

**Resolution Agreement
Fort Scott Community College
OCR Complaint No. 07052020**

The U.S. Department of Education, Office for Civil Rights (OCR), conducted a complaint investigation of Fort Scott Community College (College), Fort Scott, Kansas, pursuant to Title IX of the Education Amendments of 1972 (Title IX), 20 United States Code (U.S.C.) § 1681, and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) Part 106, which prohibit discrimination on the basis of sex by recipients of Federal financial assistance. The College, as a recipient of Federal financial assistance, is subject to the requirements of Title IX and its implementing regulation.

The Complainant alleged that the College failed to provide equal athletic opportunity for females.

I. Timetable

By December 1, 2016, the College will submit the timetable (Timetable) in the Appendix to this Agreement and incorporated into this Agreement to OCR. The College will provide the dates by which it will complete the requirements listed in Sections II and III of this Agreement and submit reports to OCR demonstrating its compliance with those requirements on the Timetable.

**II. Resolution under OCR's Case Processing Manual¹ Section 302:
Resolution Agreement Reached During an Investigation**

Before OCR completed its investigation, the College expressed an interest in resolving the following compliance issues through a resolution agreement: athletic financial assistance, travel and per diem, the opportunity to receive coaching and the compensation of coaches, publicity, the provision of support services, and the recruitment of athletes. The College agrees to take the following actions to resolve these areas.

Action Item 1: Athletic Financial Assistance

Beginning with academic year 2016-17, the College will take steps to ensure that it provides equal athletic opportunities for members of both sexes in the component of athletic financial assistance, in accordance with 34 C.F.R. § 106.37 (c) and OCR policy.

A. Commitment:

- i. *Reduction in Scholarship/Grants-in-Aid:* The College agrees it will not reduce the percent of the total scholarship and/or grants-in-aid dollars currently awarded to members of the underrepresented sex without first providing documentation demonstrating the reason for the proposed reduction and obtaining approval from OCR as it

¹ The *Case Processing Manual* is available on OCR's website at <http://www.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

simultaneously develops an athletic financial assistance plan, in conjunction with the plan for increasing athletic opportunities for members of the underrepresented sex that 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, consistent with the requirements of Title IX, the Title IX implementing regulation at 34 C.F.R. § 106.37(c), and applicable OCR policies.

ii. *Demonstration of Current Compliance*

In accordance with the Timetable set in Section I, the College will compare the amount of athletic scholarships and/or grants-in-aid awarded to male and female athletes during the 2015-16 school year to determine if the athletic scholarships and/or grants-in-aid were substantially equal to the male and female students' intercollegiate athletic participation rates, after taking into consideration any legitimate, nondiscriminatory reasons for any differences.

The College will compare the intercollegiate athletic participation rates of female and male students as reflected on the NJCAA 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.

The College 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.

After taking all legitimate, nondiscriminatory explanations into account, the College 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.

B. Reporting Requirement – Evaluation of Current Compliance

In accordance with the Timetable set in Section I, the College will provide OCR with a detailed report, with copies of supporting documents, reflecting the College's evaluation of the awarding of athletic financial assistance to the

College's female and male intercollegiate athletes pursuant to Section II(1)(A)(ii) of this Agreement. The report will include, at a minimum, a copy of the participation data that the College relied on in determining the number of male and female students in the College'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 College, and a description of any legitimate, nondiscriminatory factors that led the College to make adjustments to the data as well as a detailed description of the adjustments made.

C. Reporting Requirement – Plan to Ensure Future Compliance

The College will take the following actions only if unable to demonstrate current compliance with Title IX pursuant to Section II(1)(A)(ii) (Demonstration of Current Compliance) of this Agreement:

In accordance with the Timetable set in Section I, the College 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 academic year named in the Timetable, including the steps noted below. The plan will include a description of interim steps that have been or will be taken by the College during the years between the dates of this agreement and said academic year. The College will initiate implementation of the plan upon review and approval by OCR.

The College understands that nothing in this agreement requires the College to reduce the amounts of athletic scholarships and/or grants-in-aid it offers to either sex and that any such reductions are discouraged. In making its calculations, the College will use intercollegiate athletic participation numbers that take into account any increase in intercollegiate athletic participation opportunities the College is providing or plans to provide to students from the underrepresented sex in accordance with Section II(1)(A)(i) of this Agreement.

The College 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 College must demonstrate that its asserted rationale is in fact reasonable and does not reflect underlying

discrimination. For instance, if the College asserts the phase-in of scholarships for a new team as a justification for a disparity, the College 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.

The College 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.

D. Reporting Requirement – Implementation of the Plan in Section II(1)(C)

The College will complete and submit to OCR the following reporting requirements only if the College implements the action items set forth above in Section II(1)(C) of this Agreement:

In accordance with the Timetable set in Section I, the College will provide OCR with reports, for OCR's review and approval, that include information documenting the steps it has taken to implement the OCR approved plan referenced in Section II(1)(C) of this Agreement and demonstrating that the College 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 academic year specified in the Timetable.

In accordance with the Timetable set in Section I, the College will provide OCR with a report for OCR's review and approval detailing any and all specific actions taken by the College during the academic year set in the Timetable 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.

Action Item 2: Travel and Per Diem

Beginning with academic year 2016-17, the College will take steps to ensure that it provides equal athletic opportunities for members of both sexes in the component of travel and per diem, in accordance with 34 C.F.R. § 106.41(c)(4) and OCR policy. OCR will determine whether the College has provided equivalent benefits and services for members of both sexes with regard to travel and per diem.

- A. **Commitment:** In accordance with the Timetable set in Section I, the College will complete an assessment of the provision of travel and per diem allowances to ensure that female and male student athletes are provided with equivalent benefits and services in this area. The assessment will include:

- i. a review of the modes or methods of transportation used by men’s and women’s teams for each competition, noting whether the team, athletic department, or transportation department pays for the vehicles and/or gas; whether there is a paid driver or a coach/athlete driver; whether the vehicle is sufficient for a full-travel squad, including athletes who will not play in the game, or only sufficient for athletes required to play in a particular game; whether there is a substantial difference in the quality of school-owned and rented vehicles; and any other inquiry identified by the College as relevant to the assessment of whether there is equitable treatment in this area;
- ii. the development of a written athletic travel and per diem policy to address disparities identified after conducting the review in the preceding paragraph. The policy should apply uniformly to men and women’s teams and should be neutral both on its face and in practice;
- iii. a review of the travel budget allocated to each team, including a review and explanation of why the College set each team’s travel budget at a particular level; an assessment of whether each team’s travel budget currently meets the team’s needs (using multiple indicators, including but not limited to coach and athlete reports and review of relevant documentation); whether travel budgets are allocated in an equitable manner (adequate to meet the travel needs of each team with comparable modes of transportation, housing furnished during travel, length of stay before and after competitive events, per diem allowances, and dining arrangements) across men’s and women’s teams; whether some teams are limiting team travel or placing more athletes per bed or per room when traveling in order to stay within budget while others are not; and any other inquiry necessary to ascertain the sufficiency of the current travel budget allocation to each team; and
- iv. the development of a written plan to address budgetary disparities identified after conducting the review in the preceding paragraph.

B. Reporting Requirement:

- i. In accordance with the Timetable set in Section I the College will submit a written report containing the result of the review further described in Section II(2)(A)(i) to OCR for its review and approval.
- ii. In accordance with the Timetable set in Section I, the College will submit to OCR the written athletic travel and per diem policy governing modes of transportation further described in Section

II(2)(A)(ii). Within the number of days set in the Timetable after OCR's approval of the policy, the College shall publish same in the athletic department handbook and any other appropriate publication. Within the number of days set in the Timetable thereafter, the College shall provide OCR with documentation evidencing the publication of the policy and outlining the steps taken to date by the College to implement the policy.

- iii. In accordance with the Timetable set in Section I, the College will submit to OCR a written report containing the result of the reviews further described in section II(2)(A)(iii).
- iv. In accordance with the Timetable set in Section I, the College will submit to OCR the written plan to address budgetary disparities further described in Section II(2)(A)(iv). Within the number of days set in the Timetable of OCR's approval of the plan, the College shall begin implementation of the plan. Within the number of days set in the Timetable thereafter, the College shall provide to OCR documentation evidencing the implementation of the plan.

Action Item 3: Opportunity to Receive Coaching and Compensation of Coaches

Beginning with academic year 2016-17, the College will take steps to ensure that it provides equal athletic opportunities for members of both sexes in the component of opportunity to receive coaching and compensation of coaches, in accordance with 34 C.F.R. § 106.41(c)(5) and (6) and OCR policy. OCR will determine compliance based on the equivalency of benefits and services for members of both sexes for the availability and compensation of coaches.

- A. **Commitment:** In accordance with the Timetable set in Section I, the College will complete an assessment of the component of opportunity to receive coaching and compensation of coaches to ensure that female and male student athletes are provided with equivalent benefits and services in this area. The assessment will include:
 - i. a review of the compensation packages offered to part-time coaches of comparable experience, of the budget for compensation of part-time coaches allocated to comparable sports, and of the total budget allocated to men's versus women's teams for coaching salaries;
 - ii. the development of a written plan to address disparities identified after conducting the review in the preceding paragraph;
 - iii. a review of the attendance of men's and women's teams coaches at national conventions, training, or other professional development; the funding source for the team's coaches that attended same; whether, for

the team's coaches that did not attend same, the consideration was primarily lack of funds; and the total general budget afforded to each team, to ascertain whether there is a connection between disparities within the men's and women's teams' budgets and disparities in their attendance at national conventions, training, or other professional development;

- iv. the development of a written plan to address any disparities identified after conducting the review in the preceding paragraph;
- v. a review of which coaches from men's and women's teams have served on hiring committees; the factors that resulted in said coaches serving; whether there is a disparity in the amount of men's and women's team coaches that have served; and what factors should be changed, if any, to address an existing disparity; and
- vi. the development of a written policy to address any disparities identified after conducting the review in the preceding paragraph.

B. Reporting Requirement:

- i. In accordance with the Timetable set in Section I, the College will submit a written report containing the results of the review further described in Section II(3)(A)(i) to OCR for its review and approval.
- ii. In accordance with the Timetable set in Section I, the College will submit to OCR the plan to address compensation disparities identified and further described in Section II(3)(A)(ii). Within the number of days set in the Timetable of OCR's approval of the plan, the College shall begin to implement same. Within the number of days set in the Timetable thereafter, the College shall provide to OCR documentation evidencing the implementation of the plan.
- iii. In accordance with the Timetable set in Section I, the College will submit to OCR a written report containing the results of the review further described in Section II(3)(A)(iii).
- iv. In accordance with the Timetable set in Section I, the College will submit to OCR the plan to address any disparities identified in attendance of men's and women's teams coaches at national conventions, training, or other professional development, as further described in Section II(3)(A)(iv). Within the number of days set in the Timetable of OCR's approval of the plan, the College shall begin to implement same. Within the number of days set in the Timetable thereafter, the College shall provide to OCR documentation evidencing implementation of the plan.

- v. In accordance with the Timetable set in Section I, the College will submit to OCR a written report containing the results of the review further described in Section II(3)(A)(v).
- vi. In accordance with the Timetable set in Section I, the College will submit to OCR the policy to address any disparities identified in service by coaches on hiring committees, as further described in Section II(3)(A)(vi). Within the number of days set in the Timetable of OCR's approval of the plan, the College shall publish same in the athletic department handbook and any other appropriate publication. Within the number of days set in the Timetable thereafter, the College shall provide OCR with documentation evidencing publication of the policy and outlining any steps taken to date by the College to implement the policy.

Action Item 4: Publicity

Beginning with academic year 2016-17, the College will take steps to ensure that it provides equal athletic opportunities for members of both sexes in the provision of publicity in accordance with 34 C.F.R. § 106.41(c)(10) and OCR policy. OCR will determine compliance based on the equivalency of benefits and services for the availability and the quality of sports information personnel, the services they provide, other publicity resources, and the quality and the quantity of publications and other promotional devices featuring men's and women's programs

- A. **Commitment:** In accordance with the Timetable set in Section I, the College will complete an assessment of publicity services to ensure that female and male student athletes are provided with equivalent benefits and services in this area. The assessment will include, at a minimum:
 - i. a qualitative and quantitative review of all publications and promotional materials of the athletic department provided to the general public and/or distributed to students, staff, and alumni, including press releases, press guides, recruitment brochures, schedule cards, samples of game programs, and similar publications and/or promotional materials for each men's and women's team;
 - ii. a review of the dates on which all publications listed in the preceding paragraph were made available to the general public and/or distributed to students, staff, and alumni, in relation to each team's recruiting and competitive season;
 - iii. a review of the types of publicity or promotional services the institution provides to the men's and women's athletic programs;
 - iv. a review of the types of services provided by the sports information

director and the public relations director to men's and women's athletic programs;

- v. a review of the College's procedures for soliciting media coverage for its men's and women's intercollegiate athletic teams, including radio and television coverage of athletic contests, to ensure that to the maximum extent within the control of the College, its men's and women's teams receive equivalent access to such coverage; and
- vi. the development of a written publicity policy to address disparities identified after conducting the reviews in the preceding paragraphs I(4)(A)(i)-(v). The policy should apply uniformly to men and women's teams and should be neutral both on its face and in practice.

B. Reporting Requirement:

- i. In accordance with the Timetable set in Section I, the College will submit to OCR a written report containing the results of the review described in Section II(4)(A)(i)-(v) to OCR for its review and approval.
- ii. In accordance with the Timetable set in Section I, the College will submit to OCR the written policy governing publicity described in Section II(4)(A)(vi). Within the number of days set in the Timetable of OCR's approval of the policy, the College shall publish same in the athletic department handbook and any other appropriate publication. Within the number of days set in the Timetable days thereafter, the College shall provide OCR with documentation evidencing publication of the policy and outlining the steps taken to date by the College to implement the policy.

Action Item 5: Provision of Support Services

Beginning with academic year 2016-17, the College will take steps to ensure that it provides equal athletic opportunities for members of both sexes in the provision of support services, in accordance with 34 C.F.R. § 106.41(c) and OCR policy. OCR will determine compliance based on the equivalency of benefits and services regarding the amount of administrative, secretarial, and clerical assistance provided to both the men's and women's teams, and the availability of office space, equipment and supplies, and other support services.

A. Commitment: In accordance with the Timetable set in Section I, the College will complete an assessment of the provision of support services and office space to ensure that female and male student athletes are provided with equivalent benefits and services in this area. The assessment will include, at a minimum:

- i. a review of the office space assignments for all coaching staff, of the allocation of private offices (vs. shared offices) among assistant coaches

of men's and women's teams to ensure equal athletic opportunities, and of the allocation of common spaces outside of coach offices among men's and women's teams to ensure equal athletic opportunities; and

- ii. the development of a written plan to address disparities identified after conducting the reviews in the preceding paragraph.

B. Reporting Requirement:

- i. In accordance with the Timetable set in Section I, the College will submit to OCR a written report containing the results of the review further described in Section II(5)(A)(i).
- ii. In accordance with the Timetable set in Section I, the College will submit to OCR the written plan to address support services/office assignment disparities identified in the written report developed pursuant to the preceding paragraph. Within the number of days set in the Timetable of OCR's approval of the plan, the College shall begin to implement same. Within the number of days set in the Timetable thereafter, the College shall provide to OCR documentation evidencing implementation of the plan.

Action Item 6: Recruitment of Athletes

Beginning with academic year 2016-17, the College will take steps to ensure that it provides equal athletic opportunities for members of both sexes with respect to recruitment, in accordance with 34 C.F.R. § 106.41(c) and OCR policy. OCR will determine compliance based on the equivalency of benefits and services provided with regard to: 1) whether coaches or other professional athletic personnel in the College's programs serving male and female athletes are provided with substantially equal opportunities to recruit; 2) whether the financial and other resources made available for recruitment in the College's men's and women's teams are equivalently adequate to meet the needs of each program; and 3) whether the differences in benefits, opportunities, and treatment afforded to prospective athletes of each sex have a disproportionately limiting effect upon the recruitment of athletes of either sex.

A. Commitment: In accordance with the Timetable set in Section I, the College will complete an assessment to ensure it is providing equal athletic opportunities to members of both sexes with respect to the recruitment budgets allocated to men's and women's athletic programs. The assessment will include:

- i. a review of the recruitment budget allocated to each team, including a review of why the College set each team's recruitment budget at a particular level; an assessment of whether each team's recruitment budget currently meets the team's needs (using multiple indicators, including but not limited to coach and athlete reports and review of relevant

documentation); whether recruitment budgets are allocated in an equitable manner across men's and women's teams; whether some teams are limiting recruitment travel or activities in order to stay within budget while others are not; and any other inquiry necessary to ascertain the sufficiency of the current recruitment budget allocation to each team; and

- ii. the development of a written athletic budget policy with respect to recruitment budgets that addresses disparities identified after conducting the review in the preceding paragraph. The policy should apply uniformly to men and women's teams and should be neutral both on its face and in practice.

B. Reporting Requirement:

- i. In accordance with the Timetable set in Section I, the College will submit to OCR a written report containing the result of the review further described in Section II(6)(A)(i).
- ii. In accordance with the Timetable set in Section I, the College will submit to OCR the written policy with respect to recruitment budgets further described in Section II(6)(A)(ii). Within the number of days set in the Timetable of OCR's approval of the policy, the College shall publish same in the athletic department handbook and any other appropriate publication. Within the number of days set in the Timetable thereafter, the College shall provide OCR with documentation evidencing publication of the policy and outlining the steps taken to date by the College to implement the policy.

III. Investigative Determinations under OCR CPM Section 303(b): Non-Compliance Determinations

OCR determined that the preponderance of the evidence supported a conclusion that the College failed to comply with applicable regulations in the following areas: the accommodation of athletic interests and abilities and locker rooms, practice and competitive facilities. The College agrees to take the following actions to remedy these areas.

Action Item 7: Accommodation of Athletic Interests and Abilities

Beginning with academic year 2016-17, the College will take steps to ensure that it provides equal athletic opportunities for members of both sexes in accommodating athletic interests and abilities, in accordance with 34 C.F.R § 106.41(c)(1). Specifically, the College will assess the interests and abilities of female students and demonstrate whether same are fully and effectively accommodated by the College's current athletics program. OCR will determine whether the selection of sports and levels of competition

in the intercollegiate athletics program at the College effectively accommodates the interests and abilities of female students.

- A. **Commitment #1:** The College 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 the December 11, 1979 guidance, A Policy Interpretation: Title IX Intercollegiate Athletics. 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 College will provide athletic participation opportunities that are either substantially proportionate to each sex's enrollment, or demonstrate that the interests and abilities of female students are fully and effectively accommodated by the College's current athletics program.

The College will develop a policy setting forth the process by which it will review requests (whether oral or written, formal or informal) made to College administrators, coaches, or staff by or on behalf of students to add a particular sport, squad, level of sport, or to elevate an existing intramural sport or club sport, if any, to intercollegiate sport status, including its policy or procedure for requesting additional sports, the designation of the person responsible for receiving and responding to such requests, and the College's plans, methods and efforts to ensure wide distribution of such policies and procedures to potential applicants, existing and newly admitted students, as well as to coaches and other employees. A copy of the College's draft policy will be submitted to OCR for its review and approval before being adopted by the College, published, and disseminated to students. When submitting the draft policy to OCR for review and approval, the College will also describe the method it will use to publish and effectively disseminate the policy or procedure to its students.

- B. **Reporting Requirement #1:** In accordance with the Timetable set in Section I, the College will provide, for OCR's review and approval, a copy of the College's policy setting forth the process by which it will review requests to add additional or elevate existing sports and the College's plan to ensure wide distribution of such policies and procedures to potential applicants, existing and newly admitted students, as well as to coaches and other employees.
- C. **Commitment #2: Part I – Substantially Proportionate Participation Opportunities.** If the College determines that the 2015-16 school year intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments, the College will notify OCR. In determining substantial proportionality, the College agrees that: 1) enrollment rates will be calculated using the full-time undergraduate enrollment by sex; and 2) the participation rates of female and male students will reflect the total number of females and males listed on the

NJCAA squad 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 noncompetitive athletic activities.

- D. **Reporting Requirement #2:** In accordance with the Timetable set in Section I, the College will provide to OCR a copy of the results of its determination, documentation verifying its 2015-16 school year enrollment, and the NJCAA squad list for each intercollegiate sport on the date of the first competition for each sport for OCR's review and approval. OCR will determine whether the College has demonstrated current compliance by meeting Part I of the Three-Part Test as outlined in Section III(7)(A) and (C).
- E. **Commitment and Reporting Requirement #3: Part III - Effective Accommodation of Interests and Abilities.** If the College plans to demonstrate compliance with Part III of the Three-Part Test (or is otherwise unable to demonstrate current compliance by meeting Part I of the Three-Part Test as outlined in Section III(7)(A) and (C) of this Agreement) 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 the interests and abilities of students who are members of the underrepresented sex have been fully and effectively accommodated by the College's current intercollegiate athletics program it will adhere to Sections III(7)(E)(i) (Objective Assessment) and III(7)(E)(ii) (Actions to Increase Athletic Opportunities) of this Agreement.
- i. **Objective Assessment - Commitment:** The College will conduct an objective assessment to determine the athletic interests and abilities of female students and whether the College is fully and effectively accommodating the athletic interests and abilities of its female students. The assessment will be based on multiple indicators of interest and multiple indicators of ability, including:
 - a. administration of a survey of students and admitted students who are likely to attend 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 female students. A copy of the College's draft survey or other assessment tool will be submitted to OCR for its review and approval before being distributed to students and admitted students. The College will make revisions to the survey as advised by OCR. Upon OCR's written approval, the College will administer the survey, endeavoring to generate as high a response rate as possible, including following up with students and admitted students who do not respond;

- b. identification of any sports, squads, and levels of sports for female students that are not currently offered by the College that are offered by schools that compete within the athletic conference in which the College competes and by schools that are within the College's normal competitive region;
- c. reviewing rates of participation by female students in club and intramural sports, if any, at the College;
- d. reviewing any requests (whether oral or written, formal or informal) made to College administrators, coaches, or staff by or on behalf of female students and admitted female students to add a particular sport, squad, or level of sport, or to elevate an existing intramural sport or club sport, if any, to intercollegiate sport status;
- e. examination of the participation rates of female students in interscholastic sports, amateur athletic associations, and community sports leagues that operate in the areas from which the College draws its enrollment;
- f. reviewing the number of students cut from any women's team in the last three years and the reasons they were cut, to assess whether any of the students who were cut have the ability and interest to compete at the intercollegiate level in that or another sport and whether sufficient numbers of students who were cut could sustain a College intramural or club sport;
- g. examination of assessments made by College coaches or staff during tryouts, or observations of students participating in intramural competition, and other information reflecting the ability of female students compete in a particular sport, prior participation in that sport or a similar sport at the middle or high school level or intramural or club level, general athletic ability, participation in other 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 who are likely to attend to play at the same level of competition engaged in by the College'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.); and
- h. consideration of any other information that demonstrates the athletic interests and abilities of the College's female students.

ii. **Objective Assessment - Reporting Requirement**

- a. In accordance with the Timetable set in Section I, the College will provide a copy of the draft survey or assessment tool referenced in Section III(7)(E)(i)(a) above (student survey), for OCR's review and approval.
- b. In accordance with the Timetable set in Section I, the College will provide to OCR a complete description of the planned methodology for conducting the student survey, including how the survey will be distributed, the number of surveys to be distributed, any planned follow-up to the initial distribution of the survey, the names and contact information for the individual(s) who prepared the survey and the individuals will evaluate the responses to the surveys, and the protocol for retaining a copy of any notes or other documents compiled during the review of the student survey.
- c. In accordance with the Timetable set in Section I, the College will administer the OCR approved student survey.
- d. In accordance with the Timetable set in Section I, the College will provide to OCR a detailed report summarizing results of the assessment conducted by the College pursuant to Section III(7)(E)(i)(a)-(h) of this Agreement (College assessment). The report will include, at a minimum, the following information and/or supporting documentation:
 1. a copy of the results of the student survey referenced in Section III(7)(E)(i)(a) above, including but not limited to the number of students by sex, by sport, who indicated an interest in each sport, a complete description of the methodology used to conduct the survey, including how the survey was distributed, the number of surveys distributed and the number of responses, 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 survey, and a copy of any notes or other documents compiled during the review of the student survey;
 2. an analysis of the results of the student survey or other information collected from students using a method that is designed to fully and accurately assess unmet athletic interests, and if applicable, abilities in intercollegiate sports among female students;

3. a list of sports, squads, and levels of sports for female students that are not currently offered by the College but are offered either by schools that compete within the athletic conference in which the College competes or by schools that are within the College's normal competitive region and geographic area;
4. copies of any written requests and a summary of any non-written requests made by or on behalf of female students to add a particular sport, squad, or level of sport, or to elevate an existing clubs sport to intercollegiate sport status;
5. a summary of any assessments made by coaches or staff during tryouts, or other information reflecting the ability of female students to compete in a particular sport, prior participation in that sport or a similar sport at the interscholastic level or club or intramural level, general athletic ability, participation in other high school intercollegiate sports, the nature of the particular sport, and other relevant factors; and
6. the College's analysis and conclusions as to whether the College is fully and effectively accommodating the athletic interests and abilities of female students.

iii. **Actions to Increase Athletic Opportunities – Commitment:** In accordance with the Timetable set in Section I, if the College is unable to demonstrate compliance pursuant to Section III(7)(C), Part I - Substantially Proportionate Participation Opportunities, the College will submit its detailed plan with timeframes to effectively accommodate the interests and abilities of female students to the extent necessary to provide equal opportunity in its intercollegiate athletics program by the 2018-19 school year. The College's detailed plan will include the steps noted below. In addition, the plan will include a description of interim steps that will be taken by the College during the 2016-17 and 2017-18 school years to increase intercollegiate athletic participation opportunities for female students. The College also agrees to conduct periodic assessments of the athletic interests and abilities of its students and admitted students in subsequent years to ensure it is equally and effectively accommodating the athletic interests and abilities of its male and female students consistent with Title IX and its implementing regulation. The College will begin implementation of the plan approved by OCR within 30 days of OCR's approval.

a. *Sports currently offered:* The College will review the squad sizes of current teams to identify opportunities to increase 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.

- b. *Sports not currently offered:* The College will determine whether there are a sufficient number of female students with the interest and ability to support the addition of a team in sports not currently offered by the College as intercollegiate sports and sufficient competition in those sports within the College's normal competitive region. If so, the College will add a team in those sports and will hire a coaching staff, recruit student athletes and provide these student athletes equivalent treatment, benefits and service, including sufficient resources to the coaching staff during the 2016-17 and/or 2017-18 academic years to ensure that each team begins competition no later than the 2018-19 academic year, consistent with the above determination.
- c. *Response to developing interests and abilities:* For any sport that is not currently offered by the College in which there are a sufficient number of female students who have the interest and ability to support a team in that sport, but where the College determines that there is not sufficient competition in that sport within the College's normal competitive region, the College 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 College's normal competitive region, and elevating such sports to intercollegiate status when competition becomes available.
- d. *Elimination of athletic teams:* The College acknowledges that OCR does not require or encourage the elimination of any College intercollegiate athletic teams and that it seeks action from the College 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. The College acknowledges 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 College adds any sports, the College will provide those team(s), in

a manner comparable to other intercollegiate teams, with sufficient funds in its budget, to ensure equal opportunities, to cover expenses including, but not limited to: scholarships and financial support, coaches, recruiting, equipment and supplies, travel, publicity and support services.

iv. **Actions to Increase Athletic Opportunities – Reporting Requirements**

In accordance with the Timetable set in Section I, the College will provide to OCR for its review and approval a copy of its detailed report that includes information and supporting documentation demonstrating the plan required above will effectively accommodate the interests and abilities of members of both sexes. The plan will include a description of the interim steps that will be taken by the College during the 2016-17 and 2017-18 school years to increase intercollegiate athletic opportunities for the underrepresented sex.

In accordance with the Timetable set in Section I, and by the same dates annually thereafter, the College 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 College, an update on the College'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 2018-19 school year. The status reports will also include documentation regarding the interim steps taken by the College to increase intercollegiate athletic participation opportunities for women during the 2016-17 and 2017-18 school years.

In accordance with the Timetable set in Section I, and by the same date annually thereafter, the College will provide OCR, for OCR's review and approval, a report that includes information demonstrating that its intercollegiate athletics program equally effectively accommodate the athletic interests and abilities of its female students.

Action Item 8: Locker Rooms, Practice and Competitive Facilities

Beginning with academic year 2016-17, the College will take steps to ensure that it provides equal athletic opportunities for members of both sexes in the provision of locker rooms, practice and competitive facilities, in accordance with 34 C.F.R. § 106.41(c)(7), and OCR policy. OCR will determine compliance based on the equivalency of benefits and services for members of both sexes for the provision of locker rooms, practice and competitive facilities.

A. **Commitment:** In accordance with the Timetable set in Section I, the College will complete an assessment of locker rooms, practice and competitive facilities to ensure that female and male student athletes are provided with equivalent benefits and services in this area. The assessment will include:

- i. a review and comparison of the locker room facilities and amenities provided to men's and women's teams, including examination of the exclusivity of use, availability, quality, maintenance, and amenities of each locker room facility;
- ii. in particular, this review should consider the softball team's locker room facility (quality; size; proximity and access to shower areas, toilets, and sinks; and permanence of building structure) and the volleyball team's locker room facility (quality of flooring and frequency of leaks);
- iii. the development of a written plan to address disparities in the locker room facilities and amenities identified after conducting the review in the preceding paragraph;
- iv. a review of the practice and competitive facilities provided to men's and women's teams to ensure comparable quality, availability, exclusivity of use, maintenance, and preparation, and to determine whether they comply with regulations regarding size (in particular, the football practice facility); and
- v. the development of a written plan to address disparities in practice and competitive facilities identified after conducting the review in the preceding paragraph.

B. Reporting Requirement

- i. In accordance with the Timetable set in Section I, the College will submit to OCR a written report containing the results of the reviews further described in Section III(8)(A)(i), (ii), and (iv) to OCR for its review and approval.
- ii. In accordance with the Timetable set in Section I, the College will submit to OCR the plan to address locker room and practice facilities disparities, as further described in sections 8(A)(iii) and (v). Within the number of days set in the Timetable of OCR's approval of the plan, the College shall begin to implement same. Within the number of days set in the Timetable thereafter, the College shall provide to OCR documentation evidencing implementation of the plan.

The College understands that OCR will not close the monitoring of this Agreement until OCR determines that the College has fulfilled the terms of this Agreement and is in

compliance with Title IX and its implementing regulation at 34 C.F.R. Part 106, which were at issue in this case.

The College 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 and that all actions taken to comply with the requirements of the Agreement are subject to OCR's review and approval. Further, the College understands that during the monitoring of this Agreement, if necessary, OCR may visit the College, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the College has fulfilled the terms of this Agreement and is in compliance with Title IX and its implementing regulation at 34 C.F.R. Part 106, which were at issue in this case.

The College 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 College written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

Date

Alysia Johnston, President
Fort Scott Community College

Appendix A - Timetable
Fort Scott Community College
OCR Complaint No. 07052020

I. Timetable

The College submits this timetable in accordance with its resolution agreement with OCR dated _____.

**II. Resolution under OCR's Case Processing Manual² Section 302:
Resolution Agreement Reached During an Investigation**

Before OCR completed its investigation, the College expressed an interest in resolving the following compliance issues through a resolution agreement: athletic financial assistance, travel and per diem, the opportunity to receive coaching and the compensation of coaches, publicity, the provision of support services, and the recruitment of athletes. The College agrees to take the following actions to resolve these areas.

Action Item 1: Athletic Financial Assistance

Beginning with academic year 2016-17, the College will take steps to ensure that it provides equal athletic opportunities for members of both sexes in the component of athletic financial assistance, in accordance with 34 C.F.R. § 106.37 (c) and OCR policy.

A. Commitment:

- i. *Reduction in Scholarship/Grants-in-Aid:* The College agrees it will not reduce the percent of the total scholarship and/or grants-in-aid dollars currently awarded to members of the underrepresented sex without first providing documentation demonstrating the reason for the proposed reduction and obtaining approval from OCR as it simultaneously develops an athletic financial assistance plan, in conjunction with the plan for increasing athletic opportunities for members of the underrepresented sex that 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, consistent with the requirements of Title IX, the Title IX implementing regulation at 34 C.F.R. § 106.37(c), and applicable OCR policies.
- ii. *Demonstration of Current Compliance:* In accordance with the Timetable set in Section I, the College will compare the amount of athletic scholarships and/or grants-in-aid awarded to male and female athletes during the 2015-16 school year to determine if the athletic

² The *Case Processing Manual* is available on OCR's website at <http://www.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

scholarships and/or grants-in-aid were substantially equal to the male and female students' intercollegiate athletic participation rates, after taking into consideration any legitimate, nondiscriminatory reasons for any differences.

The College will compare the intercollegiate athletic participation rates of female and male students as reflected on the NJCAA 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.

The College 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.

After taking all legitimate, nondiscriminatory explanations into account, the College 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.

B. Reporting Requirement – Evaluation of Current Compliance

By _____, the College will provide OCR with a detailed report, with copies of supporting documents, reflecting the College's evaluation of the awarding of athletic financial assistance to the College's female and male intercollegiate athletes pursuant to Section II(1)(A)(ii) of this Agreement. The report will include, at a minimum, a copy of the participation data that the College relied on in determining the number of male and female students in the College'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 College, and a description of any legitimate, nondiscriminatory factors that led the College to make adjustments to the data as well as a detailed description of the adjustments made.

C. Reporting Requirement – Plan to Ensure Future Compliance

The College will take the following actions only if unable to demonstrate current compliance with Title IX pursuant to Section II(1)(A)(ii) (Demonstration of Current Compliance) of this Agreement:

By _____, the College 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 academic year named in the Timetable, including the steps noted below. The plan will include a description of interim steps that have been or will be taken by the College during the years between the dates of this agreement and said academic year. The College will initiate implementation of the plan upon review and approval by OCR.

The College understands that nothing in this agreement requires the College to reduce the amounts of athletic scholarships and/or grants-in-aid it offers to either sex and that any such reductions are discouraged. In making its calculations, the College will use intercollegiate athletic participation numbers that take into account any increase in intercollegiate athletic participation opportunities the College is providing or plans to provide to students from the underrepresented sex in accordance with Section II(1)(A)(i) of this Agreement.

The College 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 College must demonstrate that its asserted rationale is in fact reasonable and does not reflect underlying discrimination. For instance, if the College asserts the phase-in of scholarships for a new team as a justification for a disparity, the College 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.

The College 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.

D. Reporting Requirement – Implementation of the Plan in Section II(1)(C)

The College will complete and submit to OCR the following reporting requirements only if the College implements the action items set forth above in Section II(1)(C) of this Agreement:

By _____, the College will provide OCR with reports, for OCR's review and approval, that include information documenting the steps it has taken to implement the OCR approved plan referenced in Section II(1)(C) of this Agreement and demonstrating that the College 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 academic year specified in the Timetable.

By _____, the College will provide OCR with a report for OCR's review and approval detailing any and all specific actions taken by the College during the academic year set in the Timetable 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.

Action Item 2: Travel and Per Diem

Beginning with academic year 2016-17, the College will take steps to ensure that it provides equal athletic opportunities for members of both sexes in the component of travel and per diem, in accordance with 34 C.F.R. § 106.41(c)(4) and OCR policy. OCR will determine whether the College has provided equivalent benefits and services for members of both sexes with regard to travel and per diem.

- A. Commitment:** By _____, the College will complete an assessment of the provision of travel and per diem allowances to ensure that female and male student athletes are provided with equivalent benefits and services in this area. The assessment will include:
- i. a review of the modes or methods of transportation used by men's and women's teams for each competition, noting whether the team, athletic department, or transportation department pays for the vehicles and/or gas; whether there is a paid driver or a coach/athlete driver; whether the vehicle is sufficient for a full-travel squad, including athletes who will not play in the game, or only sufficient for athletes required to play in a particular game; whether there is a substantial difference in the quality of school-owned and rented vehicles; and any other inquiry identified by the College as relevant to the assessment of whether there is equitable treatment in this area;
 - ii. the development of a written athletic travel and per diem policy to address disparities identified after conducting the review in the preceding paragraph. The policy should apply uniformly to men and women's teams and should be neutral both on its face and in practice;
 - iii. a review of the travel budget allocated to each team, including a review and explanation of why the College set each team's travel

budget at a particular level; an assessment of whether each team's travel budget currently meets the team's needs (using multiple indicators, including but not limited to coach and athlete reports and review of relevant documentation); whether travel budgets are allocated in an equitable manner (adequate to meet the travel needs of each team with comparable modes of transportation, housing furnished during travel, length of stay before and after competitive events, per diem allowances, and dining arrangements) across men's and women's teams; whether some teams are limiting team travel or placing more athletes per bed or per room when traveling in order to stay within budget while others are not; and any other inquiry necessary to ascertain the sufficiency of the current travel budget allocation to each team; and

- iv. the development of a written plan to address budgetary disparities identified after conducting the review in the preceding paragraph.

B. Reporting Requirement:

- i. By _____ the College will submit a written report containing the result of the review further described in Section II(2)(A)(i) to OCR for its review and approval.
- ii. By _____, the College will submit to OCR the written athletic travel and per diem policy governing modes of transportation further described in Section II(2)(A)(ii). Within ___ days of OCR's approval of the policy, the College shall publish same in the athletic department handbook and any other appropriate publication. Within _____ days thereafter, the College shall provide OCR with documentation evidencing publication of the policy and outlining the steps taken to date by the College to implement the policy.
- iii. By _____, the College will submit to OCR a written report containing the result of the reviews further described in section II(2)(A)(iii).
- iv. By _____, the College will submit to OCR the written plan to address budgetary disparities further described in Section II(2)(A)(iv). Within ___ days of OCR's approval of the plan, the College shall begin implementation of the plan. Within _____ days thereafter, the College shall provide to OCR documentation evidencing implementation of the plan.

Action Item 3: Opportunity to Receive Coaching and Compensation of Coaches

Beginning with academic year 2016-17, the College will take steps to ensure that it provides equal athletic opportunities for members of both sexes in the component of opportunity to receive coaching and compensation of coaches, in accordance with 34 C.F.R. § 106.41(c)(5) and (6) and OCR policy. OCR will determine compliance based on the equivalency of benefits and services for members of both sexes for the availability and compensation of coaches.

- A. Commitment:** By _____, the College will complete an assessment of the component of opportunity to receive coaching and compensation of coaches to ensure that female and male student athletes are provided with equivalent benefits and services in this area. The assessment will include:
- i. a review of the compensation packages offered to part-time coaches of comparable experience, of the budget for compensation of part-time coaches allocated to comparable sports, and of the total budget allocated to men's versus women's teams for coaching salaries;
 - ii. the development of a written plan to address disparities identified after conducting the review in the preceding paragraph;
 - iii. a review of the attendance of men's and women's teams coaches at national conventions, training, or other professional development; the funding source for the team's coaches that attended same; whether, for the team's coaches that did not attend same, the consideration was primarily lack of funds; and the total general budget afforded to each team, to ascertain whether there is a connection between disparities within the men's and women's teams' budgets and disparities in their attendance at national conventions, training, or other professional development;
 - iv. the development of a written plan to address any disparities identified after conducting the review in the preceding paragraph;
 - v. a review of which coaches from men's and women's teams have served on hiring committees; the factors that resulted in said coaches serving; whether there is a disparity in the amount of men's and women's team coaches that have served; and what factors should be changed, if any, to address an existing disparity; and
 - vi. the development of a written policy to address any disparities identified after conducting the review in the preceding paragraph.

B. Reporting Requirement:

- i. By _____, the College will submit a written report containing the results of the review further described in Section II(3)(A)(i) to OCR for its review and approval.
- ii. By _____, the College will submit to OCR the plan to address compensation disparities identified and further described in Section II(3)(A)(ii). Within ___ days of OCR’s approval of the plan, the College shall begin to implement same. Within _____ days thereafter, the College shall provide to OCR documentation evidencing implementation of the plan.
- iii. By _____, the College will submit to OCR a written report containing the results of the review further described in Section II(3)(A)(iii).
- iv. By _____, the College will submit to OCR the plan to address any disparities identified in attendance of men’s and women’s teams coaches at national conventions, training, or other professional development, as further described in Section II(3)(A)(iv). Within ___ days of OCR’s approval of the plan, the College shall begin to implement same. Within _____ days thereafter, the College shall provide to OCR documentation evidencing implementation of the plan.
- v. By _____, the College will submit to OCR a written report containing the results of the review further described in Section II(3)(A)(v).
- vi. By _____, the College will submit to OCR the policy to address any disparities identified in service by coaches on hiring committees, as further described in Section II(3)(A)(vi). Within ___ days of OCR’s approval of the plan, the College shall publish same in the athletic department handbook and any other appropriate publication. Within _____ days thereafter, the College shall provide OCR with documentation evidencing publication of the policy and outlining any steps taken to date by the College to implement the policy.

Action Item 4: Publicity

Beginning with academic year 2016-17, the College will take steps to ensure that it provides equal athletic opportunities for members of both sexes in the provision of publicity in accordance with 34 C.F.R. § 106.41(c)(10) and OCR policy. OCR will determine compliance based on the equivalency of benefits and services for the

availability and the quality of sports information personnel, the services they provide, other publicity resources, and the quality and the quantity of publications and other promotional devices featuring men's and women's programs

A. Commitment: By _____, the College will complete an assessment of publicity services to ensure that female and male student athletes are provided with equivalent benefits and services in this area. The assessment will include, at a minimum:

- i. a qualitative and quantitative review of all publications and promotional materials of the athletic department provided to the general public and/or distributed to students, staff, and alumni, including press releases, press guides, recruitment brochures, schedule cards, samples of game programs, and similar publications and/or promotional materials for each men's and women's team;
- ii. a review of the dates on which all publications listed in the preceding paragraph were made available to the general public and/or distributed to students, staff, and alumni, in relation to each team's recruiting and competitive season;
- iii. a review of the types of publicity or promotional services the institution provides to the men's and women's athletic programs;
- iv. a review of the types of services provided by the sports information director and the public relations director to men's and women's athletic programs;
- v. a review of the College's procedures for soliciting media coverage for its men's and women's intercollegiate athletic teams, including radio and television coverage of athletic contests, to ensure that to the maximum extent within the control of the College, its men's and women's teams receive equivalent access to such coverage; and
- vi. the development of a written publicity policy to address disparities identified after conducting the reviews in the preceding paragraphs I(4)(A)(i)-(v). The policy should apply uniformly to men and women's teams and should be neutral both on its face and in practice.

B. Reporting Requirement:

- i. By _____, the College will submit to OCR a written report containing the results of the review described in Section II(4)(A)(i)-(v) to OCR for its review and approval.
- ii. By _____, the College will submit to OCR the written policy

governing publicity described in Section II(4)(A)(vi). Within ___days of OCR’s approval of the policy, the College shall publish same in the athletic department handbook and any other appropriate publication. Within _____ days thereafter, the College shall provide OCR with documentation evidencing publication of the policy and outlining the steps taken to date by the College to implement the policy.

Action Item 5: Provision of Support Services

Beginning with academic year 2016-17, the College will take steps to ensure that it provides equal athletic opportunities for members of both sexes in the provision of support services, in accordance with 34 C.F.R. § 106.41(c) and OCR policy. OCR will determine compliance based on the equivalency of benefits and services regarding the amount of administrative, secretarial, and clerical assistance provided to both the men’s and women’s teams, and the availability of office space, equipment and supplies, and other support services.

A. Commitment: By _____, the College will complete an assessment of the provision of support services and office space to ensure that female and male student athletes are provided with equivalent benefits and services in this area. The assessment will include, at a minimum:

- i. a review of the office space assignments for all coaching staff, of the allocation of private offices (vs. shared offices) among assistant coaches of men’s and women’s teams to ensure equal athletic opportunities, and of the allocation of common spaces outside of coach offices among men’s and women’s teams to ensure equal athletic opportunities; and
- ii. the development of a written plan to address disparities identified after conducting the reviews in the preceding paragraph.

B. Reporting Requirement:

- i. By _____, the College will submit to OCR a written report containing the results of the review further described in Section II(5)(A)(i).
- ii. By _____, the College will submit to OCR the written plan to address support services/office assignment disparities identified in the written report developed pursuant to the preceding paragraph. Within ___days of OCR’s approval of the plan, the College shall begin to implement same. Within _____ days thereafter, the College shall provide to OCR documentation evidencing implementation of the plan.

Action Item 6: Recruitment of Athletes

Beginning with academic year 2016-17, the College will take steps to ensure that it provides equal athletic opportunities for members of both sexes with respect to recruitment, in accordance with 34 C.F.R. § 106.41(c) and OCR policy. OCR will determine compliance based on the equivalency of benefits and services provided with regard to: 1) whether coaches or other professional athletic personnel in the College's programs serving male and female athletes are provided with substantially equal opportunities to recruit; 2) whether the financial and other resources made available for recruitment in the College's men's and women's teams are equivalently adequate to meet the needs of each program; and 3) whether the differences in benefits, opportunities, and treatment afforded to prospective athletes of each sex have a disproportionately limiting effect upon the recruitment of athletes of either sex.

A. Commitment: By _____, the College will complete an assessment to ensure it is providing equal athletic opportunities to members of both sexes with respect to the recruitment budgets allocated to men's and women's athletic programs. The assessment will include:

- i. a review of the recruitment budget allocated to each team, including a review of why the College set each team's recruitment budget at a particular level; an assessment of whether each team's recruitment budget currently meets the team's needs (using multiple indicators, including but not limited to coach and athlete reports and review of relevant documentation); whether recruitment budgets are allocated in an equitable manner across men's and women's teams; whether some teams are limiting recruitment travel or activities in order to stay within budget while others are not; and any other inquiry necessary to ascertain the sufficiency of the current recruitment budget allocation to each team; and
- ii. the development of a written athletic budget policy with respect to recruitment budgets that addresses disparities identified after conducting the review in the preceding paragraph. The policy should apply uniformly to men and women's teams and should be neutral both on its face and in practice.

B. Reporting Requirement:

- i. By _____, the College will submit to OCR a written report containing the result of the review further described in Section II(6)(A)(i).
- ii. By _____, the College will submit to OCR the written policy with respect to recruitment budgets further described in Section II(6)(A)(ii). Within ___days of OCR's approval of the policy, the College shall publish

same in the athletic department handbook and any other appropriate publication. Within _____ days thereafter, the College shall provide OCR with documentation evidencing publication of the policy and outlining the steps taken to date by the College to implement the policy.

**III. Investigative Determinations under OCR CPM Section 303(b):
Non-Compliance Determinations**

OCR determined that the preponderance of the evidence supported a conclusion that the College failed to comply with applicable regulations in the following areas: the accommodation of athletic interests and abilities and locker rooms, practice and competitive facilities. The College agrees to take the following actions to remedy these areas.

Action Item 7: Accommodation of Athletic Interests and Abilities

Beginning with academic year 2016-17, the College will take steps to ensure that it provides equal athletic opportunities for members of both sexes in accommodating athletic interests and abilities, in accordance with 34 C.F.R § 106.41(c)(1). Specifically, the College will assess the interests and abilities of female students and demonstrate whether same are fully and effectively accommodated by the College's current athletics program. OCR will determine whether the selection of sports and levels of competition in the intercollegiate athletics program at the College effectively accommodates the interests and abilities of female students.

- A. Commitment #1:** The College 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 the December 11, 1979 guidance, A Policy Interpretation: Title IX Intercollegiate Athletics. 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 College will provide athletic participation opportunities that are either substantially proportionate to each sex's enrollment, or demonstrate that the interests and abilities of female students are fully and effectively accommodated by the College's current athletics program.

The College will develop a policy setting forth the process by which it will review requests (whether oral or written, formal or informal) made to College administrators, coaches, or staff by or on behalf of students to add a particular sport, squad, level of sport, or to elevate an existing intramural sport or club sport, if any, to intercollegiate sport status, including its policy or procedure for requesting additional sports, the designation of the person responsible for receiving and responding to such requests, and the College's plans, methods

and efforts to ensure wide distribution of such policies and procedures to potential applicants, existing and newly admitted students, as well as to coaches and other employees. A copy of the College's draft policy will be submitted to OCR for its review and approval before being adopted by the College, published, and disseminated to students. When submitting the draft policy to OCR for review and approval, the College will also describe the method it will use to publish and effectively disseminate the policy or procedure to its students.

B. Reporting Requirement #1: By _____, the College will provide, for OCR's review and approval, a copy of the College's policy setting forth the process by which it will review requests to add additional or elevate existing sports and the College's plan to ensure wide distribution of such policies and procedures to potential applicants, existing and newly admitted students, as well as to coaches and other employees.

C. Commitment #2: Part I – Substantially Proportionate Participation Opportunities. If the College determines that the 2015-16 school year intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments, the College will notify OCR. In determining substantial proportionality, the College agrees that: 1) enrollment rates will be calculated using the full-time undergraduate enrollment by sex; and 2) the participation rates of female and male students will reflect the total number of females and males listed on the NJCAA squad 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 noncompetitive athletic activities.

D. Reporting Requirement #2: By _____, the College will provide to OCR a copy of the results of its determination, documentation verifying its 2015-16 school year enrollment, and the NJCAA squad list for each intercollegiate sport on the date of the first competition for each sport for OCR's review and approval. OCR will determine whether the College has demonstrated current compliance by meeting Part I of the Three-Part Test as outlined in Section III(7)(A) and (C).

E. Commitment and Reporting Requirement #3: Part III - Effective Accommodation of Interests and Abilities. If the College plans to demonstrate compliance with Part III of the Three-Part Test (or is otherwise unable to demonstrate current compliance by meeting Part I of the Three-Part Test as outlined in Section III(7)(A) and (C) of this Agreement) 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 the interests and abilities of students who are members of the underrepresented sex have been fully and effectively accommodated by the College's current

intercollegiate athletics program it will adhere to Sections III(7)(E)(i) (Objective Assessment) and III(7)(E)(ii) (Actions to Increase Athletic Opportunities) of this Agreement.

- i. **Objective Assessment - Commitment:** The College will conduct an objective assessment to determine the athletic interests and abilities of female students and whether the College is fully and effectively accommodating the athletic interests and abilities of its female students. The assessment will be based on multiple indicators of interest and multiple indicators of ability, including:
 - a. administration of a survey of students and admitted students who are likely to attend 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 female students. A copy of the College's draft survey or other assessment tool will be submitted to OCR for its review and approval before being distributed to students and admitted students. The College will make revisions to the survey as advised by OCR. Upon OCR's written approval, the College will administer the survey, endeavoring to generate as high a response rate as possible, including following up with students and admitted students who do not respond;
 - b. identification of any sports, squads, and levels of sports for female students that are not currently offered by the College that are offered by schools that compete within the athletic conference in which the College competes and by schools that are within the College's normal competitive region;
 - c. reviewing rates of participation by female students in club and intramural sports, if any, at the College;
 - d. reviewing any requests (whether oral or written, formal or informal) made to College administrators, coaches, or staff by or on behalf of female students and admitted female students to add a particular sport, squad, or level of sport, or to elevate an existing intramural sport or club sport, if any, to intercollegiate sport status;
 - e. examination of the participation rates of female students in interscholastic sports, amateur athletic associations, and community sports leagues that operate in the areas from which the College draws its enrollment;

- f. reviewing the number of students cut from any women’s team in the last three years and the reasons they were cut, to assess whether any of the students who were cut have the ability and interest to compete at the intercollegiate level in that or another sport and whether sufficient numbers of students who were cut could sustain a College intramural or club sport;
- g. examination of assessments made by College coaches or staff during tryouts, or observations of students participating in intramural competition, and other information reflecting the ability of female students compete in a particular sport, prior participation in that sport or a similar sport at the middle or high school level or intramural or club level, general athletic ability, participation in other 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 who are likely to attend to play at the same level of competition engaged in by the College’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.); and
- h. consideration of any other information that demonstrates the athletic interests and abilities of the College’s female students.

ii. **Objective Assessment - Reporting Requirement**

- a. By _____, the College will provide a copy of the draft survey or assessment tool referenced in Section III(7)(E)(i)(a) above (student survey), for OCR’s review and approval.
- b. By _____, the College will provide to OCR a complete description of the planned methodology for conducting the student survey, including how the survey will be distributed, the number of surveys to be distributed, any planned follow-up to the initial distribution of the survey, the names and contact information for the individual(s) who prepared the survey and the individuals will evaluate the responses to the surveys, and the protocol for retaining a copy of any notes or other documents compiled during the review of the student survey.
- c. By _____, the College will administer the OCR approved student survey.

d. By _____, the College will provide to OCR a detailed report summarizing results of the assessment conducted by the College pursuant to Section III(7)(E)(i)(a)-(h) of this Agreement (College assessment). The report will include, at a minimum, the following information and/or supporting documentation:

1. a copy of the results of the student survey referenced in Section III(7)(E)(i)(a) above, including but not limited to the number of students by sex, by sport, who indicated an interest in each sport, a complete description of the methodology used to conduct the survey, including how the survey was distributed, the number of surveys distributed and the number of responses, 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 survey, and a copy of any notes or other documents compiled during the review of the student survey;
2. an analysis of the results of the student survey or other information collected from students using a method that is designed to fully and accurately assess unmet athletic interests, and if applicable, abilities in intercollegiate sports among female students;
3. a list of sports, squads, and levels of sports for female students that are not currently offered by the College but are offered either by schools that compete within the athletic conference in which the College competes or by schools that are within the College's normal competitive region and geographic area;
4. copies of any written requests and a summary of any non-written requests made by or on behalf of female students to add a particular sport, squad, or level of sport, or to elevate an existing club sport to intercollegiate sport status;
5. a summary of any assessments made by coaches or staff during tryouts, or other information reflecting the ability of female students to compete in a particular sport, prior participation in that sport or a similar sport at the interscholastic level or club or intramural level, general athletic ability, participation in other high

school intercollegiate sports, the nature of the particular sport, and other relevant factors; and

6. the College's analysis and conclusions as to whether the College is fully and effectively accommodating the athletic interests and abilities of female students.

iii. **Actions to Increase Athletic Opportunities – Commitment:** By _____, if the College is unable to demonstrate compliance pursuant to Section III(7)(C), Part I - Substantially Proportionate Participation Opportunities, the College will submit its detailed plan with timeframes to effectively accommodate the interests and abilities of female students to the extent necessary to provide equal opportunity in its intercollegiate athletics program by the 2018-19 school year. The College's detailed plan will include the steps noted below. In addition, the plan will include a description of interim steps that will be taken by the College during the 2016-17 and 2017-18 school years to increase intercollegiate athletic participation opportunities for female students. The College also agrees to conduct periodic assessments of the athletic interests and abilities of its students and admitted students in subsequent years to ensure it is equally and effectively accommodating the athletic interests and abilities of its male and female students consistent with Title IX and its implementing regulation. The College will begin implementation of the plan approved by OCR within 30 days of OCR's approval.

a. *Sports currently offered:* The College will review the squad sizes of current teams to identify opportunities to increase 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.

b. *Sports not currently offered:* The College will determine whether there are a sufficient number of female students with the interest and ability to support the addition of a team in sports not currently offered by the College as intercollegiate sports and sufficient competition in those sports within the College's normal competitive region. If so, the College will add a team in those sports and will hire a coaching staff, recruit student athletes and provide these student athletes equivalent treatment, benefits and service, including sufficient resources to the coaching staff during the 2016-17 and/or 2017-18 academic years to ensure that each team begins competition no

later than the 2018-19 academic year, consistent with the above determination.

c. Response to developing interests and abilities: For any sport that is not currently offered by the College in which there are a sufficient number of female students who have the interest and ability to support a team in that sport, but where the College determines that there is not sufficient competition in that sport within the College's normal competitive region, the College 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 College's normal competitive region, and elevating such sports to intercollegiate status when competition becomes available.

d. Elimination of athletic teams: The College acknowledges that OCR does not require or encourage the elimination of any College intercollegiate athletic teams and that it seeks action from the College 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. The College acknowledges 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 College adds any sports, the College will provide those team(s), in a manner comparable to other intercollegiate teams, with sufficient funds in its budget, to ensure equal opportunities, to cover expenses including, but not limited to: scholarships and financial support, coaches, recruiting, equipment and supplies, travel, publicity and support services.

iv. **Actions to Increase Athletic Opportunities – Reporting Requirements**

By _____, the College will provide to OCR for its review and approval a copy of its detailed report that includes information and supporting documentation demonstrating the plan required above will effectively accommodate the interests and abilities of members of both sexes. The plan will include a description of the interim steps that will be

taken by the College during the 2016-17 and 2017-18 school years to increase intercollegiate athletic opportunities for the underrepresented sex.

By _____, and by the same dates annually thereafter, the College 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 College, an update on the College'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 2018-19 school year. The status reports will also include documentation regarding the interim steps taken by the College to increase intercollegiate athletic participation opportunities for women during the 2016-17 and 2017-18 school years.

By _____, and by the same date annually thereafter, the College will provide OCR, for OCR's review and approval, a report that includes information demonstrating that its intercollegiate athletics program equally effectively accommodate the athletic interests and abilities of its female students.

Action Item 8: Locker Rooms, Practice and Competitive Facilities

Beginning with academic year 2016-17, the College will take steps to ensure that it provides equal athletic opportunities for members of both sexes in the provision of locker rooms, practice and competitive facilities, in accordance with 34 C.F.R. § 106.41(c)(7), and OCR policy. OCR will determine compliance based on the equivalency of benefits and services for members of both sexes for the provision of locker rooms, practice and competitive facilities.

- A. Commitment:** By _____, the College will complete an assessment of locker rooms, practice and competitive facilities to ensure that female and male student athletes are provided with equivalent benefits and services in this area. The assessment will include:
- i. a review and comparison of the locker room facilities and amenities provided to men's and women's teams, including examination of the exclusivity of use, availability, quality, maintenance, and amenities of each locker room facility;
 - ii. in particular, this review should consider the softball team's locker room facility (quality; size; proximity and access to shower areas, toilets, and sinks; and permanence of building structure) and the volleyball team's locker room facility (quality of flooring and frequency of leaks);

- iii. the development of a written plan to address disparities in the locker room facilities and amenities identified after conducting the review in the preceding paragraph;
- iv. a review of the practice and competitive facilities provided to men’s and women’s teams to ensure comparable quality, availability, exclusivity of use, maintenance, and preparation, and to determine whether they comply with regulations regarding size (in particular, the football practice facility); and
- v. the development of a written plan to address disparities in practice and competitive facilities identified after conducting the review in the preceding paragraph.

B. Reporting Requirement

- i. By _____, the College will submit to OCR a written report containing the results of the reviews further described in Section III(8)(A)(i), (ii), and (iv) to OCR for its review and approval.
- ii. By _____, the College will submit to OCR the plan to address locker room and practice facilities disparities, as further described in sections 8(A)(iii) and (v). Within ___days of OCR’s approval of the plan, the College shall begin to implement same. Within _____ days thereafter, the College shall provide to OCR documentation evidencing the implementation of the plan.

Date

XXXXX XXXXX, President
Fort Scott Community College