

## **RESOLUTION AGREEMENT**

### **The State University of New York University at Albany Case No. 02-17-2037**

In order to resolve Case No. 02-17-2037, the State University of New York, University at Albany (the University) assures the U.S. Department of Education, Office for Civil Rights (OCR), that it will take the following actions pursuant to the requirements of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106 (Title IX).

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, at 34 C.F.R. § 106.41(c)(1). The University has advised OCR that it intends to demonstrate compliance by providing intercollegiate athletic participation opportunities for male and female students in numbers that are substantially proportionate to their respective enrollments. Accordingly, by no later than academic year 2020-2021, the University will demonstrate compliance by demonstrating that the participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments.

This Agreement does not constitute an admission on the part of the University that it violated any regulations enforced by OCR.

OCR has made clear to the University 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 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. OCR has also made clear to the University that Title IX provides institutions with flexibility and choice regarding how they will provide nondiscriminatory participation opportunities.

#### **Action Item I: Substantially Proportionate Participation Opportunities**

By October 1, 2020, if not compliant earlier, the University will demonstrate that the participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments. In doing so, 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 respective academic year to determine if these 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.

**Reporting Requirement:** By October 1, 2017, 2018, 2019 and 2020, the University will provide, for OCR's review and approval, 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 Action Item I above. The report will include, at a minimum, a copy of the enrollment and participation data that the University relied upon, and the NCAA squad or eligibility list for each intercollegiate sport on the date of the first competition for each sport. 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. OCR will determine whether the University has demonstrated current compliance by demonstrating that the participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments.

In making the election to comply with Part One, the University is not waiving its right to demonstrate that it is otherwise in compliance with OCR's three-part test. If the University determines that it wishes to demonstrate compliance by meeting Part Three, rather than Part One, the University will comply with the requirements set forth in Action Items II and III below, as appropriate. In such a case, the University will notify OCR, and in consultation with OCR, revise the reporting requirement dates for Action Items II and III as necessary.

#### **Action Item II: Effective Accommodation of Interests and Abilities**

By October 1, 2020, if not compliant earlier, should the University elect to demonstrate that the interests and abilities of the members of the underrepresented sex (females) have been fully and effectively accommodated by the present program, then the University will conduct an objective assessment to determine the athletic interests and abilities of females, and whether the University is fully and effectively accommodating their athletic interests and abilities. 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 sports among members of the underrepresented sex. The survey shall seek information on female students' interest, and if applicable, ability to participate in sports not currently offered by the University but that are offered by other schools that compete within the University's athletic conferences and by schools that are within the University's normal competitive region. The survey should include students' current and future interest in

athletics, plus an open-ended inquiry where students will be able to submit comments or requests for additional athletic opportunities at the University. Any survey used by the University to assess intercollegiate athletic interests and abilities will be pre-approved as to content and methodology by OCR; and, the methodology, implementation and response rates of each survey will maximize the possibility of obtaining accurate information and facilitating responses.

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 regions.
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 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 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.
6. Reviewing the number of female students cut from any team in the last four years, and the reasons they were cut, to assess whether any of the students who were cut have the ability to compete in that sport and whether sufficient numbers of students were cut to sustain another level in that sport.
7. Reviewing whether any viable women's team has been suspended or eliminated in the past 10 years and the reason for such decision.
8. Any other information that demonstrates the athletic interests and abilities of the University's students who are members of the underrepresented sex.

9. Where interest and ability in an intercollegiate 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 regions in that sport.

**Reporting Requirements<sup>1</sup>:**

- a) By June 30, 2018, the University will provide to OCR a copy of the draft survey referenced in Action Item II above, for OCR's review and approval.
- b) By June 30, 2018, the University will provide to OCR a complete description of the planned methodology for conducting the survey, including how the survey will be distributed, the number of surveys to be distributed, any planned follow-up to the initial distribution of the survey, the names and contact information for the individual(s) who will evaluate the responses to the surveys, and the protocol for retaining a copy of any notes or other documents compiled during the review of the surveys.
- c) Within 30 days of OCR's approval of the survey and plan for administering the survey, the University will administer the approved survey to its female students according to the plan approved by OCR.
- d) By October 1, 2018, and by the same date in 2019 and 2020, if not compliant earlier, should the University elect to demonstrate that the interests and abilities of the members of the underrepresented sex (females) have been fully and effectively accommodated by the present program, the University will provide OCR with a detailed report about the assessment conducted pursuant to Action Item II of this Agreement. The report will include, at a minimum, the following information:
  - i. Copies of any surveys administered under this section 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;
  - ii. 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;

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<sup>1</sup> As stated above, these reporting dates may be revised, in consultation with OCR, should the University choose to demonstrate compliance by meeting Part Three, rather than Part One.

- iii. Rates of participation by members of the underrepresented sex in club and intramural sports at the University;
- iv. 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;
- v. 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;
- vi. 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
- vii. 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.

### **Action Item III: Actions to Increase Athletic Opportunities**

By June 30, 2019, if the University is unable to demonstrate compliance pursuant to Action Items I or II of this Agreement, the University will submit to OCR for review and approval its detailed plan with timeframes to effectively accommodate the interests and abilities of the underrepresented sex to the extent necessary to provide equal opportunity in its intercollegiate athletics program by no later than academic year 2020-2021, including the steps noted below. In addition, the plan will include a description of interim steps that will be taken by the University during academic year 2019-2020 to increase intercollegiate athletic participation opportunities for women. The University also agrees to conduct periodic assessments of the athletic interests and abilities of its students in subsequent years to ensure that 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. The University will begin implementation of the plan approved by OCR within 30 days of OCR's approval.

#### **1. 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.

2. Sports not currently offered

The University will determine whether there is 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 sports and sufficient competition in those sports within the University's normal competitive regions. 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 academic year 2019-2020 to ensure that each team begins competition by academic year 2020-2021, consistent with the above determination.

3. Response to developing interests and abilities

For any sport that is not currently offered by the University in which there is 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 regions, 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 regions, and elevating such sports to intercollegiate status when competition becomes available.

4. 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 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.

**Reporting Requirements<sup>2</sup>:**

- a) By June 30, 2019, the University will provide to OCR a report that includes information and supporting documentation demonstrating that its plan will effectively accommodate the interests and abilities of members of both sexes by academic year 2020-2021. The plan will include a description of interim steps that the University will take during academic year 2019-2020 to increase intercollegiate athletic participation opportunities for women.
- b) By December 30, 2019, the University will provide to OCR status reports regarding its implementation of its plan to effectively accommodate the interests and abilities of members of both sexes including as applicable, information demonstrating that a

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<sup>2</sup> As stated above, these reporting dates may be revised, in consultation with OCR, should the University choose to demonstrate compliance by meeting Part Three, rather than Part One.

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 that they are able to begin competition by academic year 2020-2021. The status reports will also include documentation regarding the interim steps the University has taken to increase intercollegiate athletic participation opportunities for women during academic year 2019-2020.

#### **Action Item IV: Process for Requesting Addition of New Sports or Levels of Sports**

By November 30, 2017, the University will develop and adopt a process and written procedure for students or other interested parties, such as coaches or parents, to use in requesting the addition of new sports or levels of sports at the University. The process will be implemented upon approval by OCR, and notice and a copy of the procedure will be published with the electronic version of the Student Handbook (with changes to printed version to be made with the next published revision) and included in the Athletic Department's policies and procedures/manual, and the individual responsible for responding to any requests will be identified by name and contact information. This information will also be displayed on the University's website. The University shall retain all requests for new sports or levels of sports made through the procedure or otherwise in written or electronic form for a minimum of ten years.

#### **Reporting Requirements:**

- a) By September 30, 2017, the University will submit to OCR, for review and approval, a copy of its draft procedure for requesting new sports or levels of sports. OCR will respond within 30 calendar days.
- b) By December 15, 2017, the University will provide documentation to OCR demonstrating that the procedure for requesting new sports or levels of sports has been adopted and disseminated to students and staff; including a link to the University's website where this information may be found.
- c) By June 30, 2018, and June 30, 2019, the University will provide documentation to OCR demonstrating that the procedure for requesting new sports or levels of sports has been implemented during the past academic year, including copies of any requests and the responses to those requests.

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 regulation implementing Title IX, at 34 C.F.R. §§ 106.41(a) and (c)(1), which were at issue in this case. The University also 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, 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 regulation implementing Title IX, at 34 C.F.R. §§ 106.41(a) and (c)(1), which was at issue in this case.

The University understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings, including 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, including to enforce this Agreement, OCR shall give the University written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

8/7/17  
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Date:

/s/  
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Kevin C. Wilcox  
Associate Vice President, Finance and  
Administration Controller  
State University of New York, University at  
Albany