

Resolution Agreement
Delaware Valley University
OCR #03166001

The U.S. Department of Education, Office for Civil Rights (OCR) and the Delaware Valley University (the University) enter into this Agreement (Agreement) to resolve the allegation in the above-referenced compliance review. This Agreement does not constitute an admission of liability by the University. The University assures OCR that it will take the following actions to comply 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.

Prior to the completion of OCR's investigation, the University agreed to resolve the issues of this investigation pursuant to Section 302 of OCR's Case Processing Manual. Accordingly, to resolve the issues of this investigation, 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 opts to demonstrate compliance with 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 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).

This part of the Three-Part Test is a sufficient method of complying with the Title IX regulatory requirement to provide nondiscriminatory athletic participation opportunities. Accordingly, by no later than the 2019-2020 academic year the University will demonstrate compliance with either Part 3 of the Three-Part Test, as follows:

A. ACCOMMODATION OF STUDENT INTERESTS AND ABILITIES

The University elects to demonstrate compliance with Part 3 of the Three-Part Test referenced above and will, by March 9, 2018, 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 20 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 school, 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.

B. REPORTING REQUIREMENTS

1. The University will demonstrate compliance with Part 3 of the Three-Part test referenced above with a detailed report by June 30, 2018, 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 October 31, 2018, the University is wholly unable to demonstrate compliance with Title IX pursuant to section I.A. 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 2020-2021 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 2018-2019 and 2019-2020 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 2018-2019 and/or 2019-2020 academic year to ensure that each team begins competition preferably by the 2018-2019 academic year but certainly by no later than the 2019-2020 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 October 31, 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 2017-2018 and 2018-2019 academic years to increase intercollegiate athletic participation opportunities for women.
2. By March 30, 2019, 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 2018-2019 or the 2019-2020 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 2017-2018 and the 2018-2019 academic years.
3. By October 31, 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.

IMPLEMENTATION AND ENFORCEMENT OF THIS AGREEMENT

The University understands that by signing this Agreement, it agrees to provide the foregoing 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. §§ 106.41(c)(1). Upon completion of the obligations under this Agreement, OCR shall close and dismiss this case.

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/

12/21/17

Maria Gallo, Ph.D., President
Delaware Valley University

Date

/s/

3/30/18

Wendella P. Fox, OCR Philadelphia Director
U.S. Department of Education

Date