

RESOLUTION AGREEMENT
Western Illinois University
OCR Case No. 05-21-2297

Western Illinois University (University) enters into this agreement with the U.S. Department of Education, Office for Civil Rights (OCR), to resolve OCR Case No. 05-21-2297. 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 Title IX’s implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination based upon sex in any education program or activity receiving Federal financial assistance.

The University agrees to take the following actions:

1) Athletic Interests and Abilities

The University agrees to provide participation opportunities in its intercollegiate athletic 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, by no later than the 2024-2025 academic year.

Demonstration of compliance

The University will 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 athletic 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.

Part One: Substantial Proportionality

Should the University elect to demonstrate compliance with Part One of the Three-Part Test referenced above, the University will compare the rates of enrollment of its female and male students at the University with their rates of participation in the University’s intercollegiate athletic program to determine if they are substantially proportionate.

- The University will calculate enrollment rates using the full-time undergraduate enrollment numbers, by sex, for an academic year.
- The University will calculate the athletic participation rates of female and male students using 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 University will calculate participation rates of female and male students by counting as participants the athletes who in that same academic year: a) were receiving the institutionally-sponsored support normally provided to athletes competing at the institution involved (*e.g.*, coaching, equipment, medical and training room services), on a regular basis during a sport's season; and b) were participating in organized practice sessions and other team meetings and activities on a regular basis during a sport's season; and c) were listed on the eligibility or squad lists maintained for each sport, or d) did not meet a, b, or c above but continued to receive financial aid on the basis of athletic ability. Students who participated in more than one intercollegiate sport will be counted in each intercollegiate sport in which they participated. The participation rates should not include participants in intramural, club, or non-competitive athletic activities.

Part Two: History and Continuing Practice of Intercollegiate Athletic Program Expansion

Should the University elect to demonstrate compliance with Part Two of the Three-Part Test referenced above, the University will complete an evaluation that objectively assesses whether it has a history and continuing practice at the University 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:

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

Part Three: Full and Effective Accommodation

Should the University elect to demonstrate compliance with Part Three of the Three-Part Test referenced above, the University will conduct an objective assessment to determine the existence and/or scope of any unmet athletic interests of the underrepresented sex in the University's intercollegiate athletic program and whether the University is fully and effectively accommodating their athletic interests and abilities. The assessment will be based on multiple indicators of interests and multiple indicators of abilities, and shall include the following:

- A survey conducted within 90 days after the execution of this Resolution Agreement of current and admitted students or other information collected from current 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.
- 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.
- 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.
- 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.¹
- 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.
- Any other information that demonstrates the athletic interests and abilities of the University's students who are members of the underrepresented sex.
- 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 that sport in the University's normal competitive regions.

¹ 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.

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

Sports Currently Offered

The University will institute a squad size policy providing for increased participation opportunities for female 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 for all team members.

Sports Not Currently Offered

The University will determine whether there is a sufficient number of current and admitted female students at the University who have the interest and ability to support the addition of a team or multiple teams in sports not currently offered by the University as intercollegiate sports, and whether there is sufficient competition within the University's normal competitive region and geographic area for those teams/sports. If so, the University will add a team or multiple teams in those sports.

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.

Additional Intercollegiate 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 to cover expenses including, but not limited to coaches, recruiting, equipment and supplies, travel, publicity and support services.

Elimination of Athletic 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.

REPORTING REQUIREMENTS:

1. By no later than April 1, 2022, the University will evaluate its intercollegiate athletic program and submit to OCR its assertion of which part of the Three-Part Test the University elects to demonstrate compliance with by the 2024-2025 academic year. Should the University elect to demonstrate compliance with Part Three of the Three-Part Test referenced above, the University will provide to OCR for review and approval a copy of its proposed athletic interest survey and a detailed description of the steps the University plans to take to implement the survey.
2. By no later than July 31, 2022,
 - a. Should the University elect to demonstrate compliance with Part One of the Three-Part test, the University will provide OCR a plan, with timeframes, for how the University will provide athletic participation opportunities that are substantially proportionate to enrollment rates by no later than the 2024-2025 academic year. The plan will document the steps the University has taken and will take and will include, at a minimum, a copy of the enrollment and intercollegiate athletics participation data that the University relied on, a copy of all team rosters for each sport showing students, by sex, and any other information relied on by the University in developing the plan.
 - b. Should the University elect to demonstrate compliance with Part Two of the Three-Part Test referenced above, the University will provide OCR with a detailed report containing the University's evaluation as described in "Part Two" above, including the assessment and results, with supporting documentation.
 - c. Should the University elect to demonstrate compliance with Part Three of the Three-Part Test referenced above, the University will provide OCR a detailed report describing the multi-factored assessment conducted pursuant to "Part Three," as described above, and a plan, with timeframes, for how the University will fully and effectively accommodate the athletic interests and abilities of its female students by no later than the 2024-2025 academic year. The report will document the steps the University has taken and will take and will include, at a minimum, a copy of the survey results, a complete description of the methodology used to conduct the survey (including how the survey was distributed, the number of surveys distributed, the number of responses, and any follow-up conducted after the surveys), the names and contact information for the individual(s) who evaluated the survey responses, a copy of any notes or other documents compiled during the survey review, a list of club and intramural sports offered by the University and participation numbers (by sex) in these activities, and a list of women's sports that are not currently offered at the University but are offered either by universities that compete within the athletic conference(s) in which the University competes or by universities that are within the University's

normal competitive region. This report will detail the timetable for the addition of new varsity sports to be added pursuant to this Agreement.

3. By July 31, 2023, and by that same date annually thereafter, while this Agreement is in effect and until OCR has determined the University provides participation opportunities in its intercollegiate athletic program for female and male students that equally and effectively accommodate the athletic interests and abilities of members of both sexes, the University will provide OCR with a detailed report evaluating whether its intercollegiate athletic program equally and effectively accommodates the athletic interests and abilities to the extent necessary to provide equal opportunities for female students under the part of the Three-Part test selected by the University. The University will provide supporting documentation showing student enrollment, by sex, and team squad lists for each team, as verified and attested to by the Athletic Director or coach of each team, as well as information describing any increase or decrease in squad sizes. As applicable, the University will provide 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.

2) Opportunity to receive coaching and assignment and compensation of coaches

The University agrees to provide equal athletic opportunity for both sexes in the University's intercollegiate athletic program in the provision of the opportunity to receive coaching and assignment and compensation of coaches by no later than the 2023-2024 academic year.

By April 30, 2022, the University will conduct a full assessment of its opportunity to receive coaching and assignment and compensation of coaches to determine what steps are necessary for the University to provide equal opportunities for male and female students in the provision of the opportunity to receive coaching, and assignment and compensation of coaches, as necessary to demonstrate compliance with Title IX. The assessment will specifically address for the opportunity to receive coaching: (1) relative availability of full-time coaches, (2) relative availability of part-time and assistant coaches, and (3) relative availability of graduate assistants; for the assignment of coaches: (1) training, experience, and other professional qualifications, and (2) professional standing; and for compensation of coaches: (1) rate of compensation (per sport, per season), (2) duration of contracts, (3) conditions relating to contract renewal, (4) experience, (5) nature of coaching duties performed, (6) working conditions, and (7) other terms and conditions of employment.

Based on the assessment, the University will create a plan, with timeframes, to provide equal opportunities for male and female students in the provision of the opportunity to receive coaching and assignment and compensation of coaches by no later than the 2023-2024 academic year.

REPORTING REQUIREMENTS:

1. By May 31, 2022, the University will submit to OCR for review its full assessment of its opportunity to provide coaching and assignment and compensation of coaches. The University also will submit its plan (with timeframes) to provide equivalent treatment, benefits, and opportunities to female and male student athletes with respect to the provision of the opportunity to receive coaching and assignment and compensation of coaches, as necessary to demonstrate compliance with Title IX, by no later than the 2023-2024 academic year.
2. By July 31, 2023, and by that same date annually thereafter, while this Agreement is in effect and until OCR has determined the University provides equal athletic opportunity for both sexes in the University's intercollegiate athletic program in the provision of the opportunity to receive coaching and assignment and compensation of coaches, the University will submit a report to OCR documenting the actions taken to implement the plan to provide equal opportunity to members of both sexes in the opportunity to receive coaching and assignment and compensation of coaches, or documentation demonstrating the University provides equivalent treatment, benefits, and opportunities to female and male student athletes with respect to the provision of the opportunity to receive coaching and assignment and compensation of coaches, as necessary to demonstrate compliance with Title IX.

3) Recruitment of Student Athletes

The University agrees to provide equivalent treatment, benefits, and opportunities to female and male athletes with respect to recruitment by no later than the 2022-2023 academic year.

By April 30, 2022, the University will complete an assessment, by team, of the recruiting benefits and opportunities provided to current and prospective male and female athletes. The assessment will include consultation and input from coaches of all men's and women's teams, and specifically address: (1) whether coaches or other athletic personnel in the programs serving male and female athletes are provided with substantially equal opportunities to recruit to meet men's and women's teams' needs, (2) whether the financial and other resources made available for recruitment to the men's and women's athletic programs are equivalently adequate to meet the needs of each program, and (3) whether the differences in benefits, opportunities, and treatment afforded prospective student athletes of each sex have a disproportionately limiting effect upon the recruitment of students of either sex.

Based on the assessment, the University will create a plan, with timeframes, to provide equal opportunities for male and female students in its recruitment of student athletes as necessary to demonstrate compliance with Title IX by no later than the 2022-2023 academic year.

REPORTING REQUIREMENTS:

1. By May 31, 2022, the University will submit to OCR for review its full assessment of its recruitment of student athletes. The University also will submit its plan (with timeframes) to provide equivalent treatment, benefits, and opportunities to female and male student athletes with respect to the provision of recruiting, as necessary to demonstrate compliance with Title IX, by no later than the 2022-2023 academic year.

2. By July 31, 2023, and July 31, 2024, the University will submit to OCR documentation demonstrating the University provides equivalent treatment, benefits, and opportunities to female and male student athletes with respect to the provision of recruiting, as necessary to demonstrate compliance with Title IX.

The University understands that by signing this Resolution Agreement, it agrees to provide the data and other information in a timely manner in accordance with the reporting requirements of this Resolution Agreement. Further, the University understands that, during the monitoring of this Resolution 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 Resolution Agreement and is in compliance with the regulations implementing Title IX, at 34 C.F.R. § 106.41. Upon the University's satisfaction of the terms and obligations of the Resolution Agreement, OCR will close the case.

The University understands and acknowledges that OCR may initiate proceedings to enforce the specific terms and obligations of this Resolution Agreement and/or the applicable statutes and regulations. Before initiating such proceedings, OCR will give the University 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 University's representative below.

University President (or designee)

Date