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April 19, 2018

Maria Gallo, Ph.D.
President
Delaware Valley University
700 E. Butler Avenue
Doylestown, PA 18901

IN RESPONSE, PLEASE REFER TO: 03-16-6001

Dear Dr. Gallo:

This is to advise you of the resolution of the above-referenced compliance review of Delaware Valley University (the University) conducted by the U.S. Department of Education (Department), Office for Civil Rights (OCR). In this compliance review OCR examined whether the University discriminates against female students by denying them an equal opportunity to participate in intercollegiate athletics.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681-1688, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex. The University receives funds from the Department and is therefore subject to Title IX and its implementing regulation.

To date, OCR has investigated this compliance review by reviewing information provided by the University, interviewing University staff, conducting an on-site visit and analyzing student survey results.

Prior to the completion of OCR's investigation, the University asked to resolve this complaint. On December 21, 2017, the University submitted the enclosed signed resolution agreement (the Agreement) to OCR. When fully implemented, the Agreement will resolve the issue in the compliance review.

Legal Standards

The Title IX regulation, at 34 C.F.R. § 106.41(a), provides 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 University. The Title IX regulation, at 34 C.F.R. § 106.41(c), states that a University which operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

In determining whether a University is in compliance with Title IX with respect to athletics, OCR follows “A Policy Interpretation: Title IX and Intercollegiate Athletics” (the Policy Interpretation), which was published at 44 Federal Register No. 239, December 11, 1979.

In assessing whether the interests and abilities of the members of both sexes are being effectively accommodated to the extent necessary to provide equal opportunity to participate in intercollegiate athletics, OCR uses a three-part test.¹

The three-part test provides the following three compliance options:

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 university can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or
3. Where the members of one sex are underrepresented among intercollegiate athletes and the university cannot show a history and continuing practice of program expansion as described above, whether the university can demonstrate that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

If a university has met any part of the three-part test, OCR will determine that the university is meeting this requirement.

Investigation to Date

Part One: Substantially Proportionate Participation Opportunities

Under Part One of the Three-Part test, where an institution provides intercollegiate level participation opportunities for male and female students in numbers substantially proportionate to their respective full-time undergraduate enrollments, OCR will find that the institution is providing nondiscriminatory participation opportunities for individuals of both sexes. OCR does not require *exact* proportionality between participation and enrollment for the underrepresented sex, but *substantial* proportionality. OCR would consider opportunities to be substantially proportionate when the number of opportunities that would be required to achieve proportionality would not be sufficient to sustain a viable team.

To establish the number of intercollegiate athletic participation opportunities, OCR examined the eligibility lists prepared by the University for the 2014-2015, 2015-2016, and 2016-2017 academic years. For determining participation opportunities, athletes were counted once for each team for which they were eligible to compete. The chart below arrays the participation and enrollment rates of men and women in the intercollegiate athletics programs during the 2014-15, 2015-2016, and 2016-2017 academic years.

¹ The three-part test was first established in the Policy Interpretation.

Athletic Program Participation and Full Time Undergraduate Enrollment				
	MEN		WOMEN	
YEAR	Participation	Enrollment	Participation	Enrollment
2016-17	389 (72.7%)	641 (40%)	147 (27.3%)	961 (60%)
2015-16	361 (71%)	684(39%)	145 (29%)	1077 (61%)
2014-15	330 (71%)	632 (38%)	135 (29%)	1050 (62%)

Given the rates of participation and enrollment for the 2014-2015, 2015-2016, and 2016-2017 academic school years, OCR determined that the University is not providing equivalent intercollegiate level participation opportunities for female students in numbers substantially proportionate to their enrollment.

Part Two: History and Continuing Practice of Program Expansion

Under Part Two of the Three-Part test, an institution may demonstrate compliance by showing that it has a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex. Part Two examines an institution's past and continuing remedial efforts to provide nondiscriminatory participation opportunities through program expansion.

OCR considers the following factors, among others, as evidence indicating an institution’s history of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex:

- A record of adding intercollegiate teams, or upgrading teams to intercollegiate status, for the underrepresented sex;
- A record of increasing the numbers of participants in intercollegiate athletics who are members of the underrepresented sex; and
- An affirmative response to requests by students or others for addition or elevation of sports.

OCR will also consider the following factors, among others, as evidence that may indicate a continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex:

- The current implementation of a nondiscriminatory policy or procedure for requesting the addition of sports (including the elevation of club or intramural teams) and the effective communication of the policy or procedure to students; and
- The current implementation of a plan of program expansion that is responsive to developing interests and abilities.

OCR will not determine that an institution satisfies Part Two where it merely promises to expand its program for the underrepresented sex at some time in the future.

In order to determine whether the University has shown a history and continuing practice of program expansion which has been demonstrably responsive to the developing interests and abilities of the under-represented sex (women), OCR reviewed data submitted by the University and conducted interviews with athletics program staff, coaches and athletes. The University provided information regarding the approximate inception dates of the sports comprising the men's athletic program. All sports comprising the men's program were intercollegiate before 1976 with the exception of Tennis and Lacrosse.

Based on documentation provided by the University, women were first enrolled at the University in 1970, and no women's teams existed prior to the enactment of Title IX. In the 1970s, three teams were added. In the 1980s, three teams were added, and one additional team was added in the 1990s. Five women's teams were added within the last two years; however, two men's teams were created as well. There has been no reported elimination of a women's intercollegiate athletic team in the last ten years.

According to documentation provided, since 2013 there has been support to elevate the University's equestrian program (competitive dressage and hunt seat clubs) to the intercollegiate level, but this possibility was not revisited in earnest until 2015. In an interview with the Director of Athletics, he asserted that the equestrian coach informed him that elevating the team has been discussed for the last 15 years. The University reported that the equestrian teams were elevated to the intercollegiate level in the Fall 2017. The University's reported that 53 of the 54 athletes on the Hunt Seat team Dressage teams are women. However, both clubs (Hunt Seat and Western Club) would also continue to operate under the Inter-Club Council (ICC) for those who do not make the varsity teams.

OCR has determined that the University has added five women's sports and two men's sports within the last three years; however, it did not add or elevate an intercollegiate women's athletic team in 20 years prior to 2014. Furthermore, its participation numbers have not meaningfully increased due to these recent additional sports, nor does it have a formal process currently in place for requesting and adding a new sport.

Thus, OCR concluded that the University does not have a history and continuing practice of program expansion which was demonstrably responsive to the developing interests and abilities of women athletes.

Part Three: Effective Accommodation of Interest and Abilities

In determining compliance with Part Three of the three-part test, OCR determines whether, despite being unable to satisfy either Part One (substantial proportionality) or Part Two (history and continuing practice of program expansion), an institution is nevertheless fully and effectively accommodating the interests and abilities of the underrepresented sex. In making this determination, OCR considers whether: (a) there is an unmet interest in a particular sport; (b) there is sufficient ability to sustain a team in the sport; and (c) there is a reasonable expectation of competition for the team. OCR uses a broad range of indicators to make this determination, including:

- whether the institution uses nondiscriminatory methods of assessment when determining interests and abilities;
- the frequency of the institution's surveys/assessments;
- whether the institution's surveys/assessments have been used to eliminate viable teams;
- an evaluation of multiple indicators to assess interest; and
- an evaluation of multiple indicators to assess ability.

Methods and Frequency of Assessment of Athletic Interests

The Policy Interpretation provides that an institution may determine the athletic interests and abilities of students by nondiscriminatory methods of its choosing provided:

- the processes take into account the nationally increasing levels of women's interests and abilities;
- the methods of determining interest and ability do not disadvantage the members of the underrepresented sex;
- the methods of determining ability take into account team performance records; and
- the methods are responsive to the expressed interests of students capable of intercollegiate competition who are members of an underrepresented sex.

The University provided copies of Cooperative Institutional Research Program (CIRP) survey results for 2013, 2014, 2015, including a copy of the survey distributed. The survey does not gauge interest in any sports/activities, and thus the results cannot be used to indicate the level of interest among women in a particular sport.

Multiple Indicators Used to Assess Athletic Interest and Ability

OCR considers a range of indicators to assess whether there is sufficient ability among interested students of the underrepresented sex to sustain a team in the sport. When making this determination, OCR examines indicators such as:

- The athletic experience and accomplishments in interscholastic, club or intramural competition of underrepresented students and admitted students interested in playing the sport;
- Opinions of coaches, administrators, and athletes at the institution regarding whether interested students and admitted students have the potential to sustain an intercollegiate team; and
- If the team has previously competed at the club or intramural level, whether the competitive experience of the team indicates that it has the potential to sustain an intercollegiate team.

OCR interviewed three University administrators (Director of Athletics, Title IX Coordinator, and Coordinator for Intramurals, Recreation, and Student Life Programs) to ascertain their opinions as to whether the University's athletic program fully and effectively accommodates the interest and abilities of its participants. Two administrators reported that the current athletic program

at the University was fully and effectively accommodating the interest and abilities of all of its participants, including women, asserting that, according to coaches, there are an appropriate number of students on each team, and it is permissible for Women to play on a Men's team. The Coordinator for Intramurals also stated that the University has always had a huge equestrian program (overwhelmingly women) and active lacrosse clubs. However, he could not give an opinion since he is new to the University and only interacts with intramural sports. All three coaches interviewed opined that the current athletic program at the University was fully and effectively accommodating the interests and abilities of all its participants.

The University provided information indicating that the following clubs were popular with female students during the 2014-2015 and/or 2015-16 academic years: archery, bowling, dance team, martial arts, rock climbing, rugby, soccer, outdoor club (skiing), and vaulting. Thirty female club athletes responded to a survey OCR conducted, although not all athletes responded to all survey questions. Three female club athletes were aware that a request was made for Equestrian and Dance to be elevated to intercollegiate competitive sports. None of the female club athletes were aware of any procedure or process to follow in order to request that a club or intramural sport be elevated. Nine female club athletes expressed concern that the University's current offering of sport programs is not fully and effectively accommodating the interests and abilities of all students, noting the lack of western, shooting, and swim/dive teams.

As noted above, prior to the completion of our investigation, the University signed an agreement with OCR. In light of the commitments the University has made in the Agreement, OCR finds that the compliance review is resolved, and OCR is closing its investigation as of the date of this letter. OCR will monitor the University's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may request additional information as necessary to determine whether the University has fulfilled the terms of the Agreement and is in compliance with Title IX with regard to the issue raised.

If the University fails to implement the Agreement, OCR may initiate administrative or judicial proceedings to enforce specific terms and obligations of the Agreement. Before initiating administrative (34 CFR §§ 100.9, 100.10) or judicial proceedings to enforce the Agreement, OCR will give the University written notice of the alleged breach and sixty (60) calendar days to cure the breach.

This concludes OCR's investigation of the compliance review and should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

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, OCR will seek to protect, to the extent provided by law, personally identifiable

information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

Thank you for the assistance Tim Poirier extended to OCR in resolving this compliance review. If you have any questions, please contact Cynthia Wesley at (215) 656-8548 or Cynthia.wesley@ed.gov.

Sincerely,

/s/

Nancy E. Potter
Team Leader

Enclosure: Resolution Agreement