



RESOLUTION AGREEMENT

**University of Southern Mississippi
Compliance Review
Docket Number 06-15-6001**

The University of Southern Mississippi (USM or University) voluntarily enters into this Resolution Agreement (Agreement), as set forth below, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, to ensure its compliance with the requirements of Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. (Title IX), and its implementing regulations at 34 C.F.R. Part 106. The University is subject to Title IX because it receives Federal financial assistance from the Department. Accordingly, to ensure compliance with Title IX and to resolve this investigation, the University voluntarily agrees to the terms of this Agreement and agrees to comply fully with its provisions. This commitment does not relieve the University from fulfilling its other obligations under Title IX or resolve any other individual or class complaint against the University.

ACTION ITEMS AND REPORTING REQUIREMENTS

ATHLETIC FINANCIAL ASSISTANCE (AFA)

I. DEMONSTRATION OF CURRENT COMPLIANCE

- A. USM 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. Accordingly, by November 30, 2016, the University will demonstrate that during the 2016-2017 school year the amount of athletic scholarships and/or grants-in-aid it awarded to male and female athletes was substantially equal to their intercollegiate athletic participation rates, after taking into consideration any legitimate, nondiscriminatory reasons for any differences.
 1. USM will compare the intercollegiate athletic participation rates of female and male students as reflected on the NCAA squad or eligibility list for each intercollegiate sport (for purposes of establishing the participation rates, all students, including students who participate in more than one intercollegiate sport, will be counted only once) to the amounts of athletic financial assistance awarded to male and female athletes.
 2. USM 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.

3. After taking all legitimate, nondiscriminatory explanations into account USM 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.

REPORTING REQUIREMENT

USM will complete and submit to OCR the following AFA reporting requirement:

By November 30, 2016, USM will provide OCR with a detailed report, with copies of supporting documents, reflecting the University's evaluation of the awarding of athletic financial assistance to the University's female and male intercollegiate athletes pursuant to the AFA Section I.A. of this Agreement. 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, each athlete was awarded by the University, and a description of any legitimate, nondiscriminatory factors that led the University to make adjustments to the data as well as a detailed description of the adjustments made.

II. ACTIONS TO ENSURE FUTURE COMPLIANCE

USM will take the following actions only if it is unable to demonstrate current compliance with Title IX pursuant to AFA Section I.A. of this Agreement:

- A. By April 30, 2017, the University will submit to OCR for review and approval 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 2017-2018 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 2017-2018 academic year. The University will initiate implementation of the plan upon review and approval by OCR.
 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 intercollegiate athletes to ensure they are substantially proportionate to their respective intercollegiate athletics participation rates.

2. 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.
3. 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 AFA Section II. of this Agreement.
4. The University will identify all legitimate, nondiscriminatory factors that apply and describe how they will be taken into account. Disparities may be explained by actions taken to promote athletic program development, and by differences between in-state and out-of-state tuition. Disparities might also be explained, for example, by legitimate efforts undertaken to comply with Title IX requirements, such as participation requirements. Similarly, disparities may be explained by unexpected fluctuations in the participation rates of males and females. For example, a disparity may be explained if an athlete who had accepted an athletic scholarship decided at the last minute to enroll at another school. For any asserted nondiscriminatory justification, the University must demonstrate that its asserted rationale is in fact reasonable and does not reflect underlying discrimination. For instance, if the University asserts the phasing-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.

REPORTING REQUIREMENTS

USM will complete and submit to OCR the following reporting requirement only if it is required to implement the Action Items set forth in AFA Section II of this Agreement:

By November 30, 2017, USM will provide OCR with reports that include information documenting the steps it has taken to implement the plan referenced in AFA Section II.A. of this Agreement and demonstrating that the University will 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 during the 2017-2018 school year.

STUDENT INTERESTS AND ABILITIES (I&A)

III. DEMONSTRATION OF CURRENT COMPLIANCE

A. Participation opportunities

USM 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, by April 30, 2017, 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 level participation opportunities for female and male students in numbers that are 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. The University has the option to choose the part of the three-part test with which it will comply.

B. Substantial proportionality in participation rates

Should USM elect to demonstrate compliance with Part 1 of the three-part test referenced above, 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 2016-2017 academic year to determine if 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 women and men listed on the NCAA squad or eligibility list for each intercollegiate sport on the date of the first competition for each sport. The participation rates should not include participants in intramural, club or non-competitive athletic activities. Students who participate in more than one intercollegiate sport will be counted in each intercollegiate sport in which they participate. The information provided by the University will be sufficient to allow OCR to determine the number of students, by sex, who were participating on each intercollegiate team on the date of the team's first competition and to identify any changes to the participation numbers that occurred after the first competition.

C. History and continuing practice of program expansion

Should USM elect to demonstrate compliance with Part 2 of the three-part test referenced above, then the University will complete an evaluation that objectively assesses whether it has a history and continuing practice of intercollegiate athletic 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. USM's record since 1998 of adding or dropping intercollegiate teams or levels for members of the underrepresented sex or upgrading teams to or downgrading from intercollegiate status and increasing or decreasing the numbers of participants who are members of the underrepresented sex in intercollegiate athletics;
2. Affirmative responses to requests made by students or others for addition or elevation of sports/levels 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 sports/levels (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.

D. Accommodation of student interests and abilities

Should USM elect to demonstrate compliance with Part 3 of the three-part test referenced above, then the University will conduct an objective assessment to determine the athletic interests and abilities of the underrepresented sex and whether the University is fully and effectively accommodating the athletic interests and abilities of members of the underrepresented sex. The assessment will be based on multiple indicators of interest and multiple indicators of ability, which may include:

1. Results of recent surveys of students and admitted students or other information collected from students and admitted students using a method that is designed to fully and accurately assess unmet athletic interests and abilities in intercollegiate sports among members of the underrepresented sex;
2. Identification of sports, squads, and levels of sports for members of the underrepresented sex that are not currently offered by the University that are offered by schools that compete within the athletic conferences in which the University competes and by schools that are within the University's normal competitive 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, squad, or level of sport, or to elevate an existing club or intramural sport to intercollegiate sport status. This review may be limited to requests that were received during the previous three complete academic years;
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, 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 that operate in areas from which the University draws its students; 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 interest and ability in an intercollegiate sport not currently offered by the University is identified, the assessment will also consider whether there is a reasonable expectation of intercollegiate competition in the University's normal competitive region in that sport.

REPORTING REQUIREMENT

USM will complete and submit to OCR the following applicable I&A reporting requirement:

1. Should USM elect to demonstrate compliance with Part 1 of the three-part test referenced above, by November 30, 2016, the University will provide OCR with a detailed report, with copies of supporting documents, reflecting the University's evaluation of the proportions of female and male students in athletics conducted pursuant to Section III.B. 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 substantially proportionate to enrollment, 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 teams' first competition and to identify any changes to the participation numbers that occurred after the first competition.
2. Should the University elect to demonstrate compliance with Part 2 of the three-part test referenced above, by November 30, 2016, the University will provide OCR with a detailed report containing the University's evaluation as described and enumerated in Section III.C. of this Agreement, including any historical intercollegiate athletics participation data, any intercollegiate athletic gender equity studies conducted at the University that were not previously provided to OCR, and the results of any surveys or other assessments of the athletic interests of University students, including a copy of any survey instruments used and the methodologies used to conduct the surveys.
3. Should USM elect to demonstrate compliance with Part 3 of the three-part test referenced above, the University will provide OCR with a detailed report by April 30, 2017, about the assessment conducted pursuant to Section III.D. of this Agreement. The report will include, at a minimum, the following information:
 - a. Copies of any surveys administered under Section III.D.1. and the results of those surveys, including but not limited to a complete description of the methodology used to conduct the survey, including how the survey was distributed, the number of surveys distributed and the number of responses, any follow-up to the initial distribution of the survey, the names and contact information for the individual(s) who evaluated the responses to the surveys and a copy of any notes or other documents compiled during the review of the surveys;

- b. A summary of sports and squads for members of the underrepresented sex that are not currently offered by the University that are offered by schools that compete within the athletic conferences in which the University competes and by schools that are within the University's normal competitive region;
- c. Rates of participation by members of the underrepresented sex in club and intramural sports at the University;
- d. Rates of participation by members of the underrepresented sex in interscholastic sports that operate in the geographic areas from which the University draws its enrollment;
- e. Copies of any written requests and summaries of any non-written requests made by or on behalf of students who are members of the underrepresented sex to add a particular sport or squad, or to elevate an existing club or intramural sport to intercollegiate sport status;
- f. Summaries of any assessments made during tryouts, or observations of students participating in club or intramural competition, and other information reflecting the ability of students who are members of the underrepresented sex to compete in a particular sport, prior participation in that sport or a similar sport at the high school level or intramural or club level, general athletic ability, participation in other University intercollegiate sports, the nature of the particular sport, and other relevant factors; and
- g. Any other information that was considered by the University as part of its assessment in determining whether it is fully and effectively accommodating the athletic interests and abilities of members of the underrepresented sex.

IV. ACTIONS TO ENSURE FUTURE COMPLIANCE

USM will take the following actions only if it is unable to demonstrate compliance with Title IX pursuant to I&A Sections III.B., III.C., or III.D. of this Agreement:

- A. By November 30, 2017, the University will submit to OCR for review and approval its detailed plan with timeframes to fully and 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 2019-20 academic year, including the steps noted below. In addition, the plan will include a description of interim steps already taken or that will be taken by the University during the 2016-2017, 2017-2018 and 2018-2019 academic years to increase intercollegiate athletic participation opportunities for the underrepresented sex. The University will initiate implementation of the plan upon review and approval by OCR.
 - 1. Sports currently offered

In order to increase the competitive participation opportunities for students who are members of the underrepresented sex, USM will consider expanding the squad sizes for intercollegiate sports currently offered at the University, consistent with the nature of each sport and the level of interest in each sport. The University will increase the size of each squad where determined to be appropriate and continue to ensure that meaningful intercollegiate athletic participation opportunities are being provided for all team members.

2. Sports not currently offered

USM 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 region. If USM determines to demonstrate compliance with Title IX by adding a team in sports for the underrepresented sex, USM will hire a coaching staff, recruit student athletes, and provide sufficient resources to the coaching staff during the 2018-19 academic year to ensure that the team begins competition no later than the 2019-20 academic year.

3. Response to developing interests and abilities

USM will review those sports not currently offered by USM 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, but for which the University determines competition is insufficient in the University's normal competitive region. The University will take ongoing steps to address the interest and ability of the underrepresented sex for those sports not currently offered. Steps may include establishment of intramural or club sports, exploring the establishment of competition in the University's normal competitive region, and elevating such sports to intercollegiate status when competition becomes available. OCR has made clear to USM and it understands that OCR does not require or encourage the elimination of any University intercollegiate athletic teams and that it seeks action from the University that does not involve the elimination of athletic opportunities, because nothing in Title IX or the three-part test requires an institution to cut teams or reduce opportunities for students who are participating in intercollegiate athletics in order to comply with the provisions of Title IX relating to the effective accommodation of the interests and abilities of male and female students. USM also understands that Title IX provides institutions with flexibility and choice regarding how they will provide nondiscriminatory participation opportunities.

4. Additional intercollegiate opportunities

To the extent that USM adds any 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.

REPORTING REQUIREMENTS

USM will complete and submit to OCR the following reporting requirements only if it is required to implement the Action Items set forth in I&A Section IV of this Agreement:

1. By November 30, 2017, USM will provide OCR a report that includes information and supporting documentation demonstrating that the plan referenced in I&A Section IV.A of this Agreement will effectively accommodate the interests and abilities of members of the underrepresented sex.
2. By November 30, 2018, USM will provide OCR a status report regarding its implementation of its plan to fully and effectively accommodate the interests and abilities of members of the underrepresented sex 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 report of the budget provided to the teams to ensure competition beginning during the 2019-2020 academic year.
3. By November 30, 2018, USM will provide OCR a report that includes information documenting the steps the University has taken to equally effectively accommodate the athletic interests and abilities of members of the underrepresented sex during the 2018-2019 academic year.
4. By November 30, 2019, USM will provide OCR a report that includes information sufficient to demonstrate that USM's intercollegiate athletics program equally effectively accommodates the athletic interests and abilities of members of the underrepresented sex effective the 2019-2020 academic year.

MONITORING: GENERAL PRINCIPLES

USM understands that by signing this Agreement, it agrees to provide data and other information in a timely manner. Further, USM understands that during the monitoring of this Agreement, if necessary, OCR may visit the University, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Title IX at 34 C.F.R. § 106.37(c) and 34 C.F.R. § 106.41(c)(1), which were both at issue in this case.

Prior to the conclusion of OCR's monitoring, USM will provide documentation establishing that the amount of athletic scholarships and/or grant-in-aid it awarded to male and female athletes was substantially equal to their intercollegiate athletic participation rates, after taking into

consideration any legitimate, nondiscriminatory reasons for any differences, and that participation opportunities in its intercollegiate athletics program for female and male students equally and effectively accommodate the athletic interest and abilities of members of both sexes for the most recent academic year. USM understands that OCR will not close the monitoring of this Agreement until OCR determines that the recipient has fulfilled the terms of this Agreement and is in compliance with Title IX and its implementing regulations at 34 C.F.R. § 106.37(c) and 34 C.F.R. § 106.41(c)(1).

USM understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the University written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

This Agreement will become effective immediately upon the signature of the President or his designee below.

Dr. Rodney D. Bennett, President
University of Southern Mississippi

Date