

RESOLUTION AGREEMENT
CASE# 05-15-1344
McHenry Community High School District 156

The Board of Education of McHenry Community High School District 156 (District) agrees to fully implement this resolution agreement (Agreement) to resolve the U.S. Department of Education, Office for Civil Rights (OCR) case number 05-15-1344, and to ensure its compliance with 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 I 06, with respect to the issue of whether the selection of interscholastic sports at the District effectively accommodates the interests and abilities of male and female students to the extent necessary to provide equal athletic opportunities. This Agreement does not constitute an admission of liability, non-compliance, or wrongdoing by the District.

I. DEMONSTRATION OF CURRENT COMPLIANCE

A. Participation opportunities

The District will provide interscholastic athletics participation opportunities for female and male students that effectively accommodate their interests and abilities to the extent necessary to provide equal athletic opportunities, 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.¹

Accordingly, the District will demonstrate compliance with any one part of the Three-Part Test of compliance at the District by documenting:

1. by **May 31, 2020**, that the District is providing interscholastic level participation opportunities for female and male students in numbers that are substantially proportionate to their respective enrollments (Part One); or
2. by **June 30, 2020**, that the District has a history and continuing practice of interscholastic athletic program expansion that is demonstrably responsive to the developing interests and abilities of students at the District who are members of the underrepresented, in this case girls (Part Two); or
3. by **November 1, 2020**, that the interests and abilities of female students at the District are fully and effectively accommodated by the District's current interscholastic athletics program (Part Three).

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

¹On December 11, 1979, the Department issued its Intercollegiate Athletics Policy Interpretation, at 44 *Fed Reg.* 71,413 *et seq.*, which further clarified OCR's Title IX athletics requirements. The Policy Interpretation is generally applicable to interscholastic athletics and states that OCR will apply the three-part test to assess whether an institution is providing nondiscriminatory athletic participation opportunities.

participation opportunities. The District has the option to choose any one Part of the Three-Part Test with which the District will comply.

B. Substantial proportionality in participation rates in interscholastic athletics program (*Part One*)

Should the District elect to demonstrate compliance with Part One of the Three-Part Test referenced above, then the District will compare the rates of enrollment of its female and male students at the District for the 2019-2020 District year with their rates of participation in the District's interscholastic athletics program (based on participation rates for all interscholastic sports during the fall, winter, and spring seasons of the 2019-2020 District year) to determine if they are substantially proportionate.

1. Enrollment rates at the District will be calculated using those enrollment numbers, by sex, the District reported to the Illinois State Board of Education.
2. The interscholastic athletic participation rates of female and male students at the District will reflect the total number of females and males listed on the rosters (for all competitive levels) for each interscholastic 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.

C. History and continuing practice of interscholastic athletic program expansion (*Part Two*)

Should the District elect to demonstrate compliance with Part Two of the Three-Part Test referenced above, then the District will complete an evaluation that objectively assesses whether it has a history and continuing practice at the District of program expansion that is demonstrably responsive to the developing interests and abilities of members of the underrepresented sex. The District's evaluation will be based on multiple factors, including:

1. The District's record of adding interscholastic teams or levels for members of the underrepresented sex at the District or upgrading teams to interscholastic status and increasing the numbers of participants at the District who are members of the underrepresented sex in interscholastic athletics;
2. Affirmative responses to requests by students or others for addition or elevation of sports/levels for students at the District who are members of the underrepresented sex;
3. The existence and implementation of a nondiscriminatory policy or procedure for requesting the addition of sports/levels (including the elevation of club or intramural teams) at the District and the effective communication of the policy or procedure to District students and parents;

4. The existence and implementation of a plan of program expansion that is responsive to the developing interests and abilities of members of the underrepresented sex at the District; and
5. Efforts to monitor the developing interests and abilities of members of the underrepresented sex at the District, for example, by conducting periodic nondiscriminatory assessments of developing interests and abilities and taking timely actions in response to the results.

D. Full and effective accommodation of student interests and abilities (Part Three)

Should the District elect to demonstrate compliance with Part Three of the Three-Part Test referenced above, then the District will conduct and complete an objective assessment to determine the existence and/or scope of any unmet athletic interests of the underrepresented sex in the District's interscholastic athletics programs. The assessment will also consider whether the interested students have the ability to sustain an interscholastic team, noting that they do not need the ability to sustain a successful or elite team, but only need to show that they have the potential to participate in team try-outs, practices and competitions and, with coaching, the potential to attain sufficient ability to participate at the particular level of competition in which they have expressed interest. The assessment will be based on multiple indicators of interests and, if applicable, multiple indicators of abilities, and shall include the following:

1. A survey conducted within the first 60 days of the 2020-2021 school year of students at the District. The survey shall seek information on District students' interests and, if applicable, ability to participate in sports and levels currently offered and in sports and levels not currently offered by the District. The survey will be given during the school day in all homeroom classes with adequate time provided for student completion.
2. A review of the results of the surveys of students.
3. Identification of sports, squads, and levels of sports for female students that are not currently offered by the District but are offered either by Districts that compete within the league(s) in which the District competes or by Districts that are within the District's normal competitive region and geographic area.

REPORTING REQUIREMENTS - SECTION I

- A. Should the District elect to demonstrate compliance with Part One of the Three-Part Test referenced above, then by May 31, 2020, the District will provide OCR with a detailed report, with copies of supporting documents, reflecting the District's evaluation of the proportions of female and male students participating in interscholastic athletics at the District conducted pursuant to section LB. of this Agreement. The report will include, at a minimum, a copy of the enrollment and interscholastic athletics participation data that

the District relied on in determining whether the District is providing substantially proportionate interscholastic athletic participation opportunities to male and female students, a copy of all team rosters for each sport showing students, by sex, and other information reflecting the basis for the District's evaluation.

B. Should the District elect to demonstrate compliance with Part Two of the Three-Part Test referenced above, then by June 30, 2020, the District will provide OCR with a detailed report containing the District's evaluation as described and enumerated in section LC. of this Agreement, including the assessment and results thereof as well as all supporting documentation.

C. Should the District elect to demonstrate compliance with Part Three of the Three-Part Test referenced above, the District will submit the following information to OCR:

I. By January 15, 2021, a detailed report describing the multi-factored assessment conducted pursuant to Section LD. of this Agreement for the District. The report will include, at a minimum, the following information:

- a. A copy of the results of the survey referenced in Section LD.1., above, including but not limited to: the number of students who indicated an interest in each sport, 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, the grade levels of students who received the surveys, 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, squads, and levels of sports for female students that are not currently offered by the District but are offered either by Districts that compete within the league(s) in which the District competes or by Districts that are within the District's normal competitive region and geographic area.

II. ACCOMMODATION OF INTERESTS AND ABILITIES -ACTIONS TO INCREASE ATHLETIC OPPORTUNITIES

A. If the District is unable to demonstrate compliance pursuant to sections LB, LC. or LD. of this Agreement, and if through the above-described assessment the District identifies a sport in which there is sufficient but unmet interest and, as applicable, ability of female students to participate at the interscholastic level at the District, the District will add athletics opportunities as described below at the District until such time as either(!) the District is fully and effectively accommodating the expressed interests and abilities of female students (i.e., there remains no unmet interest and ability); or (2) the participation

rate for female students in the District's interscholastic athletics program is substantially proportionate to their rate of enrollment at the District.

For purposes of this provision, "sufficient interest" is defined as the minimum number of athletes needed to support a team. For "sufficient ability," it is sufficient that interested students and admitted students have the potential to sustain an interscholastic team and students will not be required to demonstrate they have sufficient ability in a new sport or team if students participating in existing sports or teams are not required to demonstrate through try-outs or some other process that they possess sufficient ability to participate in the specific sport or at the particular level of competition (varsity, junior varsity, etc.) in which they have expressed interest.

In providing additional athletic opportunities for female students to either accommodate their expressed interests and abilities or until their rate of participation is substantially proportionate to their rate of enrollment at the District, the District shall do the following:

I. Sports Currently Offered

- a. The District will determine, for sports that are currently offered as interscholastic sports at the District, whether there is a sufficient number of female students with the interest and, as applicable, ability to support the creation of additional levels of competition or multiple squads at the same level of competition, and sufficient competition within the District's normal competitive region, to support additional levels of competition or multiple squads at the same level of competition in those sports. If so, the District will add additional levels of competition or squads at the same or a lower level of competition at the District in those sports by no later than the 2021-2022 District year.
- b. In order to increase the competitive participation opportunities for female students, the District will consider expanding the squad sizes for interscholastic sports currently offered at the District, consistent with the nature of each sport and the level of interest in each sport. The District will increase the size of each squad where determined to be appropriate. If necessary, the District will provide sufficient coaching staff to support the addition of new athletes to any given squad and take any other steps necessary to ensure that the new athletes on each expanded squad are provided meaningful opportunities to participate in interscholastic athletics.

2. Sports Not Currently Offered

- a. The District will determine whether there is a sufficient number of female students at the District with sufficient interest and, as applicable, ability to support the addition of a team or multiple teams in sports not currently offered by the District as interscholastic sports, and whether there is sufficient competition

within the District's normal competitive region and geographic area for those teams/sports. If so, the District will add a team or multiple teams in those sports at the District by no later than the 2021-2022 District year. By July 15, 2021, the District will provide OCR with a detailed report that reflects the steps taken and planned to be taken by the District pursuant to Sections II(A)(1)-(5) of this Agreement, to create additional opportunities at the District for female students as the underrepresented sex. This report will detail the timetable for the addition of new sports, levels of sports or newly created intramural, club and/or other opportunities to be added pursuant to this Agreement. It will also describe how the creation of additional athletics opportunities taken pursuant to this Agreement will either (1) fully and effectively accommodate the expressed interests and abilities of female students (*i.e.*, there remains no unmet interest and ability); or (2) elevate female students' participation rate in the District's interscholastic athletics program to be substantially proportionate to their rate of enrollment in the District. After the addition of teams for the 2021-2022 District year, the District will provide OCR an updated report with updates to all information required for the July 15 report.

3. Response to Developing Interests and Abilities

For any sport that is not currently offered by the District where there is a sufficient number of female students who have sufficient interest and, if applicable, ability in that sport, but where the District determines that there is not sufficient competition within the District's normal competitive region, then the District will take ongoing steps to develop students' interests and abilities. These steps may include establishing intramural or club sports, exploring the feasibility of establishing competition in the District's normal competitive region and geographic area, and elevating such sports to interscholastic status when competition becomes available.

4. Elimination of Athletic Teams

OCR has made clear to the District and the District understands that OCR does not require or encourage the elimination of any District interscholastic athletic teams and that it seeks action from the District that does not involve the elimination of any 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 interscholastic 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.

5. Additional Interscholastic Opportunities

To the extent that the District adds any sports or additional levels of teams at the District, the District will provide those teams in a manner comparable to other interscholastic teams, with sufficient funds in their budgets to cover expenses that include, but are not limited to: coaches, equipment and supplies, travel funds, and publicity and support

services. The District will also publicize through its customary methods any new sports or additional levels of teams through established communication delivery systems, including electronic communication.

REPORTING REQUIREMENTS - SECTION II


- A. For the 2020-2021 and 2021-2022 District years, by September 1 for fall sports, December 1 for winter sports and May 1 for spring sports, the District will provide OCR with a copy of the squad list for each team at the District, as verified and attested to by the Athletic Director or coach of each team.
- B. By September 30 of each District year covered by this Agreement (2020-21 and 2021-22 District years), the District will provide information demonstrating the breakdown/enrollment by sex at the District.
- C. For the 2020-2021 and 2021-2022 District years, by September 1 for fall sports, December 1 for winter sports and May 1 for spring sports, the District will provide information describing any increases to the size of District squads, as described by Section II.(A)l.b. above.

The District understands that by signing this Resolution Agreement, it agrees to provide the foregoing information in a timely manner in accordance with the reporting requirements of this Resolution Agreement. Further, the District understands that, during the monitoring of this Resolution Agreement, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Resolution Agreement and is in compliance with the regulations implementing Title IX, at 34 C.F.R. § 106.41. Upon completion of the obligations under this Resolution Agreement, OCR shall close and dismiss this case.

The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Resolution Agreement. Before initiating administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Resolution Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This Resolution Agreement will become effective immediately upon the signature of the District's representative below.

Approved and agreed to on behalf of the District:


J. J. McHenry, Superintendent or Design
McHenry Community High School District 156

5/18/20
Date