

Resolution Agreement
University of Kentucky
OCR #03146002

The University of Kentucky (the University) enters into this Resolution Agreement (Agreement), as set forth below, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), to ensure its compliance with the requirements of Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. (Title IX), and its implementing regulations at 34 C.F.R. Part 106. This Agreement is submitted to resolve OCR compliance review #03146002, which was initiated to examine whether the University is providing equal athletic opportunities to members of both sexes in its intercollegiate athletics program. This Agreement is not intended to be, nor shall be construed as, an admission by the University of a Title IX violation. Accordingly, the University agrees to take the following actions:

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 and the Title IX implementing regulation at 34 C.F.R. § 106.41(c)(1). Accordingly, the University has the option to demonstrate compliance with either Part 1 or Part 3 of 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 University is providing intercollegiate athletic participation opportunities for female and male students in numbers substantially proportionate to their respective enrollments (Part 1); or
- 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).

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. Accordingly, by no later than the 2018-2019 academic year, the University will demonstrate compliance with either Part 1 or Part 3 of the Three-Part Test, as follows:

A. SUBSTANTIAL PROPORTIONALITY IN PARTICIPATION RATES IN INTERCOLLEGIATE ATHLETICS PROGRAM

Should the University elect to demonstrate compliance with Part 1 of the Three-Part test referenced above, then 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 2016-2017 academic year to determine if they are substantially proportionate. Enrollment rates will be calculated using the full-time undergraduate enrollment numbers, by sex.

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. 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.

B. ACCOMMODATION OF STUDENT INTERESTS AND ABILITIES

Should the University elect to demonstrate compliance with Part 3 of the Three-Part Test referenced above, then the University will, by April 1, 2017, submit to OCR

- i. a copy of the draft survey for OCR's review and approval; and,
- ii. 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.

Within 45 days of OCR's approval, the University will conduct an objective assessment to determine the athletic interests and abilities of the underrepresented sex, in this case, women, 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. A survey 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. 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 conference 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. 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 normal competitive regions in that sport.

C. REPORTING REQUIREMENTS

1. Should the University elect to demonstrate compliance with Part 1 of the Three-Part Test referenced above, by April 1, 2017, the University will provide OCR with 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 section I.A. of this Agreement. The report will include, at a minimum, a copy of the enrollment and participation data that the University relied on in determining whether the University is providing intercollegiate athletic participation opportunities, a copy of team squad or eligibility lists for each sport showing students, by sex, and other information reflecting the basis for the University's evaluation. 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.
2. Should the University elect to demonstrate compliance with Part 3 of the Three-Part test referenced above, the University will provide OCR with a detailed report by September 30, 2017, about the assessment conducted pursuant to this section of this Agreement. The report will include, at a minimum, the following information:
 - a. 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.

- 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 normal 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 geographic areas from which the University draws its enrollment.
- e. Copies of any written requests 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.
- 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

If, by January 30, 2018, the University is wholly unable to demonstrate compliance with Title IX pursuant to sections I.A. or I.B. 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 the 2018-2019 academic year, including the steps noted below. In addition, the plan will include a description of interim steps that have been or will be taken by the University during the 2016-2017 and 2017-2018 academic years 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. The policy will apply to each sport currently offered and will not call for limiting or reducing intercollegiate opportunities for the overrepresented sex.

2. Sports not currently offered

The University will determine whether there are 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 the 2016-2017 and/or 2017-2018 academic year to ensure that each team begins competition preferably by the 2017-2018 academic year but certainly by no later than the 2018-2019 academic year, consistent with the above determination, unless the actions taken by the University under section I.A. of this Agreement are sufficient to achieve compliance under Part 1 of the Three-Part Test.

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 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. Elimination of athletic teams

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 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.

5. 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, administrative and support services.

A. REPORTING REQUIREMENTS

1. By January 30, 2018, the University will provide 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. The plan will include a description of the

interim steps that have been or will be taken by the University during the 2016-2017 and 2017-2018 academic years to increase intercollegiate athletic participation opportunities for women.

2. By June 30, 2018, 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 2017-2018 or the 2018-2019 academic 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 2016-2017 and the 2017-2018 academic years.
3. By June 30, 2019, and by the same date annually thereafter, while the implementation of this Agreement is pending, the University will provide OCR a report that includes information demonstrating that its intercollegiate athletics program will equally effectively accommodate or is effectively accommodating the athletic interests and abilities of its female students.

ATHLETIC FINANCIAL ASSISTANCE (AFA)

I. DEMONSTRATION OF CURRENT COMPLIANCE

A. REASONABLE OPPORTUNITIES FOR AFA

The University agrees to provide reasonable opportunities for each sex to receive athletic scholarships and/or grants-in-aid in proportion to the number of students of each sex participating in intercollegiate athletics, consistent with the requirements of Title IX, the Title IX implementing regulation at 34 C.F.R. § 106.37(c), and applicable OCR policies.

1. The University will compare the intercollegiate athletic participation rates of female and male students as reflected on the NCAA squad or eligibility list for each intercollegiate sport (for purposes of establishing the participation rates, all students, including students who participate in more than one intercollegiate sport, will be counted only once) to the amounts of athletic financial assistance awarded to male and female athletes.
2. The University will examine whether there are any legitimate, nondiscriminatory explanations for any differences that exist, such as differences related to reasonable professional decisions appropriate for program development, and adjust the total amounts of aid to take those differences into account.
3. After taking all legitimate, nondiscriminatory explanations into account the University will compare the intercollegiate athletic participation rates of male and female students to the rates at which athletic scholarships and/or grants-in-aid are awarded to male and female athletes and determine whether any resultant disparity is less than or equal to 1% of the entire budget for athletic scholarships and/or grants-in-aid.

B. REPORTING REQUIREMENT

By April 1, 2017, the University will provide OCR with a detailed report, with copies of supporting documents, reflecting the University's evaluation of the awarding of athletic financial assistance for the 2016-2017 academic year to the University's female and male intercollegiate athletes pursuant to the AFA Section I.A. of this Agreement. The report will include, at a minimum, a copy of the participation data that the University relied on in determining the number of male and female students in the University's intercollegiate athletics program, a copy of team squad or eligibility lists for each sport showing students, by sex, and the amounts of athletic scholarships and/or grants-in-aid, if any, they were awarded by the University, and a description of any legitimate, nondiscriminatory factors that led the University to make adjustments to the data as well as a detailed description of the adjustments made.

II. ACTIONS TO ENSURE FUTURE COMPLIANCE

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

- A. By November 1, 2017, the University will submit to OCR for review and approval its detailed plan with timeframes to ensure that it provides reasonable opportunities for each sex to receive athletic scholarships and/or grants-in-aid in proportion to the number of students of each sex participating in intercollegiate athletics by the beginning of the 2017-2018 academic year, including the steps noted below. The plan will include a description of interim steps that have been or will be taken by the University during the 2016-2017 and the 2017-2018 academic years. The University will begin implementation of the plan within 30 days of OCR's approval.
 1. The University will identify the specific steps it will take to make adjustments in the amounts of athletic scholarships and/or grants-in-aid it makes available to its male and female students in the intercollegiate program to ensure they are substantially proportionate to their respective intercollegiate athletics participation rates. The University understands that nothing in this Agreement requires the University to cut the amounts of athletic scholarships and/or grants-in-aid it offers to either sex and that any such cuts are discouraged.
 2. In making its calculations, the University will use intercollegiate athletic participation numbers that take into account any increase in intercollegiate athletic participation opportunities the University is providing or plans to provide to students from the underrepresented sex in accordance with AFA Section II of this Agreement.
 3. The University will identify all legitimate, nondiscriminatory factors that apply to the awarding of athletic scholarships and/or grants-in-aid and describe how they will be taken into account. Disparities may be explained by actions taken to promote athletic program development, and by differences between in-state and out-of-state tuition. Disparities might also be explained, for example, by legitimate efforts undertaken to comply with Title IX participation requirements. Similarly, disparities may be explained by unexpected fluctuations in the participation rates of males and females. For example, a disparity may be explained if an athlete who had accepted an athletic scholarship decided at the last minute to enroll at another school. For any asserted nondiscriminatory justification, the University must demonstrate that its asserted rationale is reasonable and does not reflect underlying discrimination. For instance, if the University asserts the phase-in of scholarships for a new team as a justification for a disparity, the University must demonstrate that the timeframe for phasing-in of scholarships is reasonable in light of college sports practices to aggressively recruit athletes to build start-up teams quickly.

4. The University will show that after taking all legitimate, nondiscriminatory factors into account any remaining disparity between the intercollegiate athletic participation rates of male and female students and the rates at which athletic scholarships and grants-in-aid are awarded to male and female athletes will be less than or equal to 1% of the total amount athletic financial assistance awarded.

B. REPORTING REQUIREMENTS

1. By April 1, 2017, the University will provide OCR with reports that include information documenting the steps it has taken to implement the plan referenced in AFA Section II.A. of this Agreement to provide reasonable opportunities for each sex to receive athletic scholarships and/or grants-in-aid in proportion to the number of students of each sex participating in intercollegiate athletics during the 2016-2017 and 2017-2018 academic years.
2. By November 1, 2017, the University will submit to OCR for review and approval its detailed plan with timeframes to ensure that it provides reasonable opportunities for each sex to receive athletic scholarships and/or grants-in-aid in proportion to the number of students of each sex participating in intercollegiate athletics by the beginning of the 2017-2018 academic year, including the steps noted below. The plan will include a description of interim steps that have been or will be taken by the University during the 2016-2017 and the 2017-2018 academic years. The University will begin implementation of the plan within 30 days of OCR's approval.
3. By June 30, 2019, the University will provide OCR with a report detailing any and all specific actions taken by the University during the 2018-2019 academic year to provide reasonable opportunities for each sex to receive athletic scholarships and/or grants-in-aid in proportion to the number of students of each sex participating in intercollegiate athletics.

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. §§ 106.37(c) and 106.41(c)(1), which were 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. §§ 106.37(c) and 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 sixty (60) calendar days to cure the alleged breach.

/s/

12/21/2016

President or Designee
University of Kentucky

Date