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I. INTRODUCTION

Alden & Associates, Inc. was retained in March 2013 by Indiana University-Purdue University Fort Wayne [IPFW] to perform a Title IX Review of the intercollegiate athletics program. The University made a proactive decision to formally ascertain the institution’s compliance with federal law.

The scope of this review is based upon, and limited to, several different criteria—a campus visit conducted on July 23-24, 2013 which included interviews with numerous campus administrators, coaches, and student-athletes, as well as materials disseminated by the University to Alden & Associates, Inc. In addition, an online Title IX Survey was administered by Alden & Associates, Inc. and completed by all members of the IPFW head coaching staff.

Our firm relies upon the Policy Interpretation on Intercollegiate Athletics issued by the Office for Civil Rights (OCR) on December 11, 1979, 44 Fed. Reg. 71413 et seq. (1979), relevant policy clarifications, case law precedents and experiences working with the Department of Education’s Office of Civil Rights (OCR) in assessing the compliance in these areas. Please note that actual language from the Title IX regulations is used throughout the document.

The Consultant interviewed the following individuals on the IPFW campus—they are reported here in no particular order:

- Christine Marcuccilli, Director, Office of Institutional Equity & Title IX Coordinator
- Jeffrey R. Anderson, Vice Chancellor for Academic Affairs
- Stanley W. Davis, Interim Vice Chancellor for Financial Affairs
- George S. McClellan, Vice Chancellor for Student Affairs & Enrollment Management
- Tommy Bell, Director of Athletics
- John Patton [via phone], Head Athletic Trainer
- Wendy Wilson, Compliance Director
- Kassie Sinclair, General Manager, Nelligan Sports Marketing
- Ron Clark, Assistant Director of Athletics for Operations
- Jessica Steward, Head Women’s Golf Coach
- Mark Hazel, Director of Ticket Sales
- Christine Kuznar, Associate Director of MAP Center for Student-Athletes
- Mike Fruchey, Head Men’s & Women’s Cross Country Coach & Head Women’s Track & Field Coach
- Bill Salyer, Assistant Athletic Director for Media Services
- Bobby Pierce, Head Baseball Coach
- Eric Burns, Head Men’s & Women’s Tennis Coach
- Tony Jasick, [via phone] Head Men’s Basketball Coach
- Margaret Saurin, Head Women’s Soccer Coach
- Arnie Ball, Head Men’s Volleyball Coach
- Chris Paul, Head Women’s Basketball Coach
• Kevin Rudolphi, Strength & Conditioning Coach
• Kelley Hartley Hutton, Head Women’s Volleyball Coach
• Amy Tudor, Head Softball Coach

• Female Student-Athletes:
  Kendall Wienkes (Volleyball)
  Stephanie Mauk (Basketball)
  Amanda Hyde (Basketball)
  Rebecca Bruner (Basketball)

• Male Student-Athletes:
  Cody O’Neal (Baseball)
  Pierre Bland (Basketball)
  Joe Edwards (Basketball)
  Joe Reed (Basketball)
II. OVERVIEW

Title IX of the Educational Amendments of 1972 (20 U.S.C. Section 1681(a)) prohibits discrimination on the basis of sex in any program or activity that receives federal financial assistance. The statute is not directed exclusively at intercollegiate athletics, but rather addresses discrimination throughout educational institutions. Specifically, Title IX states:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

In determining whether equal opportunities are available, a number of factors are considered, including:

A. Accommodation of Student Interests & Abilities

B. Provision of Financial Aid

C. Laundry List of Areas of Equivalence

1. The provision of equipment and supplies
2. Scheduling of games and practice time
3. Travel and per diem allowance
4. Opportunity to receive tutoring and assignment and compensation of tutors
5. Opportunity to receive coaching and assignment and compensation of coaches
6. Provision of locker rooms, practice and competitive facilities
7. Provision of medical and training facilities and services
8. Provision of housing and dining facilities and services
9. Publicity
10. Support Services
11. Recruitment of Student-Athletes
III. DISCUSSION & ANALYSIS

A. Accommodation of Student Interests & Abilities (Participation Opportunities)

In order to meet the accommodation of interests and abilities portion of Title IX, the Policy Interpretation provides that an institution must be able to demonstrate that its intercollegiate athletics program complies with any one of the following three (3) tests:

1. Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments (“Prong 1”); 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 which is demonstrably responsive to the developing interests and abilities of that sex (“Prong 2”); 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 athletics program (“Prong 3”).

A review of this area begins with an analysis of the undergraduate student population numbers. An analysis of each of the three (3) prongs of compliance with Title IX with respect to participation then follows.

**Prong 1—Substantial Proportionality—Participation In Proportion to Enrollment**

The assessment of whether an institution complies with the substantial proportionality prong or Prong 1 of the Three-Part Test is relatively straightforward. A comparison is made between the relative participation percentages of male and female student-athletes to their respective undergraduate enrollment percentages. The permissible range of the differential in these percentages has never been definitively stated by the Office for Civil Rights in the Department of Education or ruled upon by a court. However, different decisions suggest that a three percent (.03) differential is more likely than not the broadest acceptable parameter. It should be noted, however, that any differential even within that range must still be assessed to determine if there are opportunities that could be added to reduce the disparity even further. The number of Indiana University-Purdue University Fort Wayne male and female student-athletes and their relative participation percentages are as follows (taken from the 2012-2013 EADA Report):
During the 2012-2013 year, forty-six percent (46%) of the student-athletes were male and fifty-four percent (54%) were female. Since women comprise 55% of the undergraduate population, there is a differential of one percent (1%). This number is within the range of what would be considered substantially proportional and therefore the University meets compliance of Participation Opportunities under Prong 1.

**Prong 2—History and Continuing Practice of Program Expansion for the Underrepresented Sex**

Where a program cannot show substantial proportionality, it can still meet the mandates of Title IX by demonstrating that it has a history and continuing practice of expanding the women's program (where women are the underrepresented sex) that is "demonstrably responsive" to their developing interests and abilities. In many respects, this is a very focused and fact-based inquiry that begins with a listing of all the current sport offerings and when they were added, a listing of any other sports that have been added and/or eliminated over the years (including when and why those actions were taken), and a review of the number of participation opportunities that were/are associated with the movements of these teams. The focus is always on what has been done recently with respect to the addition of teams.

It appears that there are no sports added in recent history, with women's soccer and women's track & field being added in 1999 [fourteen years ago]. Given the history of sports sponsorship at the University it is unlikely that the institution could be found in compliance regarding history and continuing practice of program expansion. Unless IPFW plans to add additional opportunities for women, either through the addition of teams or by adding more participation opportunities on the women’s side in the next several years, this is not a viable option.

**Prong 3—Full and Effective Accommodation of the Interests and Abilities of the Underrepresented Sex**

In determining whether a school is fully and effectively accommodating the interests and abilities of the underrepresented sex (in this instance, women) OCR will consider whether or not there exists sufficient interest and ability among women for a team not currently supported by the intercollegiate athletics program. In making this
assessment, the pool of potential student-athletes whose level of interest is relevant is not necessarily limited to those currently on campus. Rather, the institution must also consider the potential student-athletes in the school’s general recruitment area. With that having been said, even if it is determined that there exists sufficient interest and ability, a school need not add such a program unless there also exists a reasonable expectation of competition for the team.

The relative level of interest in a sport or sports is assessed in a variety of ways including the following:

a. Reviewing the level of interest and participation in club or intramural sports.

b. Student requests to add sports.
c. Surveys of the student body.
d. Analysis of the sports actively engaged in by high school student-athletes in the geographic area in which the institution recruits students.

Although the 2005 Clarification from OCR sought to slightly alter this approach based on its emphasis on the availability and use of a campus-based survey instrument, it was overturned in April 2010. It is still advisable to make a comprehensive assessment in this area so that the institution is able to gather the best and most complete evidence of its compliance under the third prong of the Three-Part Test. Because compliance under this prong can be somewhat subjective, the more available evidence is provided to support a position, the more likely it is that a favorable outcome can be achieved. The entirety of the April 20, 2010 “Dear Colleague” letter can be found in Appendix A.

The University has not completed an interest survey of its female students to determine if there is interest in adding additional women’s sports. The University should ensure that there is a distinct process and procedures for the addition and deletion of men’s and women’s sports.

B. Athletic Financial Assistance (Athletic Grant-in Aid)

Institutions must provide reasonable opportunities for awards of financial assistance for members of each sex in proportion to the number of students of each sex participating in the intercollegiate athletics program. The Policy Interpretation of 1979 clarifies that compliance will be determined by means of a financial comparison which considers whether proportional amounts of financial assistance (athletic grants-in-aid) are available to the men’s and women’s programs. Totaling the amounts awarded to each gender and comparing the ratio of men and women participating in the intercollegiate athletics program accomplishes this requirement. It is important to note that participants are counted only one (1) time, although some may compete in two (2) and/or three (3) sports; hence, the participation rate will differ for some sports from the participation opportunities rate found elsewhere.
On July 23, 1998, OCR issued a letter to the General Counsel of Bowling Green State University in response to a request concerning allowable differences between the rates of participation and the rates of the awards of athletic financial assistance. OCR took the position in this letter that a difference in excess of 1% must be justified by nondiscriminatory reasons or a violation of 34 C.F.R. Section 106.37(c) resulted. This was a marked change from the previous years when statistical tests were required to determine if differences were significant. The "Bowling Green Letter" has been distributed to all schools as current OCR policy.

Based on guidance from the Office of Civil Rights, an equitable allocation of financial aid dollars is determined by comparing the percentage of athletic financial aid dollars awarded to each gender to their percentage composition of the student-athlete pool. Based on OCR’s guidance, the permissible differential between the relative aid and composition percentage for each gender should be no more than one percent (1%). In the case of IPFW, we are performing this analysis using the data entered on the 2012-2013 EADA Report.

For the purposes of the reporting of the financial aid percentages, the EADA uses unduplicated numbers of student-athletes (actual head count). During the 2012-2013 year, the unduplicated student-athlete population was fifty-three percent (53%) male and forty-seven (47%) female; the females received fifty-six percent (56%) of the available athletic financial aid dollars. The law permits a one percent (1%) variance.

<table>
<thead>
<tr>
<th></th>
<th>2012-2013</th>
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<tbody>
<tr>
<td></td>
<td>% of Unduplicated Student-Athletes</td>
</tr>
<tr>
<td>Male</td>
<td>53%</td>
</tr>
<tr>
<td>Female</td>
<td>47%</td>
</tr>
</tbody>
</table>

C. Equal Opportunity and the Equivalence Standard (The Laundry List)

The regulations require institutions to provide equal athletic opportunities for members of both sexes. Please note that we have included at the conclusion of our Review, a summary of the responses from the actual survey—therefore, the University can see the questions we have asked the head coaches, as well as a summary response. In order to determine whether or not a school is in compliance with this provision, OCR will consider, among other things, the following:

1. Provision and maintenance of equipment and supplies;
2. Scheduling of games and practice times;
3. Travel and per diem expenses;
4. Opportunity to receive tutoring and assignment and compensation of tutors;
5. Opportunity to receive coaching and assignment and compensation of coaches;
6. Provision of locker rooms, practice and competitive facilities;
7. Provision of medical and training services and facilities;
8. Provision of housing and dining services and facilities;
9. Publicity;
10. Support services and;
11. Recruitment of student-athletes

Although each factor is assessed individually, the law requires that the overall program for men and women be equitable. Accordingly, there may exist disparities in one area that benefit the men’s program disproportionately that is offset by disparities that exist in another area that work to the benefit of the women’s program.

All areas were reviewed in the following ways: the 2011-2012 and 2012-2013 EADA Reports; departmental budgets and other documents; an online head coach survey instrument; and interviews with the administrative and coaching staff.

Each factor is discussed below and a general discussion of overall compliance in this area follows.

(1.) Provision and Maintenance of Equipment & Supplies

The quality, suitability, amount, maintenance and replacement, and availability of equipment and supplies provided to all varsity teams must be considered regarding the following:

1. Uniforms.
2. Other apparel.
3. Sport-specific equipment and supplies.
4. Instructional devices.
5. Conditioning and weight training equipment.

A review of the information relative to each of the areas above reveals the following:

The quality, availability, amount, maintenance, replacement and availability of equipment and supplies appear equitable. When reviewing the overall expenditures relative to total sport budgets, the EADA data reflects that 51% of the total is spent on female student-athletes; those female student-athletes make up 53% of the total student-athlete population. It should be noted that coaches have relative autonomy on how their respective budgets are spent related to Items 1-5 above. This practice allows them to prioritize how they spend their budgeted dollars. It is recognized that this budget authority is limited by the actual financial limitations of the sport budgets; nevertheless, problems in this area generally did not surface.
(2.) Scheduling of Games & Practice Times

The following components are reviewed regarding scheduling of games and practices:

1. Number of competitive events per sport.
2. Number and length of practice opportunities and the time of day practice opportunities are scheduled.
3. The time of day competitive opportunities are scheduled.
4. The opportunities to engage in preseason and postseason competition.

A review of the information relative to each of the above areas revealed the following:

The number of practice opportunities and the length (number of hours per week) are governed by NCAA rules. Class schedules, particularly courses with laboratory requirements further affect practice times. Practice times are based on class schedules and a semester-by-semester practice time rotation between the sports. All men’s and women's teams are affected equally by these limitations.

The teams play comparable schedules and play within the NCAA regulations. All teams or individuals that are entitled to participate in preseason competition are allowed to do so. All teams that qualify for post-season competition are allowed to compete. No inequities were observed or brought to our attention by the members of the head coaching staff.

(3.) Travel & Per Diem Allowance

The component of travel and per diem allowances includes the following factors:

1. Modes of transportation.
2. Housing during travel.
3. Length of stay before and after.
4. Per diem allowances.
5. Dining arrangements.

A review of the information relative to each of the areas above reveals the following:

Individual coaches have considerable latitude to establish the travel arrangements and per diem practices for their respective teams. It appeared throughout the head coach survey that some sports were designated a per
diem of $16-$20\(^1\), while other teams were designated a per diem of $21-$25. Please note that the disparities were not gender-related, however the University should review per diem allowances to ensure that male sports teams are not unfavorably receiving more per diem than the female sports teams. Also, please note that the per diem distribution for food can become inconsistent between the sports if provided at the discretion of the coaches. A written policy should allow for a certain percentage of male student-athletes to eat on more money if the same percentage is allowed for the female student-athletes. The Athletics Business Office should monitor this area.

Inevitably the lack of a monitored per diem policy may create inequities. Teams should be monitored on an overall basis. The Department should develop written procedures related to per diem to be placed in the departmental policies and procedures manual.

A review of the Title IX Survey administered to the head coaches indicated that the majority of teams (7 teams) are housing two (2) student-athletes per room on road trips and five (5) teams are housing three (3) student-athletes to a room. There does seem to be a small gender imbalance as the majority of the teams reporting three student-athletes per room are women’s teams. The Consultants recommend that this area be closely monitored to ensure that an inequity does not develop. Also, the Department should develop written procedures related to room assignments to be placed in the departmental policies and procedures manual.

While most travel appears to be equitable and a variety of travel modes are being used, the mode does not appear to be based on gender.

\[4.\] **Opportunity to Receive Academic Tutoring, Assignment & Compensation of Tutors**

The factors assessed include:

1. Availability.
2. Assignment.
3. Compensation.

No issues of inequity were observed or brought to our attention by the coaching staff in this area, either through interviews or the administered survey. There did not appear to be any equity issues between the men’s and women’s sports teams in the areas of availability, assignment or compensation of tutors.

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\(^1\) Three (3) head coaches indicated $16-$20, while eight (8) indicated $21-$25 per diem. One coach indicated no response other than that she “uses a credit card.”
(5.) **Opportunity to Receive Coaching, Assignment & Compensation of Coaches**

A full assessment of this area requires a review of each coach’s availability, assignment and compensation. When reviewing availability, OCR will assess the relative availability of full-time, part-time and graduate or student assistant coaches. Assignment refers to the training, experience, and other professional qualifications of the coaches of each team. Although compensation is a factor to be discussed generally, OCR has recognized that there are many legal reasons for pay discrepancies, and as such, will only look to see if the compensation structure at the institution is affecting the quality of coaching provided to the men’s and women’s programs. We did not perform an exhaustive analysis of the University’s compensation system to determine if differing compensation packages could be legally justified. However, we did review the compensation levels, and benefits provided to the coaching staff in order to identify potential issues that may have an impact on the quality of coaching provided to the men’s and women’s program.

Regarding IPFW compensation, it should be noted that it appears that coaching compensation is generally equitable. Incentives for the contracted coaches appear to be equitable as well. While the market may dictate differences in coaching salaries and incentives, this is certainly an area to review using the factors listed below when hiring new coaches.

As previously discussed, differences in compensation can be permissible, but it has to be able to be justified by examining a variety of different factors (including the influence of the marketplace).

- Experience.
  - Within coaching field
  - Within related fields (such as marketing)
- Longevity with the University.
  - Type, quantity and quality of experience in coaching field
- Education.
- Special Qualifications and Skills (such as revenue generation or public image).
- Degree of skill, effort and responsibility.
- Additional duties and responsibilities.
- Public relations, promotional and fundraising activities to generate revenue.
- Speaking engagements and accessibility for media interviews.
- Intensity and quantitative amount of promotional/revenue raising activities.
- Professional involvements/affiliations (such as service on NCAA committees).
k. Public image/relations figure (relative desirability of the person and benefit to the school).
l. Responsibility to generate revenue (based on team performance and other activities).
m. Ability to generate revenue and donations.
n. Ability to generate media coverage.
o. Productivity.
   - Team success
   - Individual student-athlete success
   - Conference/Regional/National awards/recognition
   - Academic performance of student-athletes
   - Compliance with University policies and procedures
   - Compliance with Conference and NCAA rules
   - Managerial abilities
   - Student-athletes
   - Personnel
   - Budget
   - Performance history
p. Marketplace value of the skills of the particular individual.

It is important to note that while the University may compensate one coach, but not the other for the performance of additional duties and responsibilities and based on one or more of the criteria outlined above, it should avoid offering one coach a series of incentives that it does not offer the other coach.

The University does have a bonus structure policy in place and it is equitable.

(6.) Provision of Locker Rooms, Practice & Competitive Facilities

The factors to be considered regarding locker rooms, and practice and competitive facilities are availability, quality and exclusivity of use.

A tour of the locker facilities revealed the following:

Exclusive locker rooms exist for men’s and women’s basketball, men’s and women’s volleyball, and men’s and women’s soccer. These locker rooms appear to be equitable in nature. All coaches judged their locker facilities to be of either adequate or better quality. Other sports have access to locker rooms, or hallway lockers, but not as designated facilities. This does not appear to be an issue of inequity as much as simply a lack of specific locker room space for teams.
In addition, a tour of all indoor and outdoor practice and competition facilities revealed the following:

All practice and competitive facilities appear to be equitable. While there are some issues with the baseball facility, it appears to be of similar quality to the softball facility—in fact the softball facility appears to be of slightly higher quality than does the baseball facility. If issues are addressed with baseball they will need to be addressed with the softball facility at the same time.

While there may be issues with other facilities, particularly the lack of an on-campus track and field facility, they appear to impact both the male and female student-athletes equally. Enhancements and renovations in all areas must be completed on an equitable basis and on the same timeframe to prohibit introducing new areas of concern.

(7.) Provision of Medical and Training Facilities & Services

The factors to be considered in this component include the availability and quality of:

1. Medical personnel.
2. Athletic training staff.
3. Athletic training facilities.
5. Insurance coverage.

No issues were observed or identified in this area in terms of gender equity. Several coaches indicated that certified athletic training staff coverage was not adequate, hence being assigned graduate assistant trainers, however this was expressed by several coaches of both men's and women's teams.

The weight room used for intercollegiate athletics was reviewed for access and available equipment. The facility is the primary facility for all men's and women's teams. The majority of teams are scheduled in time blocks for use of the facility or on a drop-in basis. The majority of teams indicated the workouts are monitored by the staff strength & conditioning coach. There do not appear to be any issues from a gender equity perspective.

(8.) Provision of Housing and Dining Facilities & Services

The two primary factors reviewed for compliance in this component are:

1. Provision of housing facilities and services.
2. Provision of dining facilities and services.

There is no special housing for student-athletes. Student-athletes live in
apartments on or near campus. When classes are not in session, student-athletes may stay in their apartments, or move in with others living off campus. There are organized training tables for team sports, however all sports have access to the training table if desired. No inequities appeared in this area of the review.

(9.) Publicity

OCR will consider the availability and qualifications of sports information personnel, the services they provide, other publicity resources and the quantity and quality of publications featuring men’s and women’s programs.

Teams are assigned to a sports information staff member. The staff is comprised of two (2) full-time members and one (1) part-time staff member responsible for videotaping. The Director of Sports Information covers men’s basketball, men’s and women’s soccer, men’s and women’s golf, softball, men’s and women’s cross-country and women’s track & field. The Assistant SID covers baseball, women’s basketball, men’s and women’s tennis, and women’s volleyball. Both staff members split coverage for men’s volleyball. The sports information staff travels to all men and women’s basketball games. They occasionally travel with the other team sports, if there is no conflict with the basketball home and away schedule. Traveling with other sports requires the sport team to cover the travel costs and at some point, travel with the same gender sport, i.e., if they travel with men’s soccer then they will travel with women’s soccer. All teams are represented on the website and those websites appear to be updated on a regular basis. The online coach’s survey did not indicate any substantive issues of concern relative to publicity.

(10.) Support Services

The Director of Athletics oversees both the men’s and women’s programs. The discussions with coaches and the responses to the online survey revealed that they were generally satisfied with the competence and quality of the people who support them in all areas. There is a mix of men’s and women’s sport coaches that feel there is insufficient clerical support, however this does not appear to be based on gender. Office space does not appear to be an issue relative to gender equity and coaches, regardless of sport, are treated equitably in this area.

The lack of a Senior Woman Administrator (SWA) situation at the University is of concern, however, it is a NCAA mandate to have a SWA, not a Title IX mandate. We believe that not having a SWA has a negative impact on the female student-athlete experience. Access to a Senior Woman Administrator would improve the quality of the female student-athlete experience. We have commented on this issue in a separate memorandum to the University.
(11.) Recruiting

Using 2012-2013 data from the Equity in Athletics Disclosure Act (EADA) the following relates to compliance with recruiting:

<table>
<thead>
<tr>
<th>Recruiting Expenses</th>
<th>Amount</th>
<th>Percent of Total</th>
</tr>
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<tbody>
<tr>
<td>Men’s Teams</td>
<td>$51,770</td>
<td>53%</td>
</tr>
<tr>
<td>Women’s Teams</td>
<td>$46,550</td>
<td>47%</td>
</tr>
</tbody>
</table>

The female sport team budgets, which support 54% of the overall student-athlete population, receive 47% of available recruiting dollars. The male sport team budgets, which support 46% of the overall student-athlete population, receive 53% of available recruiting dollars.

In conversations with the coaches, and after a review of the Title IX Survey, it is clear that a slight majority of coaches of both the men’s and women’s programs believe that the recruiting dollars were sufficient for their respective programs. In the responses regarding the recruiting funding being insufficient, there was no noticeable gender imbalance. The University should continue to monitor actual dollars spent on recruiting to ensure that the funding is equitable.

The donor car program (IPFW Wheel Club) has been in existence since 2007-2008. Gradual progress has been made since that time in gaining donor cars from automotive dealers. IPFW has been unable to secure sufficient cars from dealerships to provide an equitable situation and has therefore begun to provide stipends to some coaches in order to provide an equitable situation. At the current time cars and/or stipends are provided to the head coaches in the sports of men’s and women’s basketball and men’s and women’s volleyball. In addition, two assistants in both men’s and women’s basketball are provided cars and/or stipends.

The recruiting area is one that is somewhat confusing since, unlike other areas, there is no precise formula for compliance. The test is whether the needs of both the men’s and women’s programs are being met by the recruiting budgetary allotments. Discussion should take place with the coaches of the women’s programs to determine their exact recruiting needs. The overall sports budgets, as shown in the 2011-2012 and the 2012-2013 EADA Reports and 2011-2012 program sport budgets, do not show a particular inequity of any real concern. What usually occurs related to recruiting violations is the sport head coaches chooses to spend their budgeted recruiting dollars in areas other than recruiting.
IV. SUMMARY & RECOMMENDATIONS

The Consultants believe that overall the environment for women in the Department of Intercollegiate Athletics is very positive. We found no major Title IX compliance violations in the intercollegiate athletics program at IPFW. Listed below are a number of suggestions/recommendations to ensure a continued positive environment.

A. Accommodation of Student Interests & Abilities

Please note that the University must only comply with one of the three prongs:

**Prong 1:** The institution is in compliance with proportionality. There is a one percent (1%) differential between the fifty-five percent (55%) female student enrollment and the fifty-four percent (54%) female student-athlete participation rate. Please note that while the University is currently in compliance with Prong 1, it should remain vigilant in monitoring annual participation opportunities and should only add new sports programs while keeping substantial proportionality in mind at all times.

**Prong 2:** IPFW will not be found to be in compliance with this prong using sport addition as the rationale since the last addition to the program was women’s soccer and women’s track & field in 1999.

**Prong 3:** Compliance with this prong is questionable, however the University is in compliance with Prong 1. If the University were not in compliance it would be important to assess interest by reviewing club sport interest in moving to varsity status, and determining competitive opportunities in the geographical region. The University should ensure that there is a distinct process and procedures for the addition and deletion of men’s and women’s sports.

B. Athletics Financial Aid

The University was not in compliance in 2012-2013 with Athletics Financial Aid based upon the strict interpretation of the “Bowling Green Letter” and the nine percent (9%) deficit in financial aid to the men’s program.

In 2012-2013 the unduplicated student-athlete population was fifty-three percent (53%) male and forty-seven percent (47%) female; the female student-athletes received fifty-six percent (56%) of the available athletic financial aid dollars while the male student-athletes received forty-four percent (44%) of the aid, nine percent (9%) less than their participation rate.

However, the institution should look at the overall picture and in particular the
competitiveness of the men’s and women’s programs. When looking at the current financial aid offered to the women’s program it is found that it receives sixty-three (63%) of the NCAA maximum allowable aid while the men’s program receives seventy-five (75%) of the NCAA maximum allowable aid.

The participation numbers in women’s cross country/track & field provide this complication to compliance with regard to financial aid due to the requirement to use unduplicated numbers.

C. Laundry List of Areas of Equivalence

1. Equipment & Supplies

The quality, availability, amount, maintenance, replacement and availability of equipment and supplies appear equitable. The laundering and care of practice and games uniforms is available on an equitable basis to all programs. Coaches have the option to choose to use this service.

2. Scheduling of Games & Practice Times

No inequities were brought to our attention by the coaching staff, nor did we observe any when reviewing facility schedules.

3. Travel & Per Diem Allowances

This area appeared to be equitable. Similar to equipment and supplies, coaches have a great deal of latitude in this area. Care must be used to ensure overall operating budgets are monitored for equity and include the monitoring of per diem and housing for off campus travel. The Department should develop written procedures related to per diem and room assignments to be placed in the departmental policies and procedures manual.

4. Opportunity to Receive Tutoring & Assignment and Compensation of Tutors

There do not appear to be equity issues between the men’s and women’s sports teams in the areas of availability, assignment or compensation of tutors.

5. Opportunity to Receive Coaching & Assignment and Compensation of Coaches

Regarding IPFW compensation, it should be noted that it appears that coaching compensation is generally equitable. Coaching incentives and /or bonuses appear to be equitable as well. It appears that the coaching staff, in general, is well qualified to coach at the NCAA Division I level.
6. **Provision of Locker Rooms, Practice & Competitive Facilities**

All practice and competitive facilities, including locker rooms, appear to be equitable.

7. **Provision of Medical & Training Facilities and Services**

No issues were observed or identified in this area in terms of gender equity. Areas reviewed were staff assignments (online survey), physician access, and facilities. Travel assignments and schedules were reviewed and appear to be equitable.

The existing weight training facilities and staffing appear equitable.

8. **Provision of Housing & Dining Facilities and Services**

There are no inequities in this area of review.

9. **Publicity**

Generally, there do not appear to be issues of inequity with the provision of services, quality of website pages, or marketing materials. IPFW should always continue to monitor the area of sports information staffing assignments as it hires any additional staff members, to ensure travel is assigned on an equitable basis.

10. **Support Services**

The interviews with coaches, as well as the responses to the online survey, revealed that they were generally satisfied with the competence and quality of the people who support them in all areas. The majority of coaches felt that their respective secretarial and clerical needs were not met simply due to the lack of clerical staff. No inequities were found in this area.

11. **Recruitment of Student-Athletes**

The female sport team budgets, which support 54% of the overall student-athlete population, receive 47% of available recruiting dollars. The male sport team budgets, which support 46% of the overall student-athlete population, receive 53% of available recruiting dollars.

Care must be given to ensure that this area is equitable as the University adds additional opportunities for female student-athletes. The discrepancy is small but could increase if not carefully monitored. It may be beneficial to formally review this issue on an annual basis with each head coach to determine if
enough resources are being provided and to routinely pose the questions “What would make your recruiting more effective?” and “What would you add to the recruiting budget if you had the ability to do so?”

Also, in reviewing the donor car assignments, the University is in compliance, however this is an area that will need to be annually monitored to ensure compliance.

D. Specific Recommendations & Suggestions

- The Consultants recommend that the University develop written policies and procedures for the addition and deletion of sports at the institution.

- The Consultants recommend that the University continue to monitor financial aid and work to make any necessary adjustments to ensure a less than 1% differential over time based upon participation ratios. IPFW should review any plans to adjust roster numbers, program additions and/or deletions, and changes in financial aid. Adjusting one area impacts both the Accommodation of Interests & Abilities and Financial Aid sections of Title IX. In addition, the University should feel comfortable in, and have a rationale for, any discrepancies in the program and financial aid offerings, including the opportunity for success in those programs.

- The University should monitor sport per diems and travel housing on an annual basis to ensure continued equity given the coaches current flexibility in this area. The Department should also develop an administrative policy that ensures that per diems and housing are monitored on an annual basis to maintain equity.

- Human Resources, in conjunction with the Director of Athletics, should review the proposed salaries of new head or assistant coaches to ensure continued equity in this area.

- The Department should monitor the assignments and travel schedules of the athletic training and sports information staffs on an annual basis to ensure continued equity.

- The Department may want to establish a written policy for The Wheel Club to determine priorities for additional cars and the basis for those decisions. Additional cars and/or stipends should continue to be granted on an equitable basis.

- Regarding recruiting, while we understand that the University is in compliance with Title IX, we recommend that recruiting dollars be continually monitored. The institution must be able to always justify the differences in the percentage of dollars expended for men’s and women’s recruiting. The development of a separate line item with monitoring by the Director of Athletics/Senior Associate
Director of Athletics may assist the institution in ensuring equity in this area—the operating dollars information given to us did not clearly delineate whether recruiting is considered a specific line item in each head coach’s budget.

E. Conclusion

As this Review reveals, the process of compliance with Title IX is ongoing. Because of changing factors, such as increases and decreases in enrollment numbers, shifting cultural interests in various sports, the need to both maintain and upgrade facilities and compensation package increases, there is always more analysis and decision-making that must take place.

It is recommended that a five-year overall gender equity plan be developed by a campus committee to include representatives from a number of different areas. Areas of representation may include such areas as the Athletics Committee, Faculty Athletics Representative, Department of Athletics staff members, and the Office of Human Resources. While the Office of Civil Rights (OCR) does not have a specific regulation addressing the issue of a five-year plan, institutions have been given this flexibility as a response to an OCR Review. A five-year plan is also recommended by the NCAA. This plan should be an active plan at all times and include goals, steps to achieve these goals, a timetable, needed resources and individuals responsible for achieving each goal.

It should be noted that for this plan to be successful, it should be regarded as an institutional plan, not a Department of Athletics plan.

Alden & Associates, Inc. appreciates the opportunity to perform this Title IX Review for IPFW. We look forward to being of further assistance to Chancellor Carwein and Ms. Marcuccilli.
Dear Colleague Letter:  
Athletic Activities Counted for Title IX Compliance

OFFICE OF THE ASSISTANT SECRETARY

The Office for Civil Rights in the United States Department of Education issues this guidance to provide State educational agencies, local educational agencies, and postsecondary institutions with information to ensure that male and female students are provided equal opportunities to participate in intercollegiate and interscholastic athletics programs consistent with Title IX of the Education Amendments of 1972, 20 U.S.C §§ 1681 et seq., and its implementing regulations (34 C.F.R. Part 106).

This guidance represents the Department’s current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations.

If you are interested in commenting on this guidance, please email us your comment at OCR@ed.gov or write to us at the following address: Assistant Secretary for Civil Rights, 400 Maryland Avenue, SW, Potomac Center Plaza, Washington, DC 20202-1100.

September 17, 2008

Dear Colleague:

On behalf of the Office for Civil Rights (OCR) of the United States Department of Education, I am writing to provide technical assistance regarding your compliance with Title IX of the Education Amendments of 1972 (Title IX), 20U.S.C. §§ 1681 et seq. Specifically, this letter provides clarifying information to help institutions determine which intercollegiate or interscholastic athletic activities can be counted for the purpose of Title IX compliance; it does not represent a change in OCR’s policy under Title IX.

As you are aware, Title IX prohibits discrimination on the basis of sex in education programs and activities by recipients of Federal financial assistance. The Title IX regulations governing athletics state, in relevant part:

No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient...

34 C.F.R. § 106.41(a). In particular, the regulations require institutions to “provide equal athletic opportunity for members of both sexes.” 34 C.F.R. § 106.41(c).

When OCR conducts an investigation to determine whether an institution provides equal athletic opportunities as required by the Title IX regulations, OCR evaluates the opportunities provided by the institution’s intercollegiate or interscholastic “sports.” OCR does not have a specific definition of the term “sport.” Instead, OCR considers several factors related to an activity’s structure, administration, team preparation and competition, which are identified below, when determining whether an activity is a sport that can be counted as part of an institution’s intercollegiate or interscholastic athletics program for the purpose of determining compliance with 34 C.F.R. § 106.41(c).

Many institutions are members of intercollegiate athletic organizations, such as the National Collegiate Athletic Association and the National Association of Intercollegiate Athletics, or
state high school associations that have organizational requirements, which address the factors identified by OCR. When the organizational requirements satisfy these factors and compliance with the requirements is not discretionary, OCR will presume that such an institution’s established sports can be counted under Title IX. This presumption can be rebutted by evidence demonstrating that the institution is not offering the activity in a manner that satisfies the factors below.

When the presumption does not apply or has been rebutted effectively, OCR will evaluate an institution’s activity on a case-by-case basis. In such an evaluation, OCR will consider the factors below to make an overall determination of whether the activity can be considered part of the institution’s intercollegiate or interscholastic athletics program for the purpose of Title IX compliance.

If, after reviewing the factors in their entirety, OCR determines that an activity should not be counted under Title IX, an institution may ask OCR to reconsider its initial determination and may provide OCR with other evidence related to the activity’s structure, administration, team preparation and competition. This approach affords recipients the flexibility to create athletics programs that are responsive to the specific interests and abilities of their particular student bodies.

In its case-by-case evaluation of whether an activity can be counted as an intercollegiate or interscholastic sport for the purpose of Title IX compliance, OCR will consider all of the following factors:

I. **PROGRAM STRUCTURE AND ADMINISTRATION** — Taking into account the unique aspects inherent in the nature and basic operation of specific sports, OCR considers whether the activity is structured and administered in a manner consistent with established intercollegiate or interscholastic varsity sports in the institution’s athletics program, including:

   A. Whether the operating budget, support services (including academic, sports medicine and strength and conditioning support) and coaching staff are administered by the athletics department or another entity, and are provided in a manner consistent with established varsity sports; and

   B. Whether the participants in the activity are eligible to receive athletic scholarships and athletic awards (e.g., varsity awards) if available to athletes in established varsity sports; to the extent that an institution recruits participants in its athletics program, whether participants in the activity are recruited in a manner consistent with established varsity sports.

II. **TEAM PREPARATION AND COMPETITION** — Taking into account the unique aspects inherent in the nature and basic operation of specific sports, OCR considers whether the team prepares for and engages in competition in a manner consistent with established varsity sports in the institution’s intercollegiate or interscholastic athletics program, including:

   A. Whether the practice opportunities (e.g., number, length and quality) are available in a manner consistent with established varsity sports in the institution’s athletics program; and
B. Whether the regular season competitive opportunities differ quantitatively and/or qualitatively from established varsity sports; whether the team competes against intercollegiate or interscholastic varsity opponents in a manner consistent with established varsity sports;

C. When analyzing this factor, the following may be taken into consideration:

1. Whether the number of competitions and length of play are predetermined by a governing athletics organization, an athletic conference, or a consortium of institutions;

2. Whether the competitive schedule reflects the abilities of the team; and

3. Whether the activity has a defined season; whether the season is determined by a governing athletics organization, an athletic conference, or a consortium.

D. If pre-season and/or post-season competition exists for the activity, whether the activity provides an opportunity for student athletes to engage in the pre-season and/or post-season competition in a manner consistent with established varsity sports; for example, whether state, national and/or conference championships exist for the activity; and

E. Whether the primary purpose of the activity is to provide athletic competition at the intercollegiate or interscholastic varsity levels rather than to support or promote other athletic activities.

When analyzing this factor, the following may be taken into consideration:

1. Whether the activity is governed by a specific set of rules of play adopted by a state, national, or conference organization and/or consistent with established varsity sports, which include objective, standardized criteria by which competition must be judged;

2. Whether resources for the activity (e.g., practice and competition schedules, coaching staff) are based on the competitive needs of the team;

3. If post-season competition opportunities are available, whether participation in post-season competition is dependent on or related to regular season results in a manner consistent with established varsity sports; and

4. Whether the selection of teams/participants is based on factors related primarily to athletic ability.

Please keep in mind that OCR’s determinations based on these factors are fact-specific. Therefore, determinations may vary depending on a school district or postsecondary
institution’s athletics program, the nature of the particular activity, and the circumstances under which it is conducted.

It is OCR’s policy to encourage compliance with the Title IX athletics regulations in a flexible manner that expands, rather than limits, student athletic opportunities. By disseminating this list of factors, OCR intends to provide institutions with information to include new sports in their athletics programs, such as those athletic activities not yet recognized by governing athletics organizations and those featured at the Olympic games, if they so choose. Expanding interscholastic and intercollegiate competitive athletic opportunities through new sports can benefit students by creating and stimulating student interest in athletics, taking advantage of athletic opportunities specific to a particular competitive region, and providing the opportunity for access to a wide array of competitive athletic activities.

OCR remains available to provide technical assistance on this issue to recipients on a case-by-case basis. If you have further questions regarding the application of Title IX to athletics programs, or seek technical assistance, please contact the OCR enforcement office serving your state or territory. Contact information for these offices is available on the Department’s website at http://wdcrobrocolp01.ed.gov/CFAPPS/OCR/contactus.cfm.

Thank you for your attention to these matters and your continued efforts to ensure equal athletic opportunities for all of our nation’s students.

Sincerely,

Stephanie Monroe
Assistant Secretary for Civil Rights

¹ For purposes of this analysis, there is no presumption that the amount of time dedicated to competition must be equal to or greater than the amount of time dedicated to practice.