

**RESOLUTION AGREEMENT**  
**CASE #05-16-2047**  
**DICKINSON STATE UNIVERSITY**

The U.S. Department of Education, Office for Civil Rights (OCR) and Dickinson State University (University) enter into this Resolution Agreement (Agreement) to resolve the issues of sex discrimination in the above-referenced complaint. This agreement does not constitute an admission of liability, non-compliance, or wrongdoing 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 (Title IX), 20 U.S.C. §§1681-1688, and its implementing regulation, 34 C.F.R. Part 106, which prohibits discrimination based upon sex in any education program or activity receiving Federal financial assistance.

**PRELIMINARY ASSURANCES**

- A. Audit: By no later than **December 1, 2019**, the University will commence an audit (audit) and assessment of its men's and women's athletic programs by taking the actions specifically described herein. The University will report to OCR the results of the audit and assessment in the timeframes itemized, with supporting documentation, and where required, will include its plans of action.
- B. Fundraising: OCR acknowledges that the University's athletics programs may benefit from the support of booster clubs or other fundraising organizations. The University acknowledges that institutions must ensure that funds raised do not create or perpetuate unjustified disparities in the athletics programs on the basis of sex. To that end, by **December 31, 2019**, the University will post prominently on its athletics website a policy to encourage donations and other funding from outside sources, but also to ensure that 1) funds raised do not create or perpetuate unjustified disparities in the athletics programs on the basis of sex; and 2) any requirements for coaches or athletes to engage personally and actively in fundraising are not discriminatory on the basis of sex.
- C. Elimination of Teams: Title IX provides institutions with flexibility and choice regarding how they will provide nondiscriminatory participation opportunities. OCR does not require or encourage the elimination of any University intercollegiate athletic teams and seeks action from the University that does not involve the elimination of any athletic opportunities. Title IX does not require 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.
- D. The University understands that nothing in this Agreement requires the University to cut the amounts of athletic financial assistance it offers to either sex and that any such cuts are discouraged.

- E. Comparable Opportunities: To the extent that the University adds sports, the University will provide those team(s), in a manner comparable to other intercollegiate teams, with sufficient funds in its budget(s) to cover expenses including, but not limited to: coaches, recruiting, equipment and supplies, travel, publicity and support services.
- F. In assessing compliance in component areas (except in the accommodation of athletic interests and abilities and the provision of athletic financial assistance), OCR compares the availability, quality and kinds of benefits, opportunities, and treatment afforded to the University's male and female athletes 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, then 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. "If sport-specific needs are met equivalently in both men's and women's programs, [then] differences in particular program components will be found to be justifiable." 44 *Fed. Reg.* at 71,416.

## **I. ACCOMMODATION OF ATHLETIC INTERESTS AND ABILITIES**

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, the Title IX implementing regulation at 34 C.F.R. § 106.41(c)(1), and applicable OCR policies. Accordingly, the University has the option to demonstrate compliance with any one part 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:

- 1) The University is providing intercollegiate athletic participation opportunities for female and male students in numbers substantially proportionate to their respective enrollments (Part 1); or
- 2) The University has a history and continuing practice of intercollegiate athletic program expansion that is demonstrably responsive to the developing interests and abilities of students who are members of the underrepresented sex (Part 2); or
- 3) 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, the University will demonstrate compliance with any one part of the three-part test, as follows:

A. Part 1: Substantial Proportionality

Should the University elect to demonstrate compliance with Part 1 of the three-part test, 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 2019-2020 academic year to demonstrate that they are substantially proportionate.

1. Enrollment rates will be calculated using the full-time undergraduate enrollment numbers, by sex.
2. The participation rates of female and male students will reflect the total number of females and males listed on the NAIA 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-intercollegiate athletic activities. Students, who participate in more than one intercollegiate sport, will be counted in each intercollegiate sport in which they participate.
3. 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. Part 2: History and Continuing Practice of Intercollegiate Athletic Program Expansion

Should the University elect to demonstrate compliance with Part 2 of the three-part test, then the University's audit will include an assessment showing that it has a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of members of the underrepresented sex. The University's evaluation will be based on multiple factors, including:

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

5. Efforts to monitor the developing interests and abilities of members of the underrepresented sex, for example, by conducting periodic nondiscriminatory assessments of developing interests and abilities and taking timely actions in response to the results, along with the responses thereto.

C. Part 3: Full and Effective Accommodation of Students' Athletic Interests and Abilities

Should the University elect to demonstrate compliance with Part 3 of the three-part test referenced above, then the University's audit will include an objective assessment conducted 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. Results of recent surveys or other information collected using a method that is designed to accurately assess unmet athletic interests and abilities in intercollegiate sports among students and admitted students who are 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 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;
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, 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 not presently offered by the University. The assessments may include 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, which operate in areas from which the University draws its students, in women’s sports not presently offered by the University; and
6. Any other information that demonstrates the athletic interests and abilities of the University’s students who are members of the underrepresented sex.
7. Where there is not a reasonable expectation of intercollegiate competition in the University’s normal competitive region in a given sport, students’ interests and abilities in that sport may not need to be assessed, since lack of competition may provide sufficient justification for not adding a sport under Part 3. While the University may not “be required to upgrade teams to intercollegiate status or otherwise develop intercollegiate sports absent a reasonable expectation that intercollegiate competition in that sport will be available within the institution's normal competitive regions,” it may be “required by the Title IX regulation to actively encourage the development of such competition, however, when overall athletic opportunities within that region have been historically limited for the members of one sex.” 44 *Fed. Reg.* at 71,416

Based on the assessment, the University will determine (1) 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 participation opportunities, including on teams in sports not currently offered by the University as intercollegiate sports, and (2) whether sufficient intercollegiate (NAIA or other comparable) competition exists in those sports within the University’s normal competitive region.

If both criteria are met based on its analysis, the University will implement a plan with timeframes to accommodate the interests and abilities of the underrepresented sex fully and effectively to the extent necessary to provide equal opportunity in its intercollegiate athletics program by no later than the 2021-2022 academic year. The plan will include interim steps to be undertaken by the University during the 2019-2020 and 2020-2021 academic years to prepare for such increase in intercollegiate athletic participation opportunities for women, including, as appropriate, by adding individual participation opportunities and teams, hiring a coaching staff, recruiting student athletes, and providing sufficient resources to the coaching staff during the 2019-2020 and 2020-2021 academic years to ensure that each team begins competition by the 2021-2022 academic year.

#### D. Other commitments

In addition to its actions under the three-part test, the University commits that, notwithstanding anything to the contrary herein, the University will by no later than 2020-2021 fully fund its women’s intercollegiate golf team in a manner consistent with its funding of other men’s and women’s intercollegiate teams.

#### Reporting Requirements to OCR

1. Should the University elect to demonstrate compliance with Part 1 of the three-part test referenced above, then by **August 30, 2020**, it will provide to OCR its audit with supporting documentation, 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 for male and female students in numbers substantially proportionate to their respective enrollments, 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 University need not provide the all of the documentation delineated above if it is not demonstrating compliance with Part 1 of the three-part test, although it will provide OCR with its team by team participation rates for 2019-2020 and, as appropriate, ensuing years.
2. Should the University elect to demonstrate compliance with Part 2 of the three-part test referenced above, then by **August 30, 2020**, the University will provide OCR its audit with supporting documentation containing the University's evaluation as described and enumerated in section I.B. of this Agreement, including historical enrollment and intercollegiate athletics participation data, any intercollegiate athletic gender equity studies relied on by the University for Part 2 that were not previously provided to OCR, and the results of any surveys or other assessments of the athletic interests of University students that were relied on by the University for Part 2, including a copy of any survey instruments used and the methodologies used to conduct the surveys. The information will include a description of responsive actions taken by the University in response to the above referenced studies and assessments. The University need not provide the documentation delineated above for Part 2 compliance if it is not demonstrating compliance with Part 2 of the three-part test.
3. Should the University elect to demonstrate compliance with Part 3 of the three-part test referenced above, then by **August 30, 2020**, the University will provide to OCR its audit with supporting documentation including a detailed report about the assessment conducted pursuant to I.C. of this Agreement. The report will address each of the factors noted in I.C., with supporting documentation. Based upon the results of the objective assessment in I.C. referenced above, if the University's assessment reveals a need to add an intercollegiate athletics women's team(s), then the University will submit to OCR its detailed plan with timeframes to fully and effectively accommodate the interests and abilities of the underrepresented sex by no later than the 2021-2022 academic year, including a description of interim steps that will be taken by the University during the 2019-2020 and 2020-2021 academic years (including any efforts to increase intercollegiate athletic participation opportunities for women). The University will begin implementation of the plan, if needed, within 30 days of OCR's approval and will provide status reports to OCR on **August 30, 2021** and **August 30, 2022** regarding the implementation of this item.
4. If the University demonstrates compliance for the 2019-2020 or 2020-2021 academic year in its **August 30, 2020 or August 30, 2021** reports, and OCR concurs, then it shall

not have further reporting obligations to OCR under section I for unless previously notified by OCR of noncompliance.

5. By **August 30, 2020 and August 30, 2021**, the University will provide to OCR its annual expected budgets and actual expenditures for women's golf, along with a certification for the 2021 report from the head coach and Athletic Director that the sport is being fully funded by the University.
6. As applicable, by **August 30, 2020, August 30, 2021, and August 30, 2022**, the University will provide to OCR budget and other information demonstrating the addition of women's intercollegiate teams, including its announcement of the addition of teams, the hiring of a head coach, the provision of equipment and supplies, office space, practice spaces, a competitive field and locker facilities, as well as its actions to recruit athletes, announce and conduct tryouts, and schedule practices and competitions at University athletic facilities.

## **II. ATHLETIC FINANCIAL ASSISTANCE (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.

The University will by **August 30, 2020**, demonstrate to OCR its compliance for the 2019-2020 academic year using the guidelines discussed below. The University will have the option to demonstrate compliance for the 2018-2019 academic year by **December 31, 2019**. If OCR determines that the University has demonstrated compliance with the athletic financial aid provisions of Title IX during either academic year, then it will not be required to provide subsequent reports to demonstrate or report further compliance to OCR. That said, the University shall remain obligated to comply with Title IX and 34 C.F.R. § 106.37(c) in the provision of athletic financial assistance. In order to demonstrate compliance:

- A. The University will compare the intercollegiate athletic participation rates of female and male participants as reflected on the NAIA 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 participants.
- B. The University will examine whether there are any legitimate, nondiscriminatory explanations for any differences that exist, and will adjust the total amounts of aid to take those differences into account. 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. Disparities may be explained by actions taken to promote athletic program development, and by differences between in-

state and out-of-state tuition. Disparities may also be explained 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, or other reasons.

- C. The University will show that after taking all legitimate, nondiscriminatory explanations into account, any remaining disparity between the intercollegiate athletic participation rates of male and female students and the percentage of the total athletic aid awarded to male and female participants during the academic year will be less than or equal to 1%.

#### Reporting Requirements to OCR

1. The University will provide to OCR by **August 30, 2020** its audit of AFA compliance with copies of supporting documents, reflecting the University's evaluation of the AFA for the 2019-2020 academic year (and, separately, applicable aid awarded for summer school), including its nondiscriminatory justification for any disparity. The University will also have the option to demonstrate compliance for the 2018-2019 academic year by **December 31, 2019**.
2. If OCR determines that the University has demonstrated compliance with the AFA provisions during either the 2018-2019 or 2019-2020 academic year, then it will not be required to provide subsequent reports to demonstrate or report further compliance to OCR for future years. That said, the University shall remain obligated to comply with Title IX and 34 C.F.R. § 106.37(c) in the provision of AFA.
3. If the University is not able to demonstrate compliance in 2018-2019 or 2019-2020, then the University's audit will include its plan of compliance, identifying the specific steps it will take to adjust its rosters and/or the amounts of AFA 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 plan will include timeframes and will ensure that the University 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 no later than the 2021-2022 academic year. The plan will include a description of interim steps that have been or will be taken by the University during the 2019-2020 and 2020-2021 academic years.
4. All AFA reports to OCR will include, at a minimum, a copy of the participation data that the University relied on in determining the number of male and female participants 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 all athletic scholarships or grants-in-aid awarded by the University during the academic year; all applicable aid awarded for summer school; 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. The athletes listed and counted as participants will reflect the Policy Interpretation's definition of a participant for purposes of athletic financial assistance. Each head coach will verify in writing that he or she has reviewed the athletic financial assistance

reports submitted to OCR for his or her sport, and attest that the information is correct to the best of his or her knowledge.

### III. EQUIPMENT AND SUPPLIES

The University agrees to provide equivalent treatment, benefits, and opportunities to female and male student athletes with respect to the provision of equipment and supplies.

- A. By **August 30, 2020**, the University will complete its audit of the equipment and supplies it provides to each of its men's and women's teams. The audit will include, at a minimum, an assessment whether the University's men's and women's intercollegiate athletic teams are provided with comparable opportunities in the quality, amount, suitability, availability, and maintenance and replacement of the equipment and supplies. The audit will consider the unique needs for each of the men's and women's intercollegiate teams in the provision of uniforms and other equipment and supplies, the budgets for equipment, by team, the establishment of policies and schedules for purchasing new uniforms and other equipment and supplies, the laundering of uniforms and practice gear, and fundraising requirements for athletes. The audit will include consultation with athletes and coaches from each team. Based on the assessment conducted as part of the audit, if the provision of equipment and supplies to men's and women's teams is not equitable, the University will develop a plan with timeframes to ensure that it provides equal athletic opportunities for members of both sexes in the provision of equipment and supplies, and the University will immediately commence implementation of the plan as of 2020-2021, with final implementation by no later than the 2021-2022 school year.
- B. In assessing compliance in this and ensuing component areas, OCR will compare the availability, quality and kinds of benefits, opportunities, and treatment afforded to the University's male and female athletes to determine whether they are equivalent, as noted in Preliminary Commitment F, above.

#### Reporting Requirements to OCR

1. By **August 30, 2020**, the University will provide to OCR the audit and assessment referenced in section III.A of this Agreement, including if applicable its plan to ensure equity in the provision of equipment and supplies. If the University has begun implementing and/or completed any of the planned improvements, then the report will include detailed documentation regarding the progress made.
2. If the University determines that the plan referenced under III.A. is necessary, then on **August 30, 2021** and **August 30, 2022**, the University will submit a status report to OCR demonstrating implementation of the plan to provide equivalent treatment, benefits, and opportunities to female and male student athletes with respect to the provision of equipment and supplies. If the University demonstrates compliance for the 2020-2021 academic year in its **August 30, 2021** report, and OCR concurs, then it shall not have further reporting obligations to OCR under section III for the 2021-2022 academic year. If the University initially determines that the plan referenced under III.A. is not necessary

but OCR believes that it is necessary, then OCR and the University shall discuss the reasons for their differences, including potential legitimate non-discriminatory justifications, and mutually determine appropriate deadlines of at least 60 days for any necessary plan or status report through the end of the 2020-2021 academic year.

#### **IV. SCHEDULING OF GAMES AND PRACTICE TIMES**

The University agrees to provide equivalent treatment, benefits, and opportunities to female and male student athletes with respect to the scheduling of games and practice times.

- A. By **December 31, 2019**, the University will complete an audit and assessment of the scheduling of games and practice times for men's and women's teams. The assessment will specifically address the scheduling of practice times for teams that share the same facilities, the effect of coaches' other work schedules on practice times, and solutions for athletes who practice during classes or mealtimes. The assessment will also address opportunities for men and women to compete equivalently during prime time. In conducting this assessment, the University will consult with male and female athletes. The assessment will include, at a minimum, an evaluation consistent with the principles set forth in Preliminary Assurance F, above, of whether the University's men's and women's intercollegiate athletic teams are provided with comparable opportunities in the scheduling of games and practice times.
- B. Based on the assessment, if the scheduling of games and practice times for men's and women's teams is not equitable, the University will develop a plan with timeframes to ensure that it provides equal athletic opportunities for members of both sexes in the scheduling of games and practice times. The University will immediately commence implementation of the plan, with final implementation by no later than the 2021-2022 school year.

#### Reporting Requirements to OCR

1. By **December 31, 2019**, the University will provide to OCR the audit and assessment referenced in section IV.A of this Agreement, including if applicable its plan to ensure equity in the scheduling of games and practice times. To the extent the University has begun implementing and/or completed any of the planned improvements, then the report will include detailed documentation regarding the progress made.
2. If the University determines that the plan referenced under IV.A. is necessary, then on **August 30, 2020** and **August 30, 2021**, the University will submit a status report to OCR demonstrating implementation of the plan to pertaining to the scheduling of games and practice times. If the University demonstrates compliance in its **August 30, 2020** report, and OCR concurs, then it shall not have further reporting obligations to OCR under section IV for the 2020-2021 academic year, notwithstanding the prior sentence. If the University initially determines that the plan referenced under IV.A. is not necessary but OCR believes that it is necessary, then OCR and the University shall discuss the reasons for their differences, including potential legitimate non-discriminatory justifications, and mutually determine appropriate deadlines of at least 60 days for any necessary plan or status report through the end of the 2020-2021 academic year.

## V. TRAVEL AND PER DIEM

The University agrees to provide equivalent treatment, benefits, and opportunities to female and male student athletes with respect to the provision of travel and per diem allowances.

- A. By **August 30, 2020**, the University will implement a comprehensive travel policy to ensure that male and female athletes are provided equivalent treatment, benefits, and opportunities to female and male student athletes with respect to the provision of travel and per diem allowances. Coaches will be informed of the policy before the 2020-2021 year, and the policy will be posted on the University's athletics website prior to the commencement of the 2020-2021 school year.
- B. By **August 30, 2020**, the University will complete its audit and assessment of the travel and per diem allowances it provides to each of its men's and women's teams. The assessment will include, at a minimum, an evaluation consistent with the principles set forth in Preliminary Assurance F, above, of whether the University's men's and women's intercollegiate athletic teams are provided with comparable opportunities in the modes of transportation, and number of athletes assigned to hotel rooms.
- C. Based on the assessment, if the provision of travel and per diem allowances to men's and women's teams is not equitable, the University will develop a plan with timeframes to ensure that it provides equal athletic opportunities for members of both sexes in the provision of travel and per diem. The University will immediately commence implementation of the plan, with final implementation by no later than the 2020-2021 school year.

### Reporting Requirements to OCR

1. By **August 30, 2020**, the University will provide OCR with the link to its website containing the travel and per diem policy along with information showing coaches have been made aware of it.

By **August 30, 2020**, the University will provide to OCR the assessment referenced in section V.B. of this Agreement, including if applicable its plan to ensure equity in the provision of travel and per diem. If the University has begun implementing and/or completed any of the planned improvements, then the report will include detailed documentation regarding the progress made.

2. If the University determines that the plan referenced under V.B. is necessary, then on **August 30, 2021**, the University will submit a status report to OCR demonstrating implementation of the plan to pertaining to the provision of travel and per diem. If the University initially determines that the plan referenced under V.A. is not necessary but OCR believes that it is necessary, then OCR and the University shall discuss the reasons for their differences, including potential legitimate non-discriminatory justifications, and mutually determine appropriate deadlines of at least 60 days for any necessary plan or status report through the end of the 2020-2021 academic year.

## **VI. OPPORTUNITY TO RECEIVE COACHING AND THE ASSIGNMENT AND COMPENSATION OF COACHES**

The University agrees to provide equivalent treatment, benefits, and opportunities to female and male student athletes with respect to the opportunity to receive coaching and the assignment and compensation of coaches.<sup>1</sup>

- A. By **December 31, 2019**, the University will complete its audit and assessment of the coaching it provides to each of its men's and women's teams. The assessment will include, at a minimum, an evaluation consistent with the principles set forth in Preliminary Assurance F, above, of whether the University's men's and women's intercollegiate athletic teams are provided with comparable opportunities in the relative availability and compensation of full-time coaches, part-time and assistant coaches, and, if applicable, graduate assistants and volunteer coaches. The audit and assessment will consider the provision of head and assistant coaches to each of the men's and women's intercollegiate teams, the availability of coaches, taking into consideration their secondary jobs on campus, the equivalence of men's and women's teams' coaches' qualifications, the compensation of coaches, and will specifically include consultation with athletes and coaches from each team.
- B. Based on the audit and assessment, if the provision of coaching to men's and women's teams is not equitable, the University will develop a plan with timeframes to ensure that it provides equal athletic opportunities for members of both sexes in the opportunity to receive coaching and the compensation of coaches. The University will immediately commence implementation of the plan, with final implementation by no later than the 2021-2022 school year.

### Reporting Requirements

1. By **December 31, 2019**, the University will provide to OCR the assessment referenced in section VI.A of this Agreement, including if applicable its plan to ensure equity in the opportunity to receive coaching. If the University has begun implementing and/or completed any of the planned improvements, then the report will include detailed documentation regarding the progress made.
2. If the University determines that the plan referenced under VI.A. is necessary, then on **August 30, 2020** and **August 30, 2021**, the University will submit a status report to OCR demonstrating implementation of the plan pertaining to the opportunity to receive coaching. If the University demonstrates compliance in its **August 30, 2020** report, and OCR concurs, then it shall not have further reporting obligations to OCR under section VI for the 2020-2021 academic year. If the University initially determines that the plan referenced under VI.A. is not necessary but OCR believes that it is necessary, then OCR and the University shall discuss the reasons for their differences, including potential

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<sup>1</sup> "In general, a violation of [the coaching provision of Title IX] will be found only where compensation or assignment policies or practices deny male and female athletes coaching of equivalent quality, nature, or availability." 44 *Fed. Reg.* at 71,416.

legitimate non-discriminatory justifications, and mutually determine appropriate deadlines of at least 60 days for any necessary plan or status report through the end of the 2020-2021 academic year.

## **VII. PROVISION OF LOCKER ROOMS AND PRACTICE AND COMPETITIVE FACILITIES**

The University agrees to provide equivalent treatment, benefits, and opportunities to female and male student athletes with respect to the provision of locker rooms and practice and competitive facilities.

- A. By **December 31, 2019**, the University will complete its audit and assessment of the locker rooms and practice and competitive facilities it provides to each of its men's and women's teams. The assessment will include, at a minimum, an evaluation consistent with the principles set forth in Preliminary F, above, of whether the University's men's and women's intercollegiate athletic teams are provided with comparable opportunities in the quality and availability of the facilities provided for practice and competitive events, and the availability and quality of locker rooms. The assessment will specifically include consultation with athletes and coaches from each team.
- B. Based on the assessment, if the provision of locker rooms and practice and competitive facilities to men's and women's teams is not equitable, the University will develop a plan with timeframes to ensure that it provides equal athletic opportunities for members of both sexes in the provision of locker rooms and practice and competitive facilities. The University will immediately commence implementation of the plan, with final implementation by no later than the 2021-2022 school year. Should the plan require the University to expend significant, unexpected capital (or obtain state legislative approval **during the 2021 biennial legislative session**) to fund new construction or renovation of facilities, then upon request with supporting documentation, OCR may grant an additional **term** (as it may be required due to the North Dakota biennial legislative schedule) to comply with this requirement. In that event, the University shall continue to take feasible actions in the interim to provide equitable treatment.

### Reporting Requirements to OCR

1. By **December 31, 2019**, the University will provide to OCR the assessment referenced in section VII.A of this Agreement, including if applicable its plan to ensure equity in the provision of locker rooms and practice and competitive facilities. If the University has begun implementing and/or completed any of the planned improvements, then the report will include detailed documentation regarding the progress made.
2. If the University determines that the plan referenced under VII.A. is necessary, then on **August 30, 2021** and **August 30, 2022**, (and if necessary, **August 30, 2023**) the University will submit a status report to OCR demonstrating implementation of the plan to pertaining to the provision of locker rooms and practice and competitive facilities. If the University demonstrates compliance in its **August 30, 2021** report, and OCR concurs,

then it shall not have further reporting obligations to OCR under section VII for the 2021-2022 academic year, notwithstanding the prior sentence. If the University initially determines that the plan referenced under VII.A. is not necessary but OCR believes that it is necessary, then OCR and the University shall discuss the reasons for their differences, including potential legitimate non-discriminatory justifications, and mutually determine appropriate deadlines of at least 60 days for any necessary plan or status report through the end of the 2021-2022 academic year.

**VIII. 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. Upon completion of the obligations under this Agreement, OCR will close 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 and/or Title IX and its implementing regulations. Before initiating administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement, OCR shall give the University written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This Agreement will become effective immediately upon the signature of the University’s representative below.

\_\_\_\_\_  
President or designee

\_\_\_\_\_  
Date