



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS  
THE WANAMAKER BUILDING, SUITE 515  
100 PENN SQUARE EAST  
PHILADELPHIA, PA 19107-3323

**February 6, 2015**

**IN RESPONSE, PLEASE REFER TO: 03-14-2298**

Dr. Carlos Vargas-Aburto  
Acting President  
Kutztown University  
15200 Kutztown Road  
Kutztown, Pennsylvania 19530

Dear Dr. Vargas-Aburto:

This is to notify you of the resolution of the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR) against Kutztown University of Pennsylvania (the University). The Complainant alleged the University is discriminating against female students on the basis of sex in intercollegiate athletics by failing to accommodate the interests and abilities of female athletes.

OCR enforces Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the University is subject to Title IX and its implementing regulation.

The Title IX implementing regulation, at 34 C.F.R. § 106.41(a), states generally 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 Title IX implementing regulation at 34 C.F.R. § 106.41(c)(1) states that in determining whether equal athletic opportunities are provided for males and females, OCR considers whether the selection of sports effectively accommodates the interests and abilities of members of both sexes to the extent necessary to provide equal opportunity.

In addition to language from the regulation, OCR also assesses compliance using guidance provided in the "Intercollegiate Athletics Policy Interpretation," issued December 11, 1979, (Policy Interpretation); the Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test, issued on January 16, 1996; and the Intercollegiate Athletics Policy Clarification: The Three-Part Test – Part Three, issued on April 20, 2010.

OCR's analysis of whether a recipient provides male and female students an equal opportunity to participate in its intercollegiate athletics program by effectively accommodating their interests and abilities consists of two parts: (1) equal opportunities to participate, and (2) levels of competition. The Policy Interpretation provides that for the first element of this determination,

OCR will apply the following Three-Part Test to assess whether an institution is providing equal participation opportunities for individuals of both sexes:

- (1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
- (2) 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 which is demonstrably responsive to the developing interest and abilities of that sex; or
- (3) 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 be demonstrated 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. If an institution is attempting to comply with Part Three and the information or documentation compiled by the institution during the assessment process shows that there is sufficient interest and ability to support a new intercollegiate team and a reasonable expectation of intercollegiate competition in the institution's normal competitive region for the team, the institution is under an obligation to create an intercollegiate team within a reasonable period of time in order to comply with Part Three.

Under OCR procedures, a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a Resolution Agreement. The provisions of the Resolution Agreement must be aligned with the complaint allegations and be consistent with applicable regulations. Such a request does not constitute an admission of a violation on the part of the University, nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR's procedures, the University requested to resolve the complaint through a Resolution Agreement. On February 4, 2015, the University signed this Agreement. As is our standard practice, OCR will monitor the University's implementation of the Agreement, a copy of which is enclosed. Accordingly, OCR is concluding its investigation of these allegations as of the date of this letter.

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. 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.

This letter is not intended nor should it be construed to cover any other issues regarding the University's compliance with Title IX, which may exist and are not discussed herein. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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, we 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.

Please be advised that the University 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.

If you have any questions or concerns, please call me at (215) 656-8522.

Sincerely,

/s/  
Vicki Piel  
Team Leader

cc: Ann St. Ledger, Esq. (via email)

Enclosure