



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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March 24, 2017

XXX XXXX X. XXXXX, XXXXXXXX
XXXXX XXX XXXXXXX
XXXX XXX XXXX
XXXXX XXXX, XXXXXXX XXXXX

Re: Docket # 07162080

Dear XXX XXXXX:

On April 11, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the Dodge City Community College (College), Dodge City, Kansas, alleging discrimination on the basis of sex. This letter is to confirm the College has voluntarily submitted a Resolution Agreement (Agreement) to resolve allegation 1 of the complaint. For the reasons set out herein, OCR has determined there is insufficient evidence to conclude that the College subjected students to discrimination on the basis of sex as alleged in allegation 2 of the complaint.

Specifically, the complaint alleged that the College:

1. Provides different amounts or types of athletic scholarships for male and female athletes participating in its athletics program, and the difference in benefits has a negative impact on female students;¹ and
2. Subjected students to discrimination by failing to provide female students with equal housing opportunities with respect to the male students.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 United States Code (U.S.C.) § 1681, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance (FFA).

¹ To determine whether female athletes are negatively impacted in the provision of athletic scholarships, OCR will also determine whether the College discriminates against female students by denying them an equal opportunity to participate in intercollegiate athletics in violation of Title IX at 34 C.F.R. § 106.41(c).

As a recipient of FFA from the Department, the College is subject to Title IX. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>. On August 9, 2016, OCR mailed notification letters to the complainant and recipient. OCR made a data request to the recipient on August 9, 2016. The College responded to OCR's request for information on September 19, 2016, and on October 5, 2016, respectively. During the investigation, OCR reviewed the College's policies and procedures governing the award of athletic financial assistance, the College's lists of student athletes, and the financial statement listing the awards of financial assistance to athletes during the last school year. The Kansas Board of Regents provided enrollment data separated by gender and by full-time or part-time status for the 2015-16 school year. OCR also reviewed the housing applications submitted to the College during the last two school years.

ALLEGATION 1

OCR investigated whether the College provides different amounts or types of athletic scholarships for male and female athletes participating in its athletics program, and the difference in benefits has a negative impact on female students. OCR further investigated whether the College discriminates against female students by denying them an equal opportunity to participate in intercollegiate athletics in violation of Title IX at 34 C.F.R. § 106.41(c)

Accommodation of Interests and Abilities

OCR examined whether the College provides male and female students an equal opportunity to participate in its intercollegiate athletics program by effectively accommodating their interests and abilities, in accordance with 34 C.F.R. § 106.41(c)(1). OCR considered whether the selection of sports and levels of competition effectively accommodates the interests and abilities of members of both sexes.

OCR applied the following three-part test ("Three-Part Test") to assess whether the College is providing equal participation opportunities for individuals of both sexes:

1. Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
2. Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of that sex; or
3. Where the members of one sex are underrepresented among intercollegiate athletes, and the College cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

If the College meets any one part of the Three-Part Test, OCR will determine that the College provides each sex with equitable opportunities to participate. 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. If the College meets any part of the Three-Part Test, OCR will determine that the College is meeting this requirement. If the College's athletics program also equitably provides each sex with the level of competition reflective of their respective abilities, OCR will determine that the College is effectively accommodating athletic interests and abilities.

Part One: Substantially Proportionate Participation Opportunities

Under Part One of the Three-Part Test, where an institution provides intercollegiate level participation opportunities for male and female students in numbers substantially proportionate to their respective full-time undergraduate enrollments, OCR will find that the institution is providing nondiscriminatory participation opportunities for individuals of both sexes. OCR will also consider opportunities to be substantially proportionate when the number of opportunities that would be required to achieve proportionality would not be sufficient to sustain a viable team; i.e., a team for which there is a sufficient number of interested and able students and enough available competition to sustain an intercollegiate team. As a frame of reference in assessing this situation, OCR may consider the average size of teams offered for the underrepresented sex, a number that might vary by institution.

In academic year 2015-16, there were 413 (57.3%) male students and 308 (42.7%) female students enrolled at the College as full-time undergraduates. The College provided a total of 296 participation opportunities in its intercollegiate athletics program.² The College provided 184 (or 62.2% of the total) athletic opportunities for male students and 112 (or 37.8% of the total) athletic opportunities for female students.³ Based on this information, OCR determined that in academic year 2015-16, females had 112 (37.8%) of the athletic opportunities while they represented 308 (42.7%) of the overall full-time enrollment.

2015-16 Athletic Program Participation and Full-time Undergraduate Enrollment

Participants	Participation Rate⁴	Enrollment Rate	Participation Disparity
Men	184 (62.2%)	413 (57.3%)	+ 4.9%
Women	112 (37.8%)	308 (42.7%)	- 4.9%

² For purposes of determining the number of athletic opportunities, OCR counts all participants who are receiving institutionally sponsored support normally provided to athletes; participating in organized practice sessions and team meetings and activities on a regular basis; and, listed on the squad list; or, who because of injury, cannot meet the first three criteria, but who continue to receive athletic financial aid. For this analysis, the same athlete who participates on more than one team is counted as a participant on each team. In order to determine accurate participation numbers for male and female athletes, OCR scrutinizes the squad lists and other information provided by a recipient.

³ The College provided squad lists for the 2014-15 academic year which showed the number of female athletes, by team, in academic year 2014-15 was Volleyball 13, Softball 22, and Basketball 11. The number of male athletes, by team, in academic year 2014-15 was Football 61, Baseball 26, and Basketball 11. Each College athlete played on one team.

⁴ The College provided copies of the 2015-16 National Junior College Athletic Association eligibility sheets for each sport. The eligibility sheets required the College to indicate participation or non-participation for the athletes listed. As all of the listed on the eligibility sheet were listed on the rosters the College provided to OCR, OCR did not discount the athletes who were listed as non-participating on the eligibility sheets.

Participants	Participation Rate⁴	Enrollment Rate	Participation Disparity
Total	296	721	

In order to meet Part One of the Three-Part Test, the College would need to provide intercollegiate level participation opportunities for male and female students in numbers substantially proportionate to their respective enrollments. The difference between enrollment and athletic opportunities was 4.9%. In order to achieve proportionality, female athletic opportunities would need to be increased by approximately 14 for a total of 126. OCR determined that during that school year the College had an average female team size of 14. The number of opportunities that would be required to achieve proportionality would be sufficient to sustain a viable team. Therefore, OCR concludes the College has not satisfied Part One of the Three-Part Test for academic year 2015-16.

Part Two: History and Continuing Practice of Program Expansion

Under Part Two of the Three-Part Test, where the members of one sex have been and are underrepresented among intercollegiate athletes, OCR will find that the institution is providing nondiscriminatory participation opportunities for individuals of both sexes when the institution can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex. OCR examined whether the College has a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented female sex.

OCR asked the College to provide copies of written policies, procedures, and criteria for determining how and whether sports will be added to the men's and women's athletic programs. In its response to this investigation, the College notified OCR that there are no written policies, procedures, or criteria in place for determining the addition of future sports.

The College provided the following history of teams that have been added to or eliminated from the University's intercollegiate athletic program within the past 10 years, indicating when each team was added or eliminated and the reason(s) the team was added or eliminated.

<u>MEN'S SPORTS</u>	<u>YEAR ADDED</u>	<u>WOMEN'S SPORTS</u>	<u>YEAR ADDED</u>
Baseball	Late 1950's	Basketball	1975
Basketball	1931	Cross Country	Late 1970's
Cross Country	Late 1960's	Golf	2000
Football	1935	Soccer	2001
Golf	Approx. 1960's	Softball	1981
Soccer	2001	Track & Field	Approx. 1970's
Track & Field	Early 1960's	Volleyball	Approx. 1960's

The College told OCR that softball was added in 1981 because the increasing interest in the sport at the collegiate level. Women's golf was added in 2000 to provide more opportunities for female students to participate in collegiate athletics. Soccer (men's and women's) was added in 2001 because of the increasing interest in the sport at the collegiate level.

The College's most recent addition of a female athletic team was in 2000. The College requested to resolve this investigation prior to the conclusion of the investigation. Therefore, OCR is unable to determine whether the College has satisfied Part Two of the Three-Part Test.

Part Three: Effective Accommodation of Interests and Abilities

Under Part Three of the Three-Part Test, OCR will find that the institution is providing nondiscriminatory participation opportunities for individuals of both sexes when it can be demonstrated that the interests and abilities of the members of the underrepresented sex have been fully and effectively accommodated by the present program. OCR examined whether the College demonstrated that the interests and abilities of the underrepresented female sex have been fully and effectively accommodated by the present program.

The College is a member of the Kansas Jayhawk Community College Conference (KJCCC). The Conference's website indicates that the Conference offers the following sports for females: soccer, cross country, golf, tennis, and indoor/outdoor track and field, basketball, volleyball, and softball. The College offers female students athletic opportunities in each KJCCC sport except for tennis.

OCR asked the College to describe the methods the College uses for determining the athletic interests and abilities of students, and to provide copies of any surveys, questionnaires, or assessments, if any, conducted of students' athletic interest and abilities and the date(s) and results of the surveys, questionnaires, or assessments. The College provided OCR with six prospective student athlete questionnaires. Each questionnaire is related to a different athletic team: men's basketball, women's basketball, softball, football, soccer and track and field. The questionnaires ask the prospective student athletes about their past participation in the particular sport.

OCR requested copies of all notices distributed to male and female students, informing them of the intercollegiate athletic opportunities available at the College and an explanation of how these were/are distributed. The College's response stated that notices are sent out through recruiting questionnaires and sports that are listed on the Athletics website – www.goconqs.com. Upon reviewing the website, OCR found that currently, the baseball, cross country/track and field, volleyball, and women's soccer programs have questionnaires available for "prospective recruits."

The questionnaires provided by the College are assessment tools that may be used by team coaches to measure the experience and ability of prospective recruits. The questionnaires do not survey the athletic interests of the general population of enrolled students or prospective students. OCR cannot conclude the College has satisfied Part Three of the Three-Part Test for academic year 2015-16.

The above facts show that during the 2015-16 school year females were underrepresented in College's intercollegiate athletic program by 14 participants (5.9%), a number sufficient to support the addition of one viable athletic team. OCR does not have sufficient information to determine whether the College has a continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of the underrepresented sex, or whether the College is fully accommodating the interests and abilities of the underrepresented sex. The College expressed interest in engaging in resolution negotiations before OCR completed its investigation into whether the College is fulfilling its obligations under 34 C.F.R. § 106.41(c)(1) to provide both sexes with equal opportunities to compete.

Athletic Financial Assistance

The regulation implementing Title IX, at 34 C.F.R. § 106.37(c), provides that "[t]o the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in . . . intercollegiate athletics."

In determining compliance with this provision, OCR examines whether the College made proportionately equal amounts of financial assistance (scholarship aid) available to the men's and women's athletics programs. OCR calculates this by dividing the amounts of aid available for the members of each sex by the numbers of male and female participants in the athletics program and comparing the results. An institution is considered to be in compliance if this comparison results in substantially equal amounts, or if a resulting disparity can be explained by adjustments to take into account legitimate, nondiscriminatory factors. If any unexplained disparity in the scholarship budget for athletes of either sex is one percent or less for the entire budget for athletic scholarships, there will be a strong presumption that such a disparity is reasonable and based on legitimate and nondiscriminatory factors. Conversely, there will be a strong presumption that an unexplained disparity of more than one percent is in violation of the regulation implementing Title IX. OCR evaluates each case in terms of its particular facts. For example, at those colleges where 1% of the entire athletic scholarship budget is less than the value of one full scholarship, OCR will presume that a disparity of up to the value of one full scholarship is equitable and nondiscriminatory. Even if an institution consistently has less than a 1% disparity, the presumption of compliance with Title IX might still be rebutted if, for example, there was direct evidence of discriminatory intent.

The College is a member of the KJCCC and competes as a Division 1 school. The College informed OCR that its athletic department is governed by both the National Junior College Athletic Association (NJCAA) and the KJCCC. The College provided copies of the policies governing grants-in-aid, recruitment, and booster clubs of both the NJCAA and the KJCCC.

The NJCAA states that Division 1 programs may provide a maximum grant-in-aid consisting of: tuition and fees, room and board, course related books, up to \$250 in course required supplies per academic year -- provided such course supplies are required by all students in the course and specified in the institutions catalog or course syllabus --, and transportation costs one time per academic year to and from the college by direct route.

The Kansas Jayhawks policy follows the NJCAA rules with the following exceptions:

The total amount of an institutional athletic grant in aid for a certified athlete shall not exceed the cost of tuition and books at the conference school attended. If an athlete is awarded a scholarship by a source not affiliated with a particular college, and if that source awards such scholarships without restriction to college of attendance, and if the student competes for the scholarship in the same manner as any other student, he/she may accept such additional scholarship(s). In addition, an athlete who qualifies and maintains a cumulative 3.5 G.P.A. may receive an academic scholarship administered by and through the institution in attendance. Such scholarship shall not exceed \$500 per semester.

The Kansas Jayhawks policy also discusses the student athlete's acceptance of academic scholarships and of financial aid from non-institution sources.

The College's Board Policy Manual provides that the "athletic department shall distribute the athletic scholarship moneys received from non-public funds in an equitable fashion to all athletic programs, in order to allow all programs the opportunity to compete effectively. In the distribution of both public and non-public funds for athletic scholarships, full consideration must be given to compliance with the principles of educational equity for women as stated in Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681-85)." The College's policies and procedures relating to the granting of athletic financial assistance are facially neutral and are not discriminatory on the basis of sex.

OCR reviewed the College's 2015 Equity in Athletics Data Analysis. According to the report one hundred sixty-nine (169) or sixty-one point one percent (60.1%) of its student athletes were male. One hundred twelve (112) or thirty-nine percent point nine percent (39.9%) of its student athletes were female. OCR also reviewed the College's record of athletic financial assistance awarded to in-state and out-of-state students in 2015. The combined athletic financial assistance awarded was \$415,360.00. Female athletes received \$131,115.00, or thirty-one point six percent (31.6%) of the athletic financial assistance awarded by the College. Male athletes received \$284,245.00 or sixty-eight point four percent (68.4%) of athletic financial assistance awarded by the College.

In 2015, the difference between \$165,738.64 (39.9%) the amount of assistance that would have been equivalent to female athletes' participation, and \$131,115.00 (31.6%), the amount of financial assistance that was awarded to female athletes was \$34,613.64. The difference was greater than one percent of the combined athletic financial assistance awarded. One percent of the financial assistance awarded amounted to \$4,153.60.

<u>STUDENT ATHLETICS PARTICPATION IN 2015</u>					
Gender	Men	Percentage	Women	Percentage	Totals
Total Participants	169	60.1%	112	39.9%	281

<u>STUDENT ATHLETICS PARTICPATION IN 2015</u>					
Gender	Men	Percentage	Women	Percentage	Totals
Total Participants for the Coed Teams	4	57.1%	3	42.9%	7
GRAND TOTALS	173	60.1%	115	39.9%	288
<u>Grants in Aid Awarded to Student Athletics in 2015</u>					
Gender	Amount Awarded		Percentage		
Men	\$284,245		68.4		
Women	131,115		31.6		
TOTALS	\$415,360		100%		

The College did not provide a policy that outlines its procedures for ensuring the equitable awarding of financial assistance. The College did not proffer its legitimate non-discriminatory reasons in support of the proportion of financial athletic assistance awarded to male and female students before OCR suspended its investigation in response to the College’s request to engage in resolution negotiations.

Resolution Agreement

On October 4, 2016, the College expressed to OCR an interest in engaging in resolution negotiations pursuant to Section 302 of OCR’s *Case Processing Manual*.⁵ Before OCR completed its investigation, the College submitted a signed Agreement (copy enclosed) on March 23, 2017 that, when fully implemented, will address allegation 1 of this complaint.

ALLEGATION 2

The complainant alleged that the College discriminates against female students by failing to provide female students with equal housing opportunities in comparison to the housing opportunities offered to male students. The complainant alleged that the College’s policies negatively impact female students at the College because there is a limited amount of space for female students in the on-campus housing.

Legal Standards

The regulation implementing Title IX at 34 CFR 106.32 states that generally, a recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing. Where a recipient provides separate housing on the basis of sex, housing provided by a recipient to student of one

⁵ The *Case Processing Manual* is available online at <http://www.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

sex when compared to that provided to students of the other sex, shall be as a whole, proportionate in quantity to the number of students of that sex applying for such housing.⁶

Findings of Fact

- The College has four dormitories on campus, two assigned to each sex.
- Jackson Hall and Coleman Webb are female residence halls. Jackson Hall has the capacity for 100 residents. Coleman Web has the capacity for 58 residents.
- Sheldon Hall and Becker Hall are male residence halls. Sheldon Hall has the capacity for 108 residents and Becker Hall has the capacity for 122 residents.
- When all four halls are filled to capacity 388 students can occupy on campus student housing. Forty point seven percent (40.7%) of the housing is available to female students the remaining fifty-nine point two percent (59.2%) is available to male students.
- The recipient provided a copy of housing applications submitted during the 2014 Fall Semester, the 2015 Spring Semester, the 2015 Fall Semester, and the 2016 Spring Semester. The applications showed that at the start of 2014 School year, 213 men applied for student housing and 123 women applied for student housing. The male applicants were sixty-three percent (63%) of all applicants for housing, female applicants made up the remaining thirty-seven percent (37%) of applicants.
- The applications showed that at the start of the 2015-16 school year, there were 108 female applicants for housing and 190 male applicants for housing. Sixty-three point seven percent (63.7%) of the applicants were male, thirty-six point three (36.3%) were female.
- In Spring 2016, the male dormitory, Sheldon Hall was taken offline for structure renovations. Total available on campus housing was reduced to a capacity for 280 students. All the female residents were moved to Jackson Hall. Male residents occupied Becker Hall and Coleman-Webb. In Spring 2016, thirty-five point seven percent (35.7%) of available housing was provided to female students. Sixty-four point two percent (64.2%) was provided to males.
- The College's response to OCR stated that all housing applications were approved during the two years OCR reviewed.
- A comparison of the number of housing applications to the amount of available housing shows that in the two years OCR reviewed, the housing opportunities available to female students were proportionate to the number of females applying for on-campus housing.

⁶ The regulation also states that housing provided to students of one sex when compared to housing provided to student of the other sex must be comparable in quality and cost to the student. The complaint did not allege that housing provided to female students was different in quality or in cost when compared to housing offered to male students. Thus, OCR's investigation did not consider whether the College offers male and female students housing opportunities that are comparable in quality and cost.

Legal Analysis and Conclusion

There is insufficient evidence to find that the College discriminated against the female students on the basis of sex by failing to provide female students with equal housing opportunities when compared to the housing opportunities provided to male students.

The College has four dormitories on campus, two for each sex. The female residence halls have a combined capacity of 158 residents. The male residence halls have a combined capacity of 230 residents. When all four residence halls are filled to capacity 388 students can occupy on campus student housing. If each hall is restricted to occupation by its intended sex, forty point seven percent (40.7%) of the housing is available to female students the remaining fifty-nine point two percent (59.2 %) is available to male students. When the College closed one of the male dormitories in Spring 2016, the combined capacity of the three remaining residence halls was 280 residents. The College made one hundred or thirty-five point seven percent (35.7%) of residences available to female students and the remaining 180 or sixty-four point three percent (64.3%) of residences available to male students.

The recipient provided a copy of housing applications submitted for the 2014 Fall Semester, the 2015 Spring Semester, the 2015 Fall Semester, and the 2016 Spring Semester. A comparison of housing of applications to available housing shows that in the two years OCR reviewed, the housing opportunities available to female students were proportionate to the number of females applying for on-campus housing.

	<u>Male Housing Applicants</u>	<u>Male Housing Resident</u>	<u>Female Housing Applicants</u>	<u>Female Housing Resident</u>
2014 -15 Academic Year	213	213	123	123
2015-16 Academic Year	190	190	108	108

No student was denied on-campus housing during the two years OCR reviewed. Accordingly, OCR is closing Allegation 2 effective the date of this letter.⁷

OCR considers the allegations of this complaint resolved effective the date of this letter and will monitor the College’s implementation of the Agreement. When OCR concludes the College has fully implemented the terms of the Agreement, OCR will close the complaint. If the College fails to carry out the Agreement, OCR may resume the investigation.

This letter sets forth OCR’s determination in an individual OCR case. This letter is not a formal

⁷ During the course of OCR’s investigation, the College was unable to provide a written policy that ensures equal access to housing. The College informed OCR of its intent to adopt a housing policy that will address any change in the demographics of the student body and ensure equal access to housing for all students.

statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR is committed to providing prompt and effective service. If you have any questions regarding this matter, please contact XXXX XXXXX, Equal Opportunity Specialist at (816) 268-XXXX or (877) 521-2172 (telecommunications device for the deaf), or via email at XXXX.XXXXX@ed.gov.

Sincerely,

/s/ J. Earlene Gordon
J. Earlene Gordon
Supervisory Attorney

Enclosure