

VOLUNTARY RESOLUTION AGREEMENT

Hartwick College Case No. 02-18-2167

In order to resolve Case No. 02-18-2167, Hartwick College (the College) 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).

This Agreement does not constitute an admission by the College that it violated Title IX or any regulations enforced by OCR. The College has worked cooperatively with OCR and voluntarily enters into this Agreement in further demonstration of its commitment to Title IX.

The College agrees to provide participation opportunities in its intercollegiate athletics program for female and male students that effectively accommodate the athletic interests and abilities of members of both sexes, consistent with the requirements of the regulation implementing Title IX, at 34 C.F.R. § 106.41(c)(1).

OCR has made clear to the College that OCR does not require or encourage the elimination of any College intercollegiate athletic teams and that it seeks action from the College 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.

The College has advised OCR that it chooses to comply with the regulation implementing Title IX by providing nondiscriminatory participation opportunities to effectively accommodate the interests and abilities of female students, as set forth in Action Item I below. OCR has made clear to the College that Title IX provides institutions with flexibility and choice regarding how they will provide nondiscriminatory participation opportunities.

Action Item I: Effectively Accommodating Interests and Abilities

By September 30, 2019, the College will conduct an objective assessment to determine the athletic interests and abilities of female students, and whether the College 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, when possible, admitted students who have not yet enrolled using a method that is designed to fully and accurately assess unmet athletic interests and abilities in intercollegiate sports among female students. The survey shall seek information on female students' interest, and if applicable, ability to participate in sports not currently offered by the College but that are offered by other schools that compete within the College'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 College. Any survey used by the College 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 female students that are not currently offered by the College that are offered by schools that compete within the athletic conferences in which the College competes and by schools that are within the College's normal competitive regions.
3. Review of any requests (whether oral or written, formal or informal) made to College administrators, coaches, or staff by or on behalf of current students and newly enrolled students who are female to add a particular sport, squad, or level of sport, or to elevate an existing club or intramural sport to intercollegiate sport status.
4. Assessments made by College coaches or staff during tryouts, or observations of students participating in club or intramural competition, and other information reflecting the ability of current students and newly admitted students who are female 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 College 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 College's other athletes is conclusive evidence of lack of ability. For the purposes of assessing ability, it is sufficient that current students and newly admitted students have the potential to sustain an intercollegiate team.)
5. Participation in interscholastic sports by admitted students and, where available, participation rates in sports in high schools, amateur athletic associations, and community sports leagues that operate in areas from which the College draws its students.
6. Reviewing whether any viable women's team has been suspended or eliminated in the past 10 years and the reason for such decision.
7. Any other information that demonstrates the athletic interests and abilities of the College's female students.
8. Where interest and ability in an intercollegiate sport not currently offered by the College is identified, the assessment will also consider whether there is a reasonable expectation of intercollegiate competition in the College's normal competitive regions in that sport.

Reporting Requirements:

- a) By December 31, 2018, the College will provide to OCR a copy of the draft survey referenced in Action Item I above, for OCR's review and approval.

- b) By December 31, 2018, the College 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 College will administer the approved survey to its female students according to the plan approved by OCR.
- d) By December 31, 2019, the College will provide to OCR a detailed report about the assessment conducted pursuant to Action Item I 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 female students that are not currently offered by the College that are offered by schools that compete within the athletic conferences in which the College competes and by schools that are within the College's normal competitive region;
 - iii. Rates of participation by female students in club and intramural sports at the College;
 - iv. Rates of participation, where available, by female students in interscholastic sports that operate in the geographic areas from which the College 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 female students 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 College intercollegiate sports, the nature of the particular sport, and other relevant factors; and

- vii. Any other information that was considered by the College as part of its assessment in determining whether it is fully and effectively accommodating the athletic interests and abilities of female students.

Action Item II: Actions to Increase Athletic Opportunities

Action Item II of this Agreement will apply if the College determines that it will be unable to demonstrate compliance pursuant to Action Item I of this Agreement.

By June 20, 2020, if the College determines that it will be unable to demonstrate compliance pursuant to Action Item I of this Agreement, the College will submit to OCR for review and approval its detailed plan with timeframes to effectively accommodate the interests and abilities of female students to the extent necessary to provide equal opportunity in its intercollegiate athletics program by no later than academic year 2022-2023, including the steps noted below. In addition, the plan will include a description of interim steps that will be taken by the College during academic years 2020-2021 and 2021-2022 to work toward effectively accommodating the interests and abilities of female students. The College also agrees to conduct periodic assessments of the athletic interests and abilities of its students in subsequent years to ensure that it is effectively accommodating the athletic interests and abilities of its female students consistent with Title IX and its implementing regulation. The College will begin implementation of the plan approved by OCR within 30 days of OCR's approval.

1. Sports currently offered

The College will institute a squad size policy providing for increased participation opportunities for female students 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.

2. Sports not currently offered

The College will determine whether there is a sufficient number of current students and newly admitted students at the College who are female students with the interest and ability to support the addition of a team in sports not currently offered by the College as intercollegiate sports and sufficient competition in those sports within the College's normal competitive regions and in the appropriate NCAA Division. If so, the College will add a team in those sports and will hire a coaching staff, recruit student athletes, and provide sufficient resources to the coaching staff no later than academic year 2020-2021 to ensure that each team begins competition no later than academic year 2022-2023, consistent with the above determination.

3. Response to developing interests and abilities

For any sport that is not currently offered by the College in which there is a sufficient number of current students and newly admitted students who are female students who have the interest and ability to support a team in that sport, but where the College determines that there is not sufficient competition in that sport within the College's normal competitive regions, the College 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 College's normal competitive regions, and elevating such sports to intercollegiate status when competition becomes available.

4. Additional intercollegiate opportunities

To the extent that the College adds any sports, the College will provide to those team(s), in a manner comparable to other intercollegiate teams, 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:

- a) By June 30, 2020, the College 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 female students by academic year 2022-2023. The plan will include a description of interim steps that the College will take during academic years 2020-2021 and 2021-2022 to increase intercollegiate athletic participation opportunities for women.
- b) By April 30, 2021, the College 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 coaching staff have been hired for any new teams being added by the College, an update on the College'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 2021-2022. The status reports will also include documentation regarding the interim steps the College has taken to increase intercollegiate athletic participation opportunities for women during academic years 2020-2021 and 2021-2022.

Action Item III: Process for Requesting Addition of New Sports or Levels of Sports

By March 1, 2019, the College will develop and adopt a process and written procedure for students or other interested parties, such as coaches or parents, or guardians, to use in requesting the addition of new sports or levels of sports at the College. 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 any 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 College’s website. The College 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 December 31, 2018, the College 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 March 15, 2019, the College 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 College’s website where this information may be found.
- c) By December 31, 2019, and December 31, 2020, the College 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 College 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 College understands that during the monitoring of this Agreement, if necessary, OCR may visit the College, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the College has fulfilled the terms of this Agreement. Upon the College’s satisfaction of the commitments made under this Agreement, OCR will close this case.

The College 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 will give the College written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This Agreement will become effective immediately upon the signature of the College’s representative below.

8/29/18

/s/

Date

Authorized Representative
Hartwick College