



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I  
5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

September 5, 2017

Dr. John J. Petillo  
President  
Office of the President  
Sacred Heart University  
5151 Park Avenue  
Fairfield, Connecticut 06825

Re: OCR Compliance Review 01-13-6001  
Sacred Heart University

Dear President Petillo:

On June 17, 2013, the U.S. Department of Education, Office for Civil Rights (OCR) notified Sacred Heart University (the University) that it had been selected for a compliance review to examine whether the University discriminates against female students by denying them an equal opportunity to participate in intercollegiate athletics and whether the University discriminates in awarding athletics scholarships or grants-in-aid by not awarding such aid in proportion to the number of students of each sex participating in its intercollegiate athletic program.

Before OCR completed its review and made any compliance determinations, the University agreed to voluntarily resolve the compliance review as set forth in the enclosed Resolution Agreement, consistent with Section 302 of OCR's Case Processing Manual.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 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 Federal financial assistance. The Title IX regulation at 34 C.F.R. § 106.71 also incorporates by reference 34 C.F.R. § 100.7(a), which requires and authorizes OCR to conduct periodic proactive compliance reviews to determine compliance with the laws OCR enforces. The University receives Federal financial assistance from the U.S. Department of Education and, therefore, is a recipient subject to the requirements of Title IX.

OCR's compliance review focused on the following legal issues:

- Whether the University provided male and female students an equal opportunity to participate in its intercollegiate athletic program by effectively accommodating their interests and abilities, in accordance with 34 C.F.R. § 106.41(a) and (c)(1).

- Whether the University provided its athletes with scholarship and financial aid opportunities in proportion to the number of students of each sex participating in intercollegiate athletics, in accordance with 34 C.F.R. § 106.37(c).

### **Summary of OCR's Investigation to Date**

The University is located in Fairfield, Connecticut and reports on its website that in the 2016-2017 academic year, its student body was made up of 8,532 total students: 4,794 full-time undergraduate students, 634 part-time undergraduate students, and 3,104 graduate students. Approximately 67% of the University's student body is female. The University has one of the largest athletics programs in the area, offering 31 Division I teams at the time OCR opened the compliance review.

Upon commencing this compliance review in June 2013, OCR requested and reviewed statistical, budgetary, and historical data related to the University's athletic program. OCR received updated information from the University on a rolling basis throughout the compliance review. In April 2014, OCR traveled onsite to the University to meet with General Counsel; the Executive Director of Athletics; Deputy Director of Intercollegiate Athletics; Senior Associate Athletic Director for Compliance; Executive Director for University Financial Assistance; Executive Director for Athletics and Student Affairs Budgets; Executive Director for Human Resources and Title IX Coordinator; Director for Athletic Recruitment; and the Executive Director for Undergraduate Admissions.

In July 2016, OCR again went onsite and conducted interviews with the new University Title IX Coordinator; Executive Director of Athletics; Deputy Director of Athletics; Senior Associate Athletic Director for Compliance and Senior Women's Administrator; Executive Director of Budgets, Student Affairs and Athletics; Head Women's Rugby Coach; Executive Director of University Financial Assistance; and Head Women's and Men's Track & Field Coach. During the July 2016 onsite, OCR also conducted focus groups with women's rugby and track and field athletes. Following the onsite, OCR also interviewed the University's Vice President for Finance. Finally, OCR reviewed additional responsive information the University provided from 2013 through summer 2017.

### **Facts and Analysis**

#### **A. Effective Accommodation of Interests and Abilities**

The Title IX implementing regulation, at 34 C.F.R. § 106.41(a) states that "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 [of Federal financial assistance], and no recipient shall provide any such athletics separately on such basis." The regulation, at 34 C.F.R. § 106.41(c), in relevant part, requires a recipient to provide equal athletic opportunity for members of both sexes, including the provision of a "selection of sports and levels of competition [to] effectively accommodate the interests and abilities of members of both sexes." As a means of assessing whether an institution is providing an equal opportunity in its intercollegiate athletic program in compliance with Title IX (specifically 34 C.F.R. §§ 106.41(a) and (c)(1)), OCR follows the approach outlined in its guidance document, A Policy Interpretation: Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71413 issued on December 11,

1979 (Policy Interpretation). The Policy Interpretation clarifies what is popularly referred to as the “Three-Part Test” to assess whether a recipient is providing equal opportunities for male and female student-athletes in its intercollegiate athletic program.

The Three-Part Test considers the following inquiries:

1. Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
2. Where 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; or
3. Where 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 program.

If a recipient meets any one of the three parts of the Three-Part Test, the institution is providing equal opportunity to compete to its male and female student-athletes.

OCR’s preliminary analysis of the University’s compliance with each part of the Three-Part Test is discussed immediately below.

***Part One:*** *Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments.*

The Policy Interpretation defines athletic participants as those athletes: “(a) [w]ho are receiving the institutionally-sponsored support normally provided to athletes competing at the institution involved, e.g., coaching, equipment, medical and training room services, on a regular basis during a sport’s season; and (b) [w]ho are participating in organized practice sessions and other team meetings and activities on a regular basis during a sport’s season; and (c) [w]ho are listed on the eligibility or squad lists maintained for each sport; or (d) [w]ho, because of injury, cannot meet a, b, or c above but continue to receive financial aid on the basis of athletic ability.”

During OCR’s preliminary investigation of this issue, OCR reviewed various data from the University for a period encompassing 2010 through 2017, and also reviewed historical data collected by the U.S. Department of Education pursuant to the Equity in Athletics Disclosure Act (EADA). This data included enrollment data, team roster data, NCAA squad lists, financial budgets, strategic plans, and other data that shed light on the number of students attending the University and the percentage of those students who were athletes, as defined by OCR guidance. OCR also interviewed two head coaches, a group of athletes, and University administrators involved in the enrollment of students, financial aid, and the athletic program.

At the time OCR requested the University’s initial data response, and based on a review of squad lists, OCR preliminarily found a significant disparity of 17.3% between women enrolled at the University and women participating in intercollegiate sports. This disparity represented approximately 389 participation opportunities for female athletes that would need to be added to

achieve proportionality. Throughout OCR's investigation, the University has steadily increased the opportunities available to female athletes, resulting in smaller disparities: as of 2015-2016, the disparity had dropped to 8%, which represents approximately 203 participation opportunities for female athletes that would need to be added to achieve proportionality.

While OCR's compliance review preliminarily identified concerns regarding the above disparity rates, OCR credits the University's efforts to address this disparity during the course of OCR's investigation. Specifically, OCR found that most of the University's recent success in significantly lowering female student-athletes' participation disparities can be traced to the University's addition of women's rugby as a varsity sport in 2015, after elevating it from club status; and expanding several of its successful women's athletic programs, such as track and field.

OCR closely examined the University's addition of women's rugby, which the University added in an effort to work towards part one compliance. In interviews with rugby student-athletes, rugby coaching staff, and high-level athletics administrators, OCR confirmed that the University was offering meaningful athletic opportunities to female student-athletes through rugby, and that the University will continue to support and expand this emerging sport as outlined in the Resolution Agreement.

OCR also closely examined the University's expansion of its women's track and field program. OCR found that the University's track and field participation figures were substantially higher than the NCAA average; therefore, OCR scrutinized those figures to ensure that they represented real athletic opportunities for women and were not a result of roster manipulation. OCR's July 2016 interviews with the track and field coach, and OCR's focus groups with several track and field student-athletes, indicate that these teams' rosters appear to reflect genuine athletic opportunities consistent with Title IX.

The University has entered into the attached Resolution Agreement to achieve part one compliance, thereby satisfying the Three-Part test.

**Part Two:** *Where 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.*

In considering whether past actions of an institution have expanded participation opportunities for the underrepresented sex in a manner that was demonstrably responsive to their developing interests and abilities, OCR examines an institution's record of adding intercollegiate teams, or upgrading club or intramural teams, for the underrepresented sex; its record of increasing participation numbers for the underrepresented sex; and its affirmative responses to student requests for the addition or elevation of sports. OCR will not find a history and continuing practice of program expansion where an institution increased the proportional participation opportunities for the underrepresented sex by reducing the opportunities for the overrepresented sex alone or by reducing the participation opportunities for the overrepresented sex to a

proportionately greater degree than the underrepresented sex. OCR also examines current practices that support continued expansion.

OCR found that the University is a member of the National Collegiate Athletic Association (NCAA) and all of its teams compete at the Division I level. The only Division I sports sanctioned by the NCAA (excluding emerging sports such as rugby) not offered by the University at the start of OCR's review were gymnastics, rifle, skiing, and water polo. The University participates in different conferences depending on the sport and recruits both nationally and internationally. The chart below lists the teams currently offered and the years these sports originated at the University.

#### SPORT-BY-SPORT INCEPTION

MEN'S TEAM	FIRST YEAR OF COMPETITION	WOMEN'S TEAM	FIRST YEAR OF COMPETITION
Basketball	1965	Volleyball	1972
Soccer	1965	Basketball	1974
Baseball	1966	Softball	1980
Volleyball	1984	Soccer	1980
Football	1991	Cross-Country	1991
Lacrosse	1991	Lacrosse	1992
Cross-Country	1992	Field Hockey	1993
Golf	1992	Tennis	1993
Ice Hockey	1993	Bowling	1993
Tennis	1993	Golf	1994
<del>Bowling</del> <sup>1</sup>	<del>1993</del>	Indoor Track & Field	1994
<del>Rowing</del>	<del>1994</del>	Outdoor Track & Field	1994
Indoor Track & Field	1994	Equestrian	1994
Outdoor Track & Field	1994	Rowing	1994

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<sup>1</sup> The University previously sponsored men's rowing and bowling, but these sports were eliminated when the University moved to the Division I level in 1999.

MEN'S TEAM	FIRST YEAR OF COMPETITION	WOMEN'S TEAM	FIRST YEAR OF COMPETITION
Wrestling	1998	Ice Hockey	1995
Fencing	1999	Swimming	1998
		Fencing	1999
		Rugby	2015

As illustrated by this chart, the University experienced its largest growth in its athletic program between 1991 and 1994, adding 20 sports teams total – 10 for men and 10 for women.<sup>2</sup> There were no additional sports added since 1999 until the University added women's varsity rugby in 2015 as a result of OCR's compliance review. There was also no indication from staff interviews that the University had ever cut a women's team that had competed at the intercollegiate level.

OCR notes that while there were periods of time in the University's history where the University increased participation opportunities for women, there was simultaneous expansion of the men's program which had the effect of minimizing the women's relative growth. In other words, because the University was adding men's teams (albeit fewer of them) when it was adding women's teams, this expansion limited the impact that the new women's teams had in addressing the overall disparity of female opportunities. Furthermore, OCR's compliance review preliminarily suggests that the University may not have a practice or policy of adding new sports. As the chart illustrates, and as interviews with University staff corroborate, there have been virtually no additional sports added since 1999, beyond the addition of women's rugby in 2015. As noted above, the University has entered into a Resolution Agreement to achieve part one compliance, thereby satisfying the Three-Part Test.

***Part Three:*** *Where members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion, 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 program.*

Even when an institution cannot demonstrate compliance with either part one or two, OCR may find the institution in compliance through part three of the Three-Part Test if it can be shown that the underrepresented sex's interests and abilities are met by the current athletic program. To make this determination, OCR will consider assessments of unmet interest and ability, if an institution has a practice of conducting such assessments. OCR also typically looks to an institution's club and/or intramural program as indicators of possible interest and ability to participate in intercollegiate sports, and considers other indicators of possible interest and ability

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<sup>2</sup> This notable growth may be attributed to the University's transition at this time from a commuter school to a residential university.

such as developing sports on a nation-wide level and/or the sports offered in the areas from which the University draws its students.

As explained above, OCR found that the University offers nearly every Division I sport sanctioned by the NCAA. Similarly, the University appears to offer an expansive club athletic program. Notably, upon OCR's opening of this compliance review, the University reviewed its club offerings and decided to elevate its women's rugby club team to varsity status.

OCR's review raised preliminary concerns as to whether, pre-dating OCR's compliance review, the University was surveying its students for unmet interest; however, OCR notes that the University represented to OCR that it conducted a survey in 2013. As noted above, the University has entered into a Resolution Agreement to achieve part one compliance, thereby satisfying the Three-Part Test.

#### B. Athletic Financial Assistance

OCR also looked at whether the University provided its athletes scholarship opportunities in proportion to the number of students of each sex participating in intercollegiate athletics. The regulation implementing Title IX also addresses athletic financial aid in 34 C.F.R. §106.37(c), stating that "to the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate programs."

Under the Policy Interpretation, OCR conducts a "financial comparison to determine whether proportionately equal amounts of financial assistance (scholarship aid) are available to men's and women's athletic programs." The Policy Interpretation goes on to state that "[i]nstitutions may be found in compliance if this comparison results in substantially equal amounts or if a resulting disparity can be explained by adjustments to take into account legitimate, nondiscriminatory factors." The Policy Interpretation specifically states that OCR "will measure compliance with this standard by dividing the amounts of aid available for the members of each sex by the numbers of male or female participants in the athletic program and comparing the results." The Policy Interpretation also states that "[i]nstitutions may be found in compliance if this comparison results in substantially equal amounts or if a resulting disparity can be explained by adjustments to take into account legitimate, nondiscriminatory factors."

A disparity in awarding athletic financial assistance (AFA) refers to the difference between the aggregate amount of money athletes of one sex in fact received and the amount they would have received if their share of the entire budget for athletic scholarships had been awarded in proportion to their participation rates. In other words, this section does not require a proportionate number of scholarships for men and women (e.g., seven scholarships for male lacrosse players does not necessitate seven scholarships for female lacrosse players) or individual scholarships of equal dollar value (e.g., if a male soccer player receives \$7,000, a female soccer player does not also have to receive \$7,000); however, it does mean that the total amount of scholarship aid made available to men and women must be substantially proportionate to their overall participation rates.

Institutions can be found in compliance with the requirements of Title IX even in the absence of substantially proportionate rates of scholarship aid, if an identified disparity can be explained by

legitimate, nondiscriminatory factors. Disparities that exceed a mere percentage point (after controlling for all legitimate, nondiscriminatory reasons) may create a presumption of non-compliance because a recipient has direct control over the allocation of financial aid to its athletic program, and such decisions are sex-based (i.e. aid is expressly allocated among sex-segregated teams and therefore any resulting disparities cannot generally be a result of chance).

In OCR's preliminary investigation of this aspect of the University's program, OCR reviewed scholarship amounts provided by the University to each team and discussed with relevant administrators the process for providing AFA. At the outset of this review, OCR found that the University may not have underfunded its female athletes: in 2011, it was providing them a larger share of the AFA pool than their relative participation would indicate. However, OCR preliminarily found that the AFA pool allotted to female athletes has since fluctuated, from being equivalent to appearing to be underfunded. Prior to OCR making any compliance determinations with regard to AFA (including examining any legitimate, nondiscriminatory reasons for disparities), the University entered into a Resolution Agreement to achieve AFA compliance.

## **Conclusion**

OCR notes that throughout this review, the University has taken proactive steps to move towards providing proportional athletics opportunities for female athletes, including by expanding its women's teams to NCAA averages, expanding its more successful women's programs beyond just the averages and ensuring those opportunities are true opportunities, as well as creating a Division I women's rugby team. These efforts have resulted in over one hundred additional opportunities for women athletes so far. As it has grown its program, the University has increased the scholarships available to women's teams so that it can recruit and retain Division I caliber players. Not only has the University committed to creating additional opportunities for women, but it has demonstrated that it understands and has begun budgeting for the related component spending that it will need to do to provide an equitable opportunity for its women's program. The University hired a full time Title IX coordinator and created a Title IX Committee to monitor these initiatives and has been reporting to OCR throughout the review period.

As of the date of this Resolution Agreement, the University has represented to OCR in reports and interviews that it has spent over \$1.2 million on investments in its athletic program geared towards ensuring equity. For example, given the sizable additions to its women's rowing program, the University is reviewing its facilities and acquiring additional competitive vessels, and has already purchased 11 new ergs for indoor rowing practice as well as five new racing shells. The University is also increasing coaching staff for women's teams. The University hired a full-time head coach for rugby; full-time assistant coaches for lacrosse, swimming, track and field, rowing, equestrian, and rugby; a graduate assistant coach for lacrosse; a part-time diving coach; and an equipment person for ice hockey; and increased the assistant coaches for volleyball and fencing from part-time to full-time. Additionally, the University conducted a review of coaching salaries and upgraded women's head coaching salaries to be more competitive, and has committed to continue to monitor these salaries. The University has also hired two strength and conditioning coaches and renovated the weight room.



For facilities, the University moved women's ice hockey to a new rink with a locker room and meeting space; moved women's swimming to an improved pool and increased pool rental for diving; built a new turf field; replaced the track running surface and added a throwing circle; renovated lacrosse locker rooms; installed turf and added new padding on the softball field; purchased a golf course; and added additional practice and competition fields for rugby and soccer. The University has also increased travel budgets to ensure equity across teams and genders in terms of rooming and travel expenses.

In undertaking these actions, the University has demonstrated its commitment to meaningfully expand its women's athletic program. Furthermore, although not the subject of OCR's compliance review, the University has also demonstrated its commitment to continuously monitor for equality with regard to the benefits and opportunities in all other aspects of the University's intercollegiate athletic program.

The University has memorialized its commitments in the attached Resolution Agreement, signed on August 25, 2017, which OCR will monitor.

The Resolution Agreement will ensure the following, among other items:

- The University will implement a multi-year strategic plan to create additional opportunities for female athletes, and in doing so provide substantially proportionate intercollegiate participation opportunities for its male and female athletes, in compliance with part one of the Three-Part Test.
- The University agrees to continue to support and develop its women's rugby team by providing funding for all other budgetary items provided to other intercollegiate contact-sport teams, and by providing appropriate AFA to recruit and retain rugby athletes by the 2019-2020 academic year.
- The University agrees to monitor its club sports for any future growth and development opportunities, and to seek to expand its women's teams to at least up to the NCAA averages.
- The University will ensure that it is providing AFA in substantial proportionality to its male and female athletes' participation rates, including by ensuring a system is in place for the Department of Athletics to work with the Title IX Coordinator to track AFA by team.
- The University will annually monitor its entire athletic program to ensure equality in all components defined by Title IX ("laundry list").
- The University shall maintain a Title IX Committee comprised of specific members charged with Title IX compliance, including in the athletic program.

OCR has determined that the Resolution Agreement is aligned with the issues OCR examined in its compliance review, and is consistent with the laws and regulations OCR enforces.

OCR's findings only address the specific allegations and legal issue identified in this matter and do not pertain to the University's compliance with other aspects of Title IX or any other laws enforced by OCR. This letter is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases, are not formal statements 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.

Please also be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has participated and cooperated with this compliance review. If this happens, the individual may file a 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. If OCR receives such a request, OCR will seek to protect all personal information, to the extent provided by law, that, if released, could constitute an unwarranted invasion of privacy.

If you have any questions, please contact Civil Rights Investigator Molly O'Halloran at (617) 289-0058 or Molly.O'Halloran@ed.gov.

Sincerely,

/s/

Meena Morey Chandra *w/p AMM*  
Acting Regional Director

cc: Michael Larobina, Esq.