

Voluntary Resolution Agreement

Kutztown University Complaint No. 03142298

To resolve the allegation in the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR), under 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), Kutztown University (the University) enters into this Voluntary Resolution Agreement (Agreement). The University voluntarily agreed to take the following steps to ensure its Title IX compliance as set forth below. The Agreement does not constitute an admission of liability on the part of the University, nor does it constitute a determination by OCR of any violation of our regulations by the University.

ACTION ITEMS AND REPORTING REQUIREMENTS

STUDENT INTERESTS AND ABILITIES (I&A)

I. DEMONSTRATION OF CURRENT COMPLIANCE

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, the University will demonstrate compliance with 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 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 of the "Three-Part Test").

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 elected to demonstrate compliance by meeting Part 3 but continues to have the option to choose the part of the Three-Part Test with which it will comply. If the University determines that the intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments, the University will notify OCR. In determining substantial proportionality, the University agrees that:

- a. Enrollment rates will be calculated using the full-time undergraduate enrollment numbers by sex; and
- b. The participation rates of female and male students will reflect the total number of females and males listed on the NCAA squad list for each intercollegiate sport on the date of the first competition for each sport. The participation rates should not include participants in intramural, club or noncompetitive athletic activities.

A. Accommodation of student interests and abilities

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. A survey of students and admitted students who are likely to attend (i.e., transfer; matriculated; and those students admitted who have paid a deposit, attended orientation and received a schedule of courses) or other information collected from students and admitted students who are likely to attend, 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. A copy of the draft survey will be submitted to OCR for its review and approval before being distributed to students. The University will make such revisions and improvements to the survey as advised by OCR. Upon OCR's written approval, the University shall administer the survey, endeavoring to generate as high a response rate as possible.
2. Identification of sports, squads, and levels of sports for members of the underrepresented sex that are not currently offered by the University but are offered by schools that compete within the athletic conferences in which the University competes and by schools that are within the University's primary geographic competitive region.
3. Review of any requests (whether oral or written, formal or informal) made to University administrators, coaches, or designated staff by or on behalf of students and admitted students, as applicable, 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. 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 admitted students who are likely to attend 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 who are likely to attend 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 students and admitted students who are likely to attend, and participation rates in sports in high schools, amateur athletic

associations, and community sports leagues that operate in the primary geographic areas from which the University draws its students.

6. Any other documented 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 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 primary geographic competitive region in that sport.

B. I&A REPORTING REQUIREMENT (Section 1)

1. By February 5, 2015, a copy of the draft survey referenced in Section I.A., above, for OCR's review and approval.
2. By February 5, 2015 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.
3. By June 30, 2015, the University will provide OCR with a detailed report about the assessment conducted pursuant to Section I.B. of this Agreement. The report will include, at a minimum, the following information:
 - a. Copies of any surveys or questionnaires administered under Section I.A.1. The results of those surveys and questionnaires, 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 and questionnaires 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 questionnaires 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 primary geographic 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 primary geographic areas from which the University draws its enrollment;
- e. Copies of any written requests made available and summaries of any non-written requests made by students 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

The University will take the following actions only if unable to demonstrate current compliance with Title IX pursuant to Section I.A of this Agreement:

- A. By September 30, 2015, if the University is unable to demonstrate compliance pursuant to the I&A section of this Agreement (Section I), 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 the 2016-2017 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 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.

2. Sports not currently offered

If the University determines there are a sufficient number of students and admitted students, as applicable, at the University who are members of the underrepresented sex with the interest and ability to support the addition of a team in a sport not

currently offered by the University as intercollegiate sport and sufficient competition in that sport within the athletic conference in which the University competes or the University's primary geographic competitive region, then the University will add a team in those sports.

3. 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, as applicable, 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 athletic conference in which the University competes or the University's primary geographic 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 athletic conference or the University's primary geographic competitive region, 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.

I&A REPORTING REQUIREMENTS (Section 2)

1. By September 30, 2015, the University will provide OCR a report that includes information and supporting documentation demonstrating its plan will effectively accommodate the interests and abilities of members of both sexes.
2. By January 15, 2016, and June 15, 2016, the University will provide 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 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 school year. The status reports will also include documentation regarding the interim steps taken by the University to increase intercollegiate athletic participation opportunities for women during the 2014-2015 and 2015-2016 academic years.
3. By June 15, 2017, the University will provide OCR a report that includes information demonstrating that its intercollegiate athletics program will effectively accommodate the athletic interests and abilities of its female students.

IMPLEMENTATION AND ENFORCEMENT OF THIS AGREEMENT

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 regulation implementing Title IX, at 34 C.F.R. Section 106.41(c)(1), which was at issue in this case.

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

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 and 100.10) or judicial proceeding 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/ _____
President or Designee
Kutztown University

2/4/2015 _____
Date