

OCR #05142367
Lewis University
Resolution Agreement

Lewis University (University) submits this Resolution Agreement (Agreement) to the U.S. Department of Education, Office for Civil Rights (OCR), to resolve OCR complaint 05142367, and to ensure its compliance with Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681-1688 (Title IX), and its implementing regulation, 34 C.F.R. Part 106. This Agreement is submitted to resolve OCR complaint #05142367, which examined whether the University is providing equal athletic opportunities to members of both sexes in its intercollegiate athletics program. This resolution has been entered into voluntarily by the University. Accordingly, the University agrees to take the following actions:

I. STUDENT INTERESTS AND ABILITIES

The University agrees to provide athletic participation opportunities that are either substantially proportionate to the enrollments, by sex, or to demonstrate that the interests and abilities of female students are fully and effectively accommodated by the University's current athletics program.

A. Substantial proportionality in participation rates in intercollegiate athletics program

Should the University elect to demonstrate compliance by showing that it is providing intercollegiate athletic participation opportunities for female and male students in numbers substantially proportionate to their respective enrollments, 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 **2017-18** academic year to demonstrate substantial proportionality.

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 that the interests and abilities of women are fully and effectively accommodated by the University's current intercollegiate athletics program, the University will:

1. By September 30, 2017, announce the addition of women's intercollegiate bowling and women's intercollegiate lacrosse teams to begin competition effective the 2018-19 academic year.
 - a. During 2017-18, the University will publicize the addition of bowling and lacrosse, hire coaches for each team, schedule competitions for 2018-19, and otherwise provide the teams, in a manner comparable to other intercollegiate teams, with sufficient resources to cover expenses incurred in the addition of the bowling and lacrosse programs.
2. By September 30, 2017, the University will also publish on its web page its procedure for students to use to request the addition of intercollegiate sports, as well as the factors the University will assess in responding to such requests.
3. By November 30, 2017, and periodically thereafter so long as there is an underrepresented gender in its athletics program, 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:
 - a) Results of recent surveys 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.
 - b) 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 conferences in which the University competes and by schools that are within the University's normal competitive regions;
 - c) 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.

- d) 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);
- e) 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; and
- f) Any other information that demonstrates the athletic interests and abilities of the University's students who are members of the underrepresented sex.
- g) 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.

The University will determine whether there are a sufficient number of female students and admitted students at the University 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 region. 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 to ensure that each team begins competition no later than the 2019-20 academic year, consistent with the above determination, unless actions taken by the University are otherwise sufficient to demonstrate substantial proportionality, by sex.

C. Other measures

1. For those sports currently offered, the University will institute a squad size policy providing for participation opportunities for students 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 to all team members.
2. For any sport that is not currently offered by the University in which there are a sufficient number of female students and admitted students 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

- 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 normal competitive region, and elevating such sports to intercollegiate status when competition becomes available.
3. 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.
 4. To the extent that the University adds any sports, it 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: equipment and supplies, scheduling of games and practice times, travel and per diem allowances, access to tutoring and coaching, locker rooms, practice and competitive facilities, medical and training facilities and services, publicity, recruitment of student athletes and support services.

D. Reporting requirements

1. Should the University elect to demonstrate compliance by showing that it is providing intercollegiate athletic participation opportunities for female and male students in numbers substantially proportionate to their respective enrollments, then:
 - a) by June 15, 2017, the University will provide OCR with notice of its decision to do so; and
 - b) by March 1, 2018, 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 to determine that 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 that the interests and abilities of women will be fully and effectively accommodated by the University's intercollegiate athletics program, the University will by November 30, 2017, provide OCR:

- a) a detailed report showing that it has added women's intercollegiate bowling and women's intercollegiate lacrosse, hired varsity coaches, and budgeted sufficient funds to allow the coaches to recruit athletes to play on the teams, to offer athletic financial assistance, equipment and supplies, facilities and other benefits and opportunities similar to those its provides other men's and women's teams, effective with the 2018-19 academic year.
- b) information about the assessment conducted pursuant to section I.B.3 of this Agreement. The report will include, at a minimum, the following information:
 - i. 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;
 - ii. 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;
 - iii. Rates of participation by members of the underrepresented sex in club and intramural sports at the University;
 - iv. 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;
 - v. Copies of any written requests and summaries of any non-written requests made by 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;
 - vi. 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

- vii. 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.
 - c) Based upon its assessment, the University will by March 1, 2018, submit to OCR for review and approval its detailed plan with timeframes to accommodate effectively the interests and abilities of members of both sexes to the extent necessary to provide equal opportunity in its intercollegiate athletics program by the 2019-20 academic year. In addition, the plan will include a description of interim steps that will be taken by the University to increase intercollegiate athletic opportunities for women, as well as the University's plans for future assessments of unmet interests and abilities. The University will begin implementation of the plan approved by OCR within 30 days of OCR's approval.
3. By June 15, 2017, November 30, 2017, June 15, 2018, November 30, 2018, and June 15, 2019, November 30, 2019, and June 15, 2020, the University will provide OCR status reports regarding its implementation of its chosen plan to accommodate effectively the athletic interests and abilities of members of both sexes, as well as the results of its periodic assessments of unmet interests and abilities.

II. ATHLETIC FINANCIAL ASSISTANCE

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). Accordingly, by June 15, 2018, the University will demonstrate that during the 2018-19 academic year, the amount of athletic scholarships and/or grants-in-aid it will award to male and female athletes is substantially proportionate to their intercollegiate athletic participation rates, by sex, after taking into consideration any legitimate, nondiscriminatory reasons for any differences. During the 2017-18 school year:

- A. 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.
- B. 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 it will adjust the total amounts of aid to take those differences into account.

- C. 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.

By March 1, 2018, the University will provide OCR with the results of the 2017-18 assessment, including a description of any interim steps that are being taken by the University during the 2017-2018 academic year. If the University cannot demonstrate that the amount of athletic scholarships and/or grants-in-aid it awarded to male and female athletes is substantially equal to their intercollegiate athletic participation rates, after taking into consideration any legitimate, nondiscriminatory reasons for any differences, then by March 1, 2018, the University will submit to OCR for review and approval its detailed plan, with timeframes, to ensure that it provides 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 2018-2019 academic year, including the steps noted below. The University will initiate implementation of the plan upon review and approval by OCR.

- D. 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 intercollegiate athletes to ensure they are substantially proportionate to their respective intercollegiate athletics participation rates.
- E. 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.
- F. 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 to students from the underrepresented sex in accordance with section II of this Agreement.
- G. The University will identify all legitimate, nondiscriminatory factors that apply 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 requirements, such as 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 in fact 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 University sports practices to aggressively recruit athletes to build start-up teams quickly.

H. 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.

I. Reporting Requirements:

1. By June 15, 2017, November 30, 2017, March 1, 2018, November 30, 2018, and June 15, 2019, 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 to the University's female and male intercollegiate athletes pursuant this Agreement.
2. The reports 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 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.

III. SCHEDULING OF GAMES AND PRACTICE TIME

The University will ensure that by 2018-19, it provides equal athletic opportunities for members of both sexes in the scheduling of games at "prime time." For purposes of this Agreement "prime time" for athletic competitions is typically defined as evenings that precede days without classroom instruction, usually Friday evenings and Saturday evenings.

- A. The University will demonstrate that its women's athletic teams are provided with comparable opportunities as provided to the men's intercollegiate athletic teams in the time of day competitive events are scheduled. In particular, the University will provide women's basketball, soccer and softball teams comparable opportunities as men's basketball, soccer and baseball to compete in "prime time."
- B. In assessing compliance with Section III of this Agreement, OCR will compare the availability, quality and kinds of benefits, opportunities, and treatment afforded to the University's male and female athletes in the scheduling of games to determine whether they are equivalent. Under this equivalency standard, identical benefits, opportunities, or treatment are not required as long as the effects of any differences are negligible. If a comparison of the benefits, opportunities and treatment afforded to males and females in the

identified program components indicates that benefits, opportunities, or treatment are not equivalent, the University could still be in compliance with Title IX if the differences are shown to be the result of nondiscriminatory factors, such as the unique aspects of particular sports or athletic activities.

C. Reporting Requirements

1. By June 15, 2018, the University will submit a report to OCR that includes its plan for compliance by the 2018-19 year, and its schedule of competitive events for the 2018-19 school year.
2. By June 15, 2018, the University will submit a report to OCR documenting the steps it took to implement the plan in 2018-19, as well as game schedules for 2019-20 and 2020-21.

IV. Travel and Per Diem Allowance

The University will provide equal athletic opportunities to males and females in the provision of travel and per diem allowances, particularly with respect to housing furnished during travel.

- A. The University will, by June 15, 2017, develop a plan to provide equal opportunities to males and females when teams are in travel status such that its women's athletic teams, when they stay in hotels during travel, are provided with comparable opportunities as provided to the men's intercollegiate athletic teams to stay 2 athletes to a room.
- B. In assessing compliance with this section of the Agreement, OCR will compare the modes of transportation, housing furnished during travel, length of stay before and after competitive events, per diem allowances, and dining arrangements provided to the University's male and female athletes when on travel status to determine whether they are equivalent. Identical benefits, opportunities, or treatment are not required as long as the effects of any differences are negligible. If a comparison of the benefits, opportunities and treatment afforded to males and females in the identified program components indicates that benefits, opportunities, or treatment are not equivalent, the University could still be in compliance with Title IX if the differences are shown to be the result of nondiscriminatory factors, such as the unique aspects of particular sports or athletic activities.

C. Reporting Requirements

1. By June 15, 2017, the University will submit a report to OCR that includes its revised travel policies and plan for compliance by the 2017-18 year.
2. By June 15, 2018, the University will submit a report to OCR documenting the steps it took to implement the plan, including travel schedules by team, the hotels where athletes stayed and the number of athletes who were assigned to each hotel room in 2017-18.

V. Availability, Assignment and Compensation of Coaches

The University will, by 2017-18, provide equal athletic opportunity for members of both sexes in the opportunity to receive coaching, particularly with respect to the availability of coaches for women's softball.

- A. By November 30, 2017, the University will hire additional full-time or part-time coaching support for the women's softball team.
- B. By June 15, 2018, the University will conduct an assessment of the availability of its full-time and part-time coaches for all men's and women's teams. Based on the assessment, the University will develop a plan to provide equal opportunities to males and females in the assignment of coaches to intercollegiate teams by no later than the 2018-19 year.
- C. Reporting Requirements
 - 1. By November 30, 2017, the University will submit a report to OCR identifying the coach (or coaches) added to the women's softball team, and noting the credentials of the coach(es), their status as full or part time employees, and their compensation.
 - 2. By June 15, 2018, the University will submit for OCR's review and approval a plan to ensure that it provides equal athletic opportunity for members of both sexes to receive coaching by the 2018-19 year, and data upon which it relied to develop its plan. The University will also provide OCR with a list of full and part-time coaches hired for the 2017-18 year, along with their credentials and compensation, as well as a list of coaches who left the University's employment.
 - 3. By June 15, 2019, the University will submit a report to OCR documenting the steps it took to implement the plan. The information will include a list of all full-time, part-time and volunteer coaches, noting which coaches were hired for the 2018-19 year, along with their credentials and compensation, as well as a list of coaches who left the University's employment.

VI. Locker Rooms, Practice and Competitive Facilities

The University will, by 2018-19, provide equal athletic opportunity for members of both sexes in the provision of practice and competitive facilities, with respect to the women's softball competitive facility.

- A. The University will by June 15, 2017, conduct an assessment of the quality and availability of the softball competitive facility, specifically determining whether the bullpens face the correct direction, and there is sufficient spectator seating, concessions and field lighting.
- B. By March 1, 2018, the University will make changes to the softball field consistent with the outcome of its assessment. The University will add lighting to the softball field by no

later than 2018-19, or at a later date mutually agreed upon with OCR, consistent with the University's implementation of its Master Plan for the development of athletic facilities.

C. Reporting Requirements

- a. By November 30, 2017, the University will submit to OCR for its approval an assessment of the quality and availability of the softball competitive facility, along with its plan if any, to make changes to the softball field consistent with the outcome of its assessment. The University plan will include the dates by which it will add lighting to the softball field by 2018-19.
- b. By June 15, 2019, the University will submit a report to OCR documenting its implementation of the plan with respect to the softball field..

The University understands that OCR will not close the monitoring of this Agreement until OCR determines that the University has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Title IX, at 34 C.F.R. § 106.41 and § 106.37(c), which are at issue in this complaint.

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 regulations implementing Title IX, at 34 C.F.R. § 106.41 and § 106.37(c), which are at issue in this complaint.

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, 100.10), or judicial proceedings 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.

Approved and agreed to on behalf of the University:

Name and Title

Date