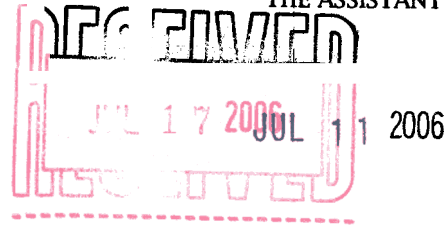




UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY



The Honorable Rep. Carolyn Maloney
1651 Third Avenue, Suite 311
New York, NY 10128

Dear Rep. Maloney:

Thank you for your letter dated June 26, 2006 to Secretary of Education Margaret Spellings expressing your concerns about the U.S. Department of Education's (Department) Additional Clarification of Intercollegiate Athletics Policy: Three-Part Test – Part Three (Additional Clarification) and seeking information on the steps that the Department's Office for Civil Rights (OCR) is taking to enforce Title IX of the Education Amendments of 1972 (Title IX). Secretary Spellings has referred your letter to this office for response.

I wholeheartedly agree with your emphasis on the importance of Title IX and its significance in providing unprecedented opportunities for women and girls. This success is based in part on the enforcement efforts by OCR, and we are committed to the continuous vigorous enforcement of the law. I believe the Additional Clarification furthers that mission.

The Additional Clarification

The Additional Clarification builds on the prior 1996 Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (1996 Clarification). The 1996 Clarification recognized the need for an accurate assessment of student interests and abilities in athletics while providing institutions with the flexibility to make assessments consistent with their own unique needs and circumstances. In the 1996 Clarification and a Dear Colleague Letter issued in 2003, OCR also pledged to provide further guidance on schools' obligations under the three-part test. We issued the Additional Clarification, on March 17, 2005, in response to that commitment.

Along with the Additional Clarification, OCR issued a User's Guide prepared by the National Center for Education Statistics (NCES), as well as a detailed technical report prepared by the National Institute of Statistical Sciences (NISS). The User's Guide also provides a web-based prototype survey (the "Model Survey"). Schools, however, are not required to use the Model Survey or any other survey. Institutions continue to have discretion and flexibility when determining athletic interests and abilities of students, and we expect they will continue to use a variety of nondiscriminatory methods of their choosing consistent with the Department's 1979 Intercollegiate Athletics Policy Interpretation.

Consistent with this flexibility, schools have a long history of choosing to use surveys of various kinds to measure student athletic interests under part three of the three-part test. The Model Survey and User's Guide were developed after NCEs and NISS conducted an extensive statistical review and analysis of OCR cases, from 1992-2002, involving the use of surveys under the three-part test.

In fact, NCEs concluded in the User's Guide that many of the survey instruments used by these schools were flawed, and often were administered to limited pools of students and resulted in very low response rates. The Additional Clarification and User's Guide address these deficiencies by providing schools, for the first time, with a Model Survey they may choose to use to assess athletic interests using an effective, unbiased method, rather than having the burden of developing their own surveys, as schools have done in the past.

In your letter, you raised concerns about the use of email surveys to assess student interests and abilities in athletics. The guidance given to schools was carefully designed to account for and maximize response rates. In order to properly administer the Model Survey, schools must conduct a "census," meaning that the Model Survey must be provided to all full-time undergraduates, or to all such students of the underrepresented sex — typically women. In the past, many schools did not administer their surveys to all female students, thereby failing to provide a significant number of women with this easy opportunity to express interest in additional athletic opportunities.

As you note, schools have the option to distribute the Model Survey to undergraduate women exclusively. This is consistent with the purpose of the census – to facilitate compliance with part three of the three-part test, under which schools must show that they are fully and effectively accommodating the interests and abilities of the underrepresented sex. While the Additional Clarification gives institutions the discretion to conduct surveys of both sexes, requiring institutions specifically to collect data on the interests of the overrepresented sex therefore would not be necessary to demonstrate compliance with part three of the three-part test.

While your letter specifically referenced surveys conducted by email, email is not the only method schools may use to administer the census. In fact, the preferred method is for schools to administer the census together with a mandatory activity—such as registration for courses—thereby requiring students to complete the census or actively bypass it. If, however, a school does choose to conduct the census through email, the school must inform students of the purpose of the census and that if they do not respond, the school will assume they are not interested in additional varsity athletic opportunities. Moreover, the school must take reasonable steps to follow-up with all students who do not respond to the email survey.

These requirements are consistent with, and often may exceed, the procedures and policies that colleges now are using with regard to email generally. As a result of the significant expansion and reliance on email in recent years, many educational institutions have established email as an official means of communication with students (often the

primary or preferred method). Further, they often have policies that put students on notice that they are responsible for regularly checking their email for communications from administrators, faculty, and staff. New York University and Syracuse University are two examples of institutions in New York that have adopted such policies.

Most important, even when the proper implementation of the Model Survey shows a lack of student interest in a particular sport, the Additional Clarification informs schools that they still must take into account other expressions of athletic interest by students of the underrepresented sex, such as a recent-broad based petition from an existing club team for elevation to varsity status, the recent elimination of a viable varsity team, and active participation on a viable intercollegiate team. OCR will not use census results to contravene such direct and persuasive evidence of actual athletic interest by students of the underrepresented sex, which is not reflected in the census results.

OCR Title IX Athletics Investigations

You also asked for additional details regarding the 166 investigations of possible Title IX athletics violations of the three-part test, by postsecondary institutions, conducted by OCR in the last 14 years. In 133 of those investigations, schools voluntarily entered into agreements to make changes to address apparent compliance concerns involving various athletics issues identified by OCR. In the remaining 33 investigations, OCR found insufficient evidence of noncompliance. Where OCR found compliance problems, the remedies that OCR obtained were tailored to the specific facts and circumstances of the case. Many of these institutions, for example, have created new intercollegiate teams or reinstated previously eliminated teams for the underrepresented sex, or developed policies and procedures for elevating club teams to varsity status and for creating new intercollegiate teams. Some institutions agreed to hire additional coaches, provide increased financial and/or coaching support for athletic recruitment, appropriately allocate athletic financial assistance, or provide additional or improved equipment or facilities to teams for the underrepresented sex. In all of these cases, OCR has monitored or continues to monitor the institution's athletics program to ensure compliance with the agreement.

With respect to Title IX generally, OCR currently has 377 Title IX cases under investigating or in monitoring, 168 of which involve athletics. The remaining open Title IX cases involve a range of other allegations of sex discrimination, including sexual harassment, admissions, recruitment, discipline, and assignment of students, program and support services, employment, and a myriad of other issues. With respect to athletics, 75 of the cases under investigation or in monitoring include possible noncompliance with the three-part test; other athletics allegations include, for example, recruitment; financial assistance/scholarships; equipment and supplies; medical and training facilities and services; support services; scheduling; assignment, training, and availability of coaching staff; academic tutoring; travel and per diem; athletic housing and dining facilities and services; publicity; locker room, practice, and competitive facilities; and other athletic issues.

Communication with Students and Parents

You also asked what steps OCR has taken to inform students and parents about their rights under Title IX. Even though Title IX was enacted in 1972, OCR continues to take proactive steps to help ensure that students and parents are aware of their rights and how those rights may be enforced.

OCR regularly provides technical assistance to student, parent, and community groups, as well as schools and colleges, to inform students of their rights under the federal civil rights laws, including Title IX, and to help institutions comply with those requirements. OCR provides guidance through a variety of methods, including responses to thousands of inquiries, via phone, email, or mail, each year from parents, students, recipients, and groups representing beneficiaries and recipients. To further assist students and parents, OCR provides technical assistance through conferences, training, community outreach; posting policies, pamphlets, and other information about Title IX enforcement on the Department's website; and issuing guidance on civil rights legal requirements and how to comply with the laws we enforce.

For example, in 2004, OCR issued Dear Colleague letters to postsecondary education institutions, chief state school officers and state and local education agencies, emphasizing schools' obligations under Title IX, highlighting recipient responsibility to designate and train Title IX coordinators and develop and disseminate to students, employees, and others Title IX nondiscrimination policies and grievance procedures. Since 2004, OCR has investigated or initiated more than 70 compliance reviews to determine if recipients are in compliance with these essential Title IX requirements to inform students, parents, and others that the school does not discriminate on the basis of sex and to inform them of the individual to contact at the school and process available if they believe they have been discriminated against.

In 2002, the Department established the Secretary of Education's Commission on Opportunity in Athletics, which was charged with examining and making recommendations to the Secretary on whether current Title IX compliance standards should be revised to strengthen athletic opportunities and clarify the obligations of colleges and schools to ensure fairness for all athletes. To this end, the Commission was composed of a number of Department senior staff; representatives of athletes, educators, coaches and other interested parties, and provided the opportunity for student athletes, parents, and others to express and be informed of concerns and recommendations.

In addition, under the Equity in Athletics Disclosure Act of 1998, the Department collects financial and statistical information on men's and women's intercollegiate sports in the nearly 2,000 institutions that participate in the Federal student aid programs and have intercollegiate athletic programs. This data is available to the public to help prospective students and their families research athletic opportunities on various college campuses.

You also requested information regarding OCR's funding levels committed to initiatives informing students and parents of their rights under Title IX. While OCR maintains

general funding information, OCR does not maintain the type of data you are seeking. Approximately 96% of OCR's annual budget is allotted to personnel and common support. The remaining 4% is available for all discretionary activities, including technical assistance initiatives. OCR does not allocate these discretionary funds between the specific statutes we enforce.

We appreciate your interest in the strong enforcement of Title IX and share your commitment to equal opportunity in education programs, including athletics programs. Thank you again for writing and expressing your concerns. Please let me know if I can be of further assistance.

Sincerely,

A handwritten signature in blue ink that reads "Stephanie Monroe". The signature is written in a cursive style with a large, stylized "S" and "M".

Stephanie Monroe