



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION II

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March 31, 2016

Dr. Shirley Mullen  
President  
Houghton College  
One Willard Avenue  
Houghton, New York 14744

Re: Case No. 02-14-2152  
Houghton College

Dear President Mullen:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaint filed against Houghton College (the College). The complainant alleged that the College discriminated on the basis of sex in its intercollegiate athletics program, by failing to fully and effectively accommodate the athletic interests and abilities of female students to the extent necessary to provide equal opportunities to members of both sexes.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The College is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title IX.

The regulation implementing Title IX, at 34 C.F.R. § 106.41(a), specifically prohibits discrimination on the basis of sex in athletic programs offered by recipients of financial assistance from the Department. The regulation implementing Title IX, at 34 C.F.R. § 106.41(c), states that a recipient that operates or sponsors athletic teams must provide equal opportunity for members of both sexes. The regulation implementing Title IX, at 34 C.F.R. § 106.41(c)(1), states that in determining whether equal opportunities are available, OCR will consider, among other factors, whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes.

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There are two aspects to OCR's analysis. OCR first considers the opportunities provided to students of each sex to compete in intercollegiate events, and then compares the quality of competition provided to women's teams with the quality of competition provided to men's teams.

The College is a private Christian institution providing education in the liberal arts and sciences. It is a small college, enrolling approximately 1,000 to 1,100 undergraduate students per year. Approximately two-thirds of the College's undergraduate enrollment is female. College athletes currently compete in 18 National Collegiate Athletics Association (NCAA) Division III sports.<sup>1</sup>

OCR applies the following three-part test to assess whether an institution is providing equal participation opportunities for individuals of both sexes:

- i. Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
- ii. 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 that is demonstrably responsive to the developing interests and abilities of that sex; or
- iii. 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 demonstrate that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

The three-part test furnishes three individual avenues for measuring compliance with the requirement to provide individuals of each sex with nondiscriminatory opportunities to participate in intercollegiate athletics. If an institution has met any part of the three-part test, OCR will determine that the institution is meeting this requirement.

*Part One: Are Competitive Opportunities Substantially Proportionate to Enrollment?*

Under Part One of the three-part test, where an institution provides intercollegiate level participation opportunities for male and female students in numbers substantially proportionate to their respective full-time undergraduate enrollments, OCR will find that the institution is providing nondiscriminatory participation opportunities for individuals of both sexes.

OCR compared the number of male and female undergraduate full-time students enrolled with the number of athletic opportunities available to each sex within the College's athletic program

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<sup>1</sup> The College has been transitioning from membership and competition in the National Christian College Athletic Association (NCCAA) and/or the National Association of Intercollegiate Athletics (NAIA) to the NCAA.

for academic years 2011-2012, 2012-2013 and 2013-2014.<sup>2</sup> In determining participation opportunities, OCR counted the number of actual athletes participating<sup>3</sup> in each competitive sport.<sup>4</sup>

OCR determined that during academic year 2011-2012, women had 169 (59.0%) of the athletic opportunities while they represented 65.3% (776/1187) of the overall enrollment. The difference between enrollment and opportunities is a difference of 6.3%. In order for women to achieve athletic opportunities proportionate to their enrollment as compared to men, women's athletic opportunities would need to be increased by 52, which is greater than the average women's team size of 21 (169 participation opportunities divided by 8 teams)<sup>5</sup> during academic year 2011-2012.

OCR determined that during academic year 2012-2013, women had 182 (54.0%) of the athletic opportunities while they represented 66.4% (722/1086) of the overall enrollment. The difference between enrollment and opportunities is a difference of 12.4%. In order for women to achieve athletic opportunities proportionate to their enrollment as compared to men, women's athletic opportunities would need to be increased by 125, which is greater than the average women's team size of 18.2 (182 participation opportunities divided by 10) during academic year 2012-2013.

OCR further determined that during academic year 2013-2014, women had 197 (52.3%) of the athletic opportunities while they represented 64.5% (660/1023) of the overall enrollment. The difference between enrollment and opportunities is a difference of 12.2%. In order for women to achieve athletic opportunities proportionate to their enrollment as compared to men, women's athletic opportunities would need to be increased by 128, which is greater than the average women's team size of 18 (197 participation opportunities divided by 11 teams) during academic year 2013-2014.

Based on the foregoing, OCR concluded that the athletic participation opportunities for women and men were disproportionate to their respective enrollments in each of the three years reviewed. Therefore, the College failed to satisfy Part One.

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<sup>2</sup> During academic year 2011-2012 the College offered participation opportunities in 14 sports including men's and women's basketball, cross-country, indoor track, outdoor track, soccer and baseball/softball. In addition participation opportunities were available in women's field hockey and volleyball. During academic year 2012-2013 the College added men's and women's golf and lacrosse for a total of 18 sports. During academic year 2013-2014 the College dropped men's and women's golf but added men's and women's tennis.

<sup>3</sup> As a general rule, OCR counts all student athletes listed on a team's squad or eligibility list, and who are on the team as of the team's first competitive event. Under the interests and abilities analysis, a student athlete who participates in more than one sport will be counted separately as a participant in each sport.

<sup>4</sup> An extracurricular activity not involving competition as its purpose is not considered a competitive sport for purposes of the interests and abilities analysis.

<sup>5</sup> OCR considers opportunities to be substantially proportionate when the number of opportunities that would be required to achieve proportionality would not be sufficient to sustain a viable team. As a frame of reference in assessing this situation, OCR considers the average size of teams offered for the underrepresented sex, a number which would vary by institution

*Part Two: Is there a History and Continuing Practice of Program Expansion for the Underrepresented Sex?*

Under Part Two of the three-part test, an institution may demonstrate compliance by showing that it has a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex. Part Two examines an institution's past and continuing remedial efforts to provide nondiscriminatory participation opportunities through program expansion.

OCR considers the following factors, among others, as evidence indicating an institution's history of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex:

- A record of adding intercollegiate teams, or upgrading teams to intercollegiate status, for the underrepresented sex;
- A record of increasing the number of participants in intercollegiate athletics who are members of the underrepresented sex; and
- An affirmative response to requests by students or others for addition or elevation of sports.

OCR may also consider the following factors, among others, as evidence that may indicate a continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex:

- The current implementation of a nondiscriminatory policy or procedure for requesting the addition of sports (including the elevation of club or intramural teams) and the effective communication of the policy or procedure to students; and
- The current implementation of a plan of program expansion that is responsive to developing interests and abilities.

OCR determined that the College began its intercollegiate sports program for men during academic year 1967-1968; it offered basketball, cross country and soccer. The College added the following men's teams in subsequent academic years: baseball, outdoor track and golf in 1968-1969; tennis in 1969-1970; indoor track in 1972-1973; and lacrosse in 2012-2013, bringing the total of men's sports to nine (9).

The College began offering intercollegiate sports for women with the introduction of women's basketball during academic year 1969-1970. The College added the following women's teams in subsequent academic years: volleyball in 1970-1971; field hockey and indoor track in 1972-1973; tennis in 1974-1975; outdoor track and softball in 1977-1978; cross-country in 1979-1980; soccer in 1981-1982; and lacrosse and golf in 2012-2013, for a total of eleven (11) women's sports.

As of the 2013-2014 season, the women's program offered participation opportunities in ten (10) sports, and the men's program offered participation opportunities in eight (8) sports. The College provided information about changes to the athletics programs, including sports that were

dropped and in some instances restored. With respect to women's sports, in academic year 1981-1982 the College dropped women's tennis, but restored it in 2013-2014. Similarly, in 1982-1983, the College dropped softball, but restored it in 2011-2012. Women's golf was dropped in 2013-2014, one year after its introduction. With respect to men's sports, the College dropped baseball in 1987-1988, restored it in 2011-2012. The College dropped men's golf in 1979-1980, restored it in 2012-2013; and dropped it again in 2013-2014, at the same time that women's golf was dropped. In 1980-1981, the College dropped men's tennis, but restored it in 2013-2014 at the same time women's tennis was restored.

OCR determined that the men's and women's golf teams are the only teams that have been dropped and are no longer offered. The College reported that women's and men's golf teams were cut shortly after the start of the 2013-2014 season, due to emergency campus-wide cuts necessitated by declining enrollment. The College asserted that eliminating the golf teams satisfied the athletics department share of the campus-wide cuts, and cited several reasons for cutting the golf teams: namely, it affected the smallest number of student-athletes; it affected fewer females than males; it is not a sport offered by all schools with which the College competes; and reportedly the women's team was not meeting the NCAA's minimum participation requirements on a consistent basis.<sup>6</sup> The College further represented that it believed that declining enrollment would result in even fewer women golfers in the 2013-2014 season, making it unlikely that the College would be able to sustain the team, regardless of the mandatory budget cuts. OCR notes, however, that data collected through the admissions office indicated that 23 females who applied to the College for academic year 2013-2014 indicated an interest in golf.

The College reported that notwithstanding the College's declining enrollment in recent years, it has managed to expand its program and increase the number of female athletes. The College reported that during the time period under review, it was and continues to be in the process of transitioning into the NCAA, an athletics conference that offers more intercollegiate sports opportunities, particularly for female students, than the conferences in which the College participated for many years, the NCCAA and/or the NAIA. As indicated previously, the College reported that from 2011 through 2014, the number of participation opportunities for female athletes increased from 169 to 182 to 197, representing an increase in participation rates for females from 21.7% to 29.8%. While the women's program experienced slight increases in participation opportunities, men's participation opportunities increased to a much greater extent; the number of participation opportunities for male athletes increased from 117 to 155 to 179, representing an increase in participation rates for males from 28.4% to 49.3%.

OCR's investigation revealed that during the 2011-2012 season, the College restored softball and baseball.<sup>7</sup> The College reported that student interest, captured through a comprehensive review of its athletics program undertaken during academic year 2008-2009, motivated the restoration of these teams. The review took more than one year to complete and consisted of surveying faculty/staff and students on a variety of issues; establishing a review committee and student feedback group; analyzing and visiting comparison institutions; and preparing a comprehensive

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<sup>6</sup> NCAA bylaws require a minimum of five participants at six contests.

<sup>7</sup> As previously noted, baseball was initially offered in academic year 1968-1969; dropped in 1987-1988; and restored in 2011-2012.

report. A review of the comprehensive report revealed student interest in lacrosse; a sport not previously offered by the College. The College added both men's and women's lacrosse during the 2012-2013 season.

The College asserted that it has received no request to add an intercollegiate sport, but has added multiple sports over the past few years due to its affiliation with NCAA and its requirements. OCR determined that the College has a formal policy for requesting the addition of sports teams. The policy sets forth the steps necessary to establish a club team. The process includes circulating a petition to evaluate the level of interest on campus and presenting it to the Committee on Intercollegiate Athletics (CIA),<sup>8</sup> which will determine if sufficient interest exists to proceed. If the CIA determines that sufficient interest exists as evidenced by the petition or the recent discontinuation of an intercollegiate team, intramural activities will be arranged with the Director of Intramurals. If the intramural program maintains interest for one year, the CIA may approve the addition of the sport as a club sport. In the event that a club sport maintains student interest, the CIA would have the authority to recommend to the Student Life Council (SLC) that it be added as an intercollegiate sport.<sup>9</sup> The request would then go to faculty and the President's staff to discuss budgeting implications. The Board of Trustees also would be involved at this point in the process. Assuming the sport is feasible from a budgetary standpoint, a budget would be approved and the sport would be added.

OCR conducted interviews with the Athletic Director, three Associate Directors of Athletics, and head coaches. All stated that they believed that the College had procedures in place for interested persons, including students, to request the addition of sports and/or teams; however, several indicated that they only became aware of them when they reviewed documentation submitted to OCR regarding the instant complaint, but were unfamiliar with where the information is published. They all stated that because the College is a small campus, most things get done through word-of-mouth and they did not believe that the procedures were used frequently, if ever. They asserted that anyone interested in adding a sport and/or team would know that all they need to do is talk to the athletics staff.

Based on the above, OCR determined that the College has formal procedures in place for students, coaches, faculty or others to request that additional sports be added; however, it does not appear that the procedures are widely publicized and/or accessible to students. OCR further determined that although participation opportunities and the number of female student athletes has increased slightly, there is still a 12.2% discrepancy between female enrollment and participation opportunities; and the College's decision to include a women's team among the department's cuts to meet budgetary exigencies disproportionality affects females. Therefore, OCR is unable to conclude that the College has a history of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex.

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<sup>8</sup> The CIA is composed of three or four elected faculty members, two student representatives, the faculty athletics representative, and the Athletic Director.

<sup>9</sup> The SLC is chaired by the Vice President for Student Life, and includes two faculty representatives, three student life staff members, two elected student representatives, and the Student Government President.

*Part Three: Is the Institution Fully and Effectively Accommodating the Interests and Abilities of the Underrepresented Sex?*

Under Part Three of the three-part test, OCR determines whether an institution is fully and effectively accommodating the interests and abilities of the underrepresented sex. Although disproportionately high athletic participation rates by one sex (as compared to their enrollment rates) may indicate that an institution is not providing equal athletic opportunities to its students of the other, underrepresented sex, an institution can satisfy Part Three where there is evidence that the imbalance does not reflect discrimination, i.e., where it can demonstrate that notwithstanding disproportionately low participation rates of the underrepresented sex, the interests and abilities of these students are, in fact, being fully and effectively accommodated.

In making this determination, OCR considers whether there is (1) unmet interest in a particular sport; (2) sufficient ability to sustain a team in the sport; and (3) a reasonable expectation of competition for the team. If all three conditions are present, OCR will find that an institution has not fully and effectively accommodated the interests and abilities of the underrepresented sex.

OCR evaluates a broad range of indicators in determining whether an institution has unmet interest and ability to support an intercollegiate team in a particular sport, including the following five elements: (1) whether an institution uses nondiscriminatory methods of assessment when determining the athletic interests and abilities of its students; (2) whether a viable team for the underrepresented sex recently was eliminated; (3) multiple indicators of interest; (4) multiple indicators of ability; and (5) frequency of conducting assessments. OCR examines multiple indicators when determining whether there is sufficient ability among interested students of the underrepresented sex to sustain a team, including: (1) the athletic experiences and accomplishments – in interscholastic, club or intramural competition – of underrepresented students and admitted students interested in playing the sport; (2) opinions of coaches, administrators, and athletes at an institution regarding whether interested students and admitted students have the potential to sustain an intercollegiate team; (3) if the team has previously competed at the club or intramural level, whether the competitive experience of the team indicates that it has the potential to sustain an intercollegiate team; (4) participation in other sports, intercollegiate, interscholastic or otherwise, that may demonstrate skills or abilities that are fundamental to the particular sport being considered; and, (5) tryouts or other direct observations of participation in the particular sport in which there is interest.

Because women are substantially underrepresented in the College's competitive sports relative to their percentage of the student population, OCR evaluated whether there was unmet interest in women's sports that are not offered by the College. OCR determined that the College conducted an internal review of its intercollegiate athletics program during academic year 2008-2009.<sup>10</sup> This assessment was conducted as the College was transitioning from the NCCAA and/or NAIA to NCAA – Division III, and was a comprehensive assessment that examined what was required to comply with NCAA-III's minimum competitive standards and how the college would comply. The assessment included surveys of faculty, staff students and comparison schools. Included in

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<sup>10</sup> The College also submitted to OCR a survey administered in March 2014 that the College stated was designed to assess student interest in sports, specifically with regard to intramural activities. The College noted that the addition of a new field house will allow it to offer additional intramural opportunities.

the assessment report is a copy of the student survey. The survey's first few questions inquire about a student's interest in attending sporting events at Houghton and following sports results on the internet. Starting with question 7, it asks questions about participation, such as "did you participate in varsity sports in high school?"; "Since this time last year have you participated in any club or intercollegiate athletic activities sponsored by the college?" Then the survey states that there are many reasons that students do not participate in club or intercollegiate athletics in college and asks the respondents to check all of the reasons that apply to them.

The College noted in its analysis of the survey responses that sports mentioned as possible additions for women included softball, tennis, lacrosse, swimming and golf. It noted that softball, tennis and golf were historically offered but were cut for budgetary reasons over the years. The report further noted that the number of times these sports were mentioned by students as possibilities was 11, 6, 5, 3, and 3, respectively. While these numbers are small, the College asserted that it was looking to expand its offerings to comply with NCAA-III minimum competition requirements, and therefore added/restored softball, tennis and golf for women.

During interviews with OCR, none of the athletic staff identified any interests that were not being met; rather they asserted that they believe that generally everyone was satisfied with the athletics program. Several indicated that since there were more sports for women and all sports that were offered to men were also offered to women, there was no unmet interest. All of the coaching staff indicated that the Athletic Director was adamant in ensuring that there is equity in the men's and women's program in all areas; and in some instances coaches felt that the men's programs that were larger were getting less because the Athletic Director required the same level of funding for similar sports, such as baseball and softball, despite the team's particular needs.

OCR interviewed one female student athlete who had been on the golf team. The interviewee stated that she believed that if golf had been continued, more people would have played and coaches would have had more opportunity to recruit players to build a viable team. She suggested that the opportunity may have been missed with the cutting of the team because the athletes moved on to other sports.

Prior to OCR's obtaining information about and completing an analysis of all of the factors regarding Part Three of the three-part test, the College expressed an interest in resolving the complaint. OCR determined it was appropriate to negotiate a resolution and therefore did not complete its investigation to determine whether the College could satisfy Part Three of the three-part test.

On March 30, 2016, the College voluntarily entered into the attached resolution agreement to resolve the allegations in this complaint without further investigation. Among other action items, the College agreed to conduct a survey (to be reviewed and approved by OCR) of women in its student body to determine possible interest and ability in sports not currently offered by the College; identify any sports, squads, and levels of sports for female students that are not currently offered by the College but are offered either by schools that compete within the league in which the College competes or by schools that are within the College's normal competitive region and geographic area; create and implement a nondiscriminatory policy or procedure for requesting the addition of sports/levels (including the elevation of intramural teams) and

ensuring the effective communication of the policy or procedure to students and others; beginning with academic year 2016-2017, if the College identifies a sport or sports in which there is sufficient but unmet interest, and if applicable, ability of female students to participate at the intercollegiate level, the College will add athletics opportunities until such time as either (1) the school is fully and effectively accommodating the expressed interests and abilities of female students (i.e., there remains no unmet interest and ability) or (2) the participation rate for female students in intercollegiate athletics program is substantially proportionate to their rate of enrollment; and, conduct periodic assessments of the athletics interests and abilities of its students in subsequent years to ensure it is equally and effectively accommodating the athletic interests and abilities of its male and female students consistent with Title IX and its implementing regulation. OCR will monitor implementation of the resolution agreement.

This letter should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding OCR's determination, please contact Tracey Beers, Senior Compliance Team Attorney, at (646) 428-3804 or [tracey.beers@ed.gov](mailto:tracey.beers@ed.gov), or Felice Bowen, Team Leader, at (646) 428-3806 or [felice.bowen@ed.gov](mailto:felice.bowen@ed.gov).

Sincerely,

\_\_\_\_\_/s/\_\_\_\_\_  
Timothy C.J. Blanchard

Encl.

cc: XXXX XXXXX, Esq.