

Resolution Agreement #05-16-6001
Southern Illinois University - Edwardsville

The U.S. Department of Education, Office for Civil Rights (OCR) and The Board of Trustees of Southern Illinois University, Governing Southern Illinois University – Edwardsville (University) enter into this Resolution Agreement (Agreement) to resolve OCR Case No. 05-16-6001. 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.

I. ATHLETIC INTERESTS AND ABILITIES (I&A)

A. The University will provide participation opportunities in its intercollegiate athletics program for female and male students that equally and effectively accommodate the athletic interests and abilities of members of both sexes, consistent with the requirements of Title IX, and the Title IX implementing regulation at 34 C.F.R. § 106.41(c)(1). Accordingly, the University has the option to demonstrate compliance with any one part of the three-part test¹ 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 requirement to provide nondiscriminatory athletic participation opportunities. The University has chosen to comply with the three-part test by demonstrating compliance with Part One, as follows:

B. By April 30, 2021, the University will demonstrate that it is providing intercollegiate athletic participation opportunities for female and male students in numbers substantially proportionate to their respective enrollments; the University will compare the enrollment rates of its female and male students with their rates of participation in the University's

¹See, the December 11, 1979, Intercollegiate Athletics Policy Interpretation (Policy Interpretation), at 44 *Fed. Reg.* 71,413 *et seq.*, found at <http://www2.ed.gov/about/offices/list/ocr/docs/t9interp.html>.

intercollegiate athletics program during the 2020-2021 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 University will calculate participation rates of female and male students by counting as participants the athletes in 2020-2021 who:
 - a. were receiving institutionally-sponsored support normally provided to athletes competing at the institution (e.g., coaching, equipment, academic services, medical and training room services) during the sport's championship season,
 - b. were participating in organized practices and other team activities on a regular basis during the sport's championship season,
 - c. were listed on the eligibility and squad list maintained by each sport for a substantial portion of the sport's championship season, or
 - d. did not meet a, b, or c above but continued to receive financial aid on the basis of athletic ability.
 - 3) The rates will not include athletes of the other sex who participate on practice squads.
 - 4) The participation rates will not include participants in intramural, club or non-competitive athletic activities.
 - 5) Students who participate in more than one intercollegiate sport will be counted in each intercollegiate sport in which they participate.
- C. To achieve compliance with Part One, the University intends to increase participation opportunities in at least three of its existing women's intercollegiate sports, and to not eliminate opportunities for current male athletes or eliminate existing men's sports. The University will take action toward compliance with Part One during the 2019-2020 academic year and will document to OCR the status of the action it is taking.
- D. Reporting requirements
- 1) By September 1, 2019, and April 30, 2020, the University will provide OCR with a detailed report, with copies of supporting documents, demonstrating the actions the University has taken to increase intercollegiate athletic participation opportunities for female students. The report will include the University's evaluation of the proportions of female and male students in athletics conducted pursuant to section I.A. of this Agreement. It will also include, at a minimum, a copy of the 2019-2020 enrollment and participation data that the University relied on in calculating its 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) By April 30, 2021, the University will provide OCR with a detailed report, with copies of supporting documents, demonstrating that the University is providing intercollegiate

athletic participation opportunities for female and male students in numbers substantially proportionate to their respective enrollments. The report will include the University's evaluation of the proportions of female and male students in athletics conducted pursuant to section I.A. of this Agreement. It will also include, at a minimum, a copy of the 2020-2021 enrollment and participation data that the University relied on in calculating its 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.

II. ACTIONS TO INCREASE ATHLETIC OPPORTUNITIES

If the University believes that it will be unable to demonstrate compliance pursuant to section I of this Agreement, then the University will submit to OCR by December 1, 2020, its detailed plan with timeframes to effectively accommodate the interests and abilities of the underrepresented sex to the extent necessary to provide equal opportunity in its intercollegiate athletics program by the 2021-2022 academic year, including the steps noted below:

- A. Sports currently offered: The University will institute a squad size policy providing for increased participation opportunities for students who are members of the underrepresented sex to the maximum extent feasible consistent with the nature of each sport and the level of interest in each sport while still ensuring that meaningful intercollegiate athletic participation opportunities are being provided for all team members. The policy will apply to each sport currently offered and will not call for limiting or reducing intercollegiate athletic participation opportunities for the overrepresented sex.
- B. Sports not currently offered: The University will determine whether there are a sufficient number of students and admitted students at the University who are members of the underrepresented sex with the interest and ability to support the addition of a team in sports not currently offered by the University as intercollegiate sports and sufficient competition in those sports within the University's normal competitive regions. If so, the University will add a team in those sports and will hire a coaching staff, recruit student athletes and provide sufficient resources to the coaching staff beginning as soon as practicable after December 1, 2020, with the goal of beginning competition by the 2021-2022 academic year (unless the actions taken by the University first achieve compliance under Part 1 of the three-part test).
- C. Response to developing interests and abilities: For any sport that is not currently offered by the University in which there are a sufficient number of students and admitted students who are members of the underrepresented sex who have the interest and ability to support a team in that sport, but where the University determines that there is not sufficient competition in that sport within the University's normal competitive regions, the University will take ongoing steps to address such interest and ability. Steps may include establishment of intramural or club sports, exploring the establishment of competition in the University's

normal competitive regions, and elevating such sports to intercollegiate status when competition becomes available.

- D. Elimination of athletic teams: OCR has made clear to the University that OCR does not require or encourage the elimination of any University intercollegiate athletic teams and that it seeks action from the University that does not involve the elimination of athletic opportunities, because nothing in Title IX or the three-part test requires an institution to cut teams or reduce opportunities for students who are participating in intercollegiate athletics in order to comply with the provisions of Title IX relating to the effective accommodation of the interests and abilities of male and female students. OCR has also made clear to the University that Title IX provides institutions with flexibility and choice regarding how they will provide nondiscriminatory participation opportunities.
- E. Additional intercollegiate opportunities: To the extent that the University adds any sports, the University will provide those team(s), in a manner comparable to other intercollegiate teams, with sufficient funds in the budget(s) to cover expenses including, but not limited to: coaches, recruiting, equipment and supplies, travel, publicity and support services.
- F. Reporting requirements
 - 1) By December 1, 2020, the University will submit to OCR its plan with timeframes to effectively accommodate the interests and abilities of the underrepresented sex to the extent necessary to provide equal opportunity in its intercollegiate athletics program by no later than the 2021-2022 academic year.
 - 2) By April 30, 2021, June 30, 2021, and December 31, 2021, the University will provide OCR status reports regarding its implementation of its plan to effectively accommodate the interests and abilities of members of both sexes including as applicable, information demonstrating that a coaching staff has been hired for any new teams being added by the University, an update on the University's progress in recruiting student athletes for the added teams and a copy of the detailed budget provided to the teams to ensure they are able to begin competition during the 2021-2022 academic year. The status reports will also include documentation regarding the interim steps taken by the University to increase intercollegiate athletic participation opportunities for women during the 2020-2021 academic year.
 - 3) By June 30, 2022, the University will provide OCR a report that includes information demonstrating that its intercollegiate athletics program is effectively accommodating the athletic interests and abilities of its female students.

III. 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.

- 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 (NOTE: for purposes of establishing this participation rate, 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 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.
- D. By February 15, 2020, 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 for the 2019-2020 academic year to the University's female and male intercollegiate athletes. The report 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, with supporting documentation, that led the University to make adjustments to the data as well as a detailed description of the adjustments made.

IV. ACTIONS TO ENSURE FUTURE COMPLIANCE

The University will take the following actions, including the reporting to OCR, only if unable to demonstrate current compliance with Title IX pursuant to AFA Section III of this Agreement:

- A. By February 15, 2020, the University will submit to OCR its detailed plan with timeframes to ensure that it 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 the beginning of the 2020-2021 academic year, including the steps noted below. The plan will include a description of interim steps that have been or will be taken by the University during the 2019-2020 academic year.

- 1) 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 students in the intercollegiate program to ensure they are substantially proportionate to their respective intercollegiate athletics participation rates. 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.
 - 2) 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 or plans to provide to students from the underrepresented sex in accordance with this Agreement.
 - 3) The University will identify all legitimate, nondiscriminatory factors that apply to the awarding of athletic scholarships and/or grants-in-aid 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.
 - 4) 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 college sports practices to aggressively recruit athletes to build start-up teams quickly.
 - 5) 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.
- B. By February 15, 2020, June 30, 2020 and June 30, 2021, the University will provide OCR with reports that include information documenting the steps it has taken to implement the plan referenced in IV.A 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.

V. EQUIPMENT AND SUPPLIES

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

- 1) By October 31, 2019, the University will complete and provide to OCR its assessment of the equipment and supplies it provides to each of its men's and women's teams. The assessment will include, at a minimum, whether the University's women's intercollegiate athletic teams are provided with comparable opportunities as provided to the men's intercollegiate athletic teams in the budgets and in the quality, amount, suitability, availability, maintenance and replacement of the equipment and supplies. The assessment will consider each of the men's and women's intercollegiate teams, and will specifically include consultation with athletes and coaches from each team. Based on the assessment, 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. The University will immediately commence implementation of the plan as applicable to spring 2020 sports, with final implementation by no later than the 2020-2021 school year.
- 2) In assessing compliance, OCR will compare the availability, quality and kinds of benefits, opportunities, and treatment afforded to the University's male and female athletes in the provision of equipment and supplies 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.

B. Reporting requirement

- 1) By October 31, 2019, the University will provide to OCR the assessment referenced in section V.A(1) of this Agreement, including 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 plan referenced in V.B(1) above is necessary, by January 31, 2020 and June 30, 2020, the University will submit a status report to OCR demonstrating implementation of the plan pertaining to the provision of equipment and supplies.
- 3) By June 30, 2021, the University will submit a report to OCR demonstrating its full implementation of the equipment and supplies provision of the Agreement.

VI. PUBLICITY

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

- 1) By October 31, 2019, the University will complete a comprehensive assessment of the provision of publicity for each men's and women's athletic team. The assessment will include, at a minimum, an evaluation consistent with the principles set forth in V.A(2), above, of the availability and quality of sports information personnel; access to other publicity resources for men's and women's programs; and quantity and quality of social media, publications and other promotional devices featuring men's and women's programs.
- 2) Based on the assessment, the University will develop a plan to ensure that it provides equal athletic opportunities for members of both sexes in the provision of publicity. The University will immediately commence implementation of the plan as applicable to spring 2020 sports, with final implementation by no later than the 2020-2021 academic year.

B. Reporting requirements

- 1) By October 31, 2019, the University will provide OCR with the results of the assessment of its provision of publicity and, as necessary, the referenced plan. The assessment will include: a description of the process followed in conducting the assessment; a list naming the individuals administering and participating in the assessment process; a description of non-documentary information considered; a copy of any documents relied upon in the process; and, the results of the assessment. The plan will include a description of all actions that will be taken to ensure that the University provides equivalent provision of publicity to male and female student athletes; a timeline for the identified actions; and, the identity of the individual(s) who will monitor the implementation of the plan.
- 2) If the plan referenced in VI.B(1) above is necessary, then the University will provide OCR with reports by January 31, 2020, June 30, 2020, December 31, 2020 and June 30, 2021, demonstrating implementation of the plan to provide equivalent treatment, benefits, and opportunities to female and male student athletes with respect to the provision of publicity.

VII. IMPLEMENTATION AND ENFORCEMENT OF THIS AGREEMENT

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 and obligations of this Agreement. Upon the University's satisfaction of the commitments made under this Agreement, OCR will close this review.

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