletics
 - Total private support - \$422,533
- o Hansen Football Performance Center (Opened 2014)
 - Total Facility Cost - \$55 million
 - Total private support - \$38.3 million
 - Athletics largest facility fundraising effort in history

Could the university and athletic department utilize endowments to retain some or all the programs?

We are extremely thankful for the support of our loyal and generous donors. Existing endowments typically have donor-directed restrictions that designate a specific area or type of support. The total dollars required to create new endowments to fund the four sports being discontinued is simply too high.

- Estimated Cost to Endow each sport program
 - Men's and Women's Swimming - \$70M would generate an annual operating budget of \$2.8 million. (Assumes a 4% payout)
 - Men's Tennis - \$20M would generate an \$800,000 operating budget (Assumes a 4% payout)
 - Men's Gymnastics - \$20M would generate an \$800,000 operating budget (Assumes a 4% payout)

How will you support the student-athletes whose sports are being discontinued?

We will work hard to support each student-athlete as they go through this very difficult transition. We have promised each student the following:

1. We will provide the opportunity for each of the four teams to train and compete at Iowa this season (2020-21) to the extent the COVID-19 pandemic allows.
2. We will honor all student-athletes' financial aid agreements until the student completes his/her undergraduate degree at Iowa, or until such time the student chooses to transfer to another institution.
3. Should a student-athlete decide to continue their education at another institution, the athletics department compliance office will assist him/her on a personal level. All necessary documentation will be provided in a timely manner to ensure student-athletes can transfer efficiently.

Why were these sports chosen for elimination?

Iowa engaged in a thorough process in which all financial options and each of our programs were reviewed. Several different sports, and sport combinations, were considered. In the end, the sports selected were determined to provide the best path forward in a complex and difficult situation.

While the single reason for reducing sport sponsorship at Iowa was the financial crisis brought on by COVID-19, the following specific factors were used in the evaluation:

- History of the sport at Iowa
- Sponsorship of the sport at the NCAA Division I level
- Historical competitive success, within the Big Ten Conference and NCAA Division I
- Impact on diversity within our student-athlete and staff populations
- Investment required to achieve competitive excellence on the conference and NCAA Division I level
- Impact on Gender Equity and Title IX compliance

- National, State, and local interest
- Impact on the student-athlete experience across all sports, now and in the future
- Current and future prospect for success of the sport
- Expense savings from the elimination of the sport
- Iowa High School Association sponsorship of sport(s)
- Current and future facility opportunities/needs

Not all factors applied to each of the four teams. We remain thankful for the contributions and successes of each of our teams and student-athletes, and will continue to celebrate them even as the pandemic forces Iowa Athletics to chart a different path forward.

What happens to the incoming students in the affected sport programs? If they opt to withdraw from UI will they receive a refund on their deposit?

The athletics department compliance office will work closely with each incoming student to help meet their financial needs. In addition, our compliance office staff will counsel each student-athlete on their available options.

How will UI support the affected coaches and staff?

Employment contracts for all coaches will be honored. The university will support a coach's decision to seek employment prior to the end of their contract. Support will be provided to coaches and staff in seeking employment. Our athletics department human resources staff will be available to provide counseling regarding employment options.

How does this decision reflect on the stability of UI Athletics?

Win. Graduate. Do It Right. We believe this decision better positions Iowa Athletics to excel at the conference and national level for the future. The impact of the COVID-19 pandemic is significant and we are making sound decisions necessary to work through the short-term, and long-term, challenges. At the same time, we are creating a path forward to sustain academic and athletic excellence, in the post pandemic era.

Will any sports transition to compete as a club program?

Following the completion of the 2020-2021 intercollegiate athletic season, it is our hope that these students, if they choose, could continue to compete in the robust UI club program.

Swimming: The Iowa Flyers Swim Club (IFLY) is a registered USA Swimming club operated by the University of Iowa Recreational Services. The club practices and competes at the Natatorium of the Campus Recreation and Wellness Center. It offers competitive opportunities to University of Iowa students through its masters program. The club hosts national meets like the Speedo Midwest Challenge, which was hosted by the University just last year. More information: <https://www.teamunify.com/team/iauíf/page/home>

Tennis: The University sponsors the Hawkeye Tennis club which provides open court times in the same facility used by Athletics, monthly drills, and opportunities to compete with other players on campus and in the community. The Club also offers University students the opportunity to tryout for its co-ed travel team. More information: <https://uiowa.campuslabs.com/engage/organization/tennis-club-hawkeye>

Gymnastics: The Gymnastics Club at Iowa exists to support University of Iowa students who wish to continue training and competing in the sport of gymnastics. The club practices in the same facility used by the Athletics—the North Gym of the Field House. More information: <https://uiowa.campuslabs.com/engage/organization/the-gymnastics-club-at-iowa>

What impact do these decisions have on Gender Equity and Title IX compliance?

The University of Iowa remains committed to adhering to federal Title IX gender equity compliance. This plan will allow us to continue to provide equitable national championship and academic opportunities for our student-athletes in compliance with Title IX.

How does this decision impact diversity within the department?

Diversity, equity, and inclusion are important parts of the Iowa Athletics Departments mission. The elimination of these four sports will not negatively impact our efforts in this area.

What are the plans, given the unknowns of COVID-19 if a sport program is unable to field a full, competitive roster?

It is our intent to compete during the 2020-2021 academic year. If due to COVID-19, or other factors, we are unable to complete a sport season we will continue to honor the student-athlete scholarships and coaches' contracts. Iowa will honor all athletic financial aid agreements until the student completes their undergraduate degree at Iowa, or until such time the student chooses to transfer to another institution.