

**Resolution Agreement
Denison University
OCR Docket #15-14-2049**

Denison University (University) voluntarily submits this Agreement to the U.S. Department of Education, Office for Civil Rights (OCR), to resolve OCR complaint number #15-14-2049, and to ensure the University's compliance with Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (Title IX), and its implementing regulation, 34 C.F.R. Part 106, with respect to the issues addressed by the investigation (whether the University discriminates against female students by denying them an equal opportunity to participate in intercollegiate athletics).

The University has worked cooperatively with OCR, and voluntarily enters into this Agreement in further demonstration of its commitment to Title IX compliance. The University maintains it is proud of its history advancing women in sport, and will continue to work cooperatively with the OCR through the resolution process to further enhance its Title IX efforts.

OPPORTUNITY TO PARTICIPATE IN INTERCOLLEGIATE ATHLETICS

I. DEMONSTRATION OF CURRENT COMPLIANCE

A. Participation opportunities

The University agrees to provide participation opportunities in its intercollegiate athletics program for female and male students that equally and effectively accommodate the athletic interests and abilities of members of both sexes, consistent with the requirements of Title IX, the Title IX implementing regulation at 34 C.F.R. § 106.41(c)(1), and applicable OCR policies. Accordingly, by **June 30, 2015**, the University will demonstrate compliance with any one part of the three-part test used by OCR to assess whether the interests and abilities of members of both sexes are being effectively accommodated to the extent necessary to provide an equal opportunity to participate in intercollegiate athletics by documenting that:

1. The University is providing intercollegiate level participation opportunities for female and male students in numbers that are substantially proportionate to their respective enrollments (Part 1); or
2. The University has a history and continuing practice of intercollegiate athletic program expansion that is demonstrably responsive to the developing interests and abilities of students who are members of the underrepresented sex (Part 2); or
3. The interests and abilities of students who are members of the underrepresented sex have been fully and effectively accommodated by the University's current intercollegiate athletics program (Part 3).

Each part of the three-part test is an equally sufficient and separate method of complying with the Title IX regulatory requirement to provide nondiscriminatory athletic participation opportunities. The University has the option to choose the part of the three-part test with which it will comply.

B. Substantial proportionality in participation rates in intercollegiate athletics program

Should the University elect to demonstrate compliance with Part 1 of the three-part test referenced above, then the University will compare the enrollment rates of its female and male students with their rates of participation in the University's intercollegiate athletics program during the 2013-2014 academic year to determine if they are substantially proportionate.

1. Enrollment rates will be calculated using the full-time undergraduate enrollment numbers, by sex.
2. The participation rates of female and male students will reflect the total number of females and males listed on the NCAA varsity squad or eligibility list for each intercollegiate varsity sport on the date of the first competition for each sport. The participation rates should not include participants in intramural, club or non-competitive athletic activities. Students, who participate in more than one intercollegiate sport, will be counted in each intercollegiate sport in which they participate. The information provided by the University will be sufficient to allow OCR to determine the number of students, by sex, who were participating on each intercollegiate team on the date of the team's first competition and to identify any changes to the participation numbers that occurred after the first competition.

C. History and continuing practice of intercollegiate athletic program expansion

Should the University elect to demonstrate compliance with Part 2 of the three-part test referenced above, then the University will complete an evaluation that objectively assesses whether it has a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of members of the underrepresented sex. The University's evaluation will be based on multiple factors, including:

1. The University's record since 1984 of adding intercollegiate varsity teams or levels for members of the underrepresented sex or upgrading teams to intercollegiate varsity status and increasing the numbers of participants who are members of the underrepresented sex in intercollegiate varsity athletics;
2. Affirmative responses to requests made by students or others for addition or elevation of sports/levels for students who are members of the underrepresented sex;

3. The existence and implementation of a nondiscriminatory policy or procedure for requesting the addition of sports/levels (including the elevation of club or intramural teams) and the effective communication of the policy or procedure to students;
4. The existence and implementation of a plan of program expansion that is responsive to the developing interests and abilities of members of the underrepresented sex; and
5. Efforts to monitor the developing interests and abilities of members of the underrepresented sex, for example, by conducting periodic nondiscriminatory assessments of developing interests and abilities and taking timely actions in response to the results.

D. Accommodation of student interests and abilities

Should the University elect to demonstrate compliance with Part 3 of the three-part test referenced above, then the University will conduct an objective assessment to determine the athletic interests and abilities of the underrepresented sex and whether the University is fully and effectively accommodating the athletic interests and abilities of members of the underrepresented sex. The assessment will be based on multiple indicators of interest and multiple indicators of ability, including:

1. Results of recent surveys of students and admitted students or other information collected from students and admitted students using a method that is designed to fully and accurately assess unmet athletic interests and abilities in intercollegiate varsity sports among members of the underrepresented sex;
2. Identification of sports, squads, and levels of sports for members of the underrepresented sex that are not currently offered by the University that are offered by schools that compete within the athletic conferences in which the University competes and by schools that are within the University's normal competitive region;
3. Review of any requests (whether oral or written, formal or informal) made to University administrators, coaches, or staff by or on behalf of students and admitted students who are members of the underrepresented sex to add a particular sport, squad, or level of sport, or to elevate an existing club or intramural sport to intercollegiate varsity sport status. This review may be limited to requests that were received during the previous three complete academic years;
4. Assessments made by University coaches or staff during tryouts, or observations of students participating in club or intramural competition, and other information reflecting the ability of students and admitted students who are members of the underrepresented sex to compete in a particular sport,

prior participation in that sport or a similar sport at the high school level or intramural or club level, general athletic ability, participation in other University intercollegiate sports, the nature of the particular sport, and other relevant factors (Neither a poor competitive record, nor the inability of interested students or admitted students to play at the same level of competition engaged in by the University's other athletes is conclusive evidence of lack of ability. For the purposes of assessing ability, it is sufficient that interested students and admitted students have the potential to sustain an intercollegiate varsity team.);

5. Participation in interscholastic sports by admitted students and participation rates in sports in high schools, amateur athletic associations, and community sports leagues that operate in areas from which the University draws its students; and
6. Any other information that demonstrates the athletic interests and abilities of the University's students who are members of the underrepresented sex.
7. Where interest and ability in an intercollegiate varsity sport not currently offered by the University is identified, the assessment will also consider whether there is a reasonable expectation of intercollegiate competition in the University's normal competitive region in that sport.

E. **Reporting Requirements:**

1. Should the University elect to demonstrate compliance with Part 1 of the three-part test referenced above, by **June 30, 2015**, the University will provide OCR with a detailed report, with copies of supporting documents, reflecting the University's evaluation of the proportions of female and male students in athletics conducted pursuant to section I.B. of this Agreement. The report will include, at a minimum, a copy of the enrollment and participation data that the University relied on in determining whether the University is providing intercollegiate athletic participation opportunities, a copy of team squad or eligibility lists for each sport showing students, by sex, and other information reflecting the basis for the University's evaluation. The information provided by the University will be sufficient to allow OCR to determine the number of students, by sex, who were participating on each intercollegiate team on the date of the team's first competition and to identify any changes to the participation numbers that occurred after the first competition.
2. Should the University elect to demonstrate compliance with Part 2 of the three-part test referenced above, by **June 30, 2015**, the University will provide OCR with a detailed report containing the University's evaluation as described and enumerated in section I.C. of this Agreement, including any historical intercollegiate athletics participation data, any intercollegiate athletic gender equity studies conducted at the University since 1984 that were not previously provided to OCR, and the results of any surveys or other

assessments of the athletic interests of University students since 1984, including a copy of any survey instruments used and the methodologies used to conduct the surveys.

3. Should the University elect to demonstrate compliance with Part 3 of the three-part test referenced above, the University will provide OCR with a detailed report by **June 30, 2015**, about the assessment conducted pursuant to section I.D. of this Agreement. The report will include, at a minimum, the following information:
 - a. Copies of any surveys administered under section I.D.1. and the results of those surveys, including but not limited to a complete description of the methodology used to conduct the survey, including how the survey was distributed, the number of surveys distributed and the number of responses, any follow-up to the initial distribution of the survey, the names and contact information for the individual(s) who evaluated the responses to the surveys and a copy of any notes or other documents compiled during the review of the surveys;
 - b. A summary of sports and squads for members of the underrepresented sex that are not currently offered by the University that are offered by schools that compete within the athletic conferences in which the University competes and by schools that are within the University's normal competitive region;
 - c. Rates of participation by members of the underrepresented sex in club and intramural sports at the University;
 - d. Rates of participation by members of the underrepresented sex in interscholastic sports that operate in the geographic areas from which the University draws its enrollment;
 - e. Copies of any written requests and summaries of any non-written requests made by or on behalf of students who are members of the underrepresented sex to add a particular sport or squad, or to elevate an existing club or intramural sport to intercollegiate sport status;
 - f. Summaries of any assessments made during tryouts, or observations of students participating in club or intramural competition, and other information reflecting the ability of students who are members of the underrepresented sex to compete in a particular sport, prior participation in that sport or a similar sport at the high school level or intramural or club level, general athletic ability, participation in other University intercollegiate sports, the nature of the particular sport, and other relevant factors; and

- g. Any other information that was considered by the University as part of its assessment in determining whether it is fully and effectively accommodating the athletic interests and abilities of members of the underrepresented sex.

II. ACTIONS TO INCREASE ATHLETIC OPPORTUNITIES

If, by **June 30, 2015**, the University is wholly unable to demonstrate good faith compliance pursuant to sections I.B., I.C., or I.D. of this Agreement, the University will submit to OCR for review and approval its detailed plan with timeframes to accommodate effectively the interests and abilities of members of both sexes to the extent necessary to provide equal opportunity in its intercollegiate athletics program by the 2016-17 academic year, including the steps noted below. In addition, the plan will include a description of interim steps that will be taken by the University during the 2015-2016 academic year to increase intercollegiate athletic participation opportunities for women. The University will begin implementation of the plan approved by OCR within 30 days of OCR's approval.

A. Sports currently offered

The University will institute a squad size policy providing for increased participation opportunities for students who are members of the underrepresented sex to the maximum extent feasible consistent with the nature of each sport and the level of interest in each sport while still ensuring that meaningful intercollegiate athletic participation opportunities are being provided for all team members. The policy will apply to each sport currently offered and will not call for limiting or reducing intercollegiate athletic participation opportunities for the overrepresented sex.

B. Sports not currently offered

The University will determine whether there are a sufficient number of students and admitted students at the University who are members of the underrepresented sex with the interest and ability to support the addition of a team in sports not currently offered by the University as intercollegiate varsity sports and sufficient competition in those sports within the University's normal competitive region. If so, the University will add a team in those sports and will hire a coaching staff, recruit student athletes and provide sufficient resources to the coaching staff during the **2015-2016** academic year to ensure that each team begins competition no later than the **2016-2017** academic year, consistent with the above determination, unless the actions taken by the University under section II.A. are sufficient to achieve compliance under Part 1 of the three-part test.

C. Response to developing interests and abilities

For any sport that is not currently offered by the University in which there are a sufficient number of students and admitted students who are members of the underrepresented sex who have the interest and ability to support a team in that sport, but where the University determines that there is not sufficient competition in that sport within the University's normal competitive region, the University will take ongoing steps to address such interest and ability. Steps may include establishment of intramural or club sports, exploring the establishment of competition in the University's normal competitive region, and elevating such sports to intercollegiate varsity status when competition becomes available.

D. Elimination of athletic teams

OCR has made clear to the University and the University understands that OCR does not require or encourage the elimination of any University intercollegiate athletic teams and that it seeks action from the University that does not involve the elimination of athletic opportunities, because nothing in Title IX or the three-part test requires an institution to cut teams or reduce opportunities for students who are participating in intercollegiate athletics in order to comply with the provisions of Title IX relating to the effective accommodation of the interests and abilities of male and female students.

E. Additional intercollegiate opportunities

To the extent that the University adds any sports, the University will provide those team(s), in a manner comparable to other intercollegiate varsity teams, with sufficient funds in its budget to cover expenses including, but not limited to: coaches, recruiting, equipment and supplies, travel, publicity and support services.

F. Reporting Requirements:

1. By **June 30, 2015**, the University will provide OCR a report that includes information and supporting documentation demonstrating its plan will accommodate effectively the interests and abilities of members of both sexes.
2. By **December 1, 2015**, the University will provide OCR a status report regarding its implementation of its plan to accommodate effectively the interests and abilities of members of both sexes including as applicable, information demonstrating that a coaching staff has been hired for any new teams being added by the University, an update on the University's progress in recruiting student athletes for the added teams and a copy of the detailed budget provided to the teams to ensure they are able to begin competition during the **2016-2017** academic year.

3. By **June 30, 2016**, the University will provide OCR a report that includes information demonstrating that its intercollegiate athletics program will equally effectively accommodate the athletic interests and abilities of its female students effective the **2016-2017** academic year.

General Requirements

The University understands that OCR will not close the monitoring of this agreement until OCR determines that the University has fulfilled the terms of this agreement and is in compliance with the Title IX implementing regulation at 34 C.F.R. § 106.41(c)(1), which is at issue in this review.

The University understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the University understands that during the monitoring of this Agreement, if necessary, OCR may visit the University, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Title IX as identified above.

The University understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this agreement, OCR shall give the University written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

_____/s/_____
Denison University, President or designee

__1/14/15_____
Date