

Resolution Agreement
OCR Case Number 07-16-2108
Western Nebraska Community College

The U.S. Department of Education, Office for Civil Rights (OCR) and the Western Nebraska Community College (College), Scottsbluff, Nebraska, enter into this Resolution Agreement (Agreement) to resolve the above-referenced complaint. The College assures OCR that it will take the following actions to comply with the requirements 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, which prohibits discrimination on the basis of sex by recipients of Federal financial assistance.

OCR investigated whether the College discriminates on the basis of sex by failing to provide equitable athletic opportunities for male and female athletes in violation of the Title IX implementing regulation at 34 C.F.R. §106.41.

The College is resolving this complaint during OCR's investigation pursuant to Section 302 of OCR's *Case Processing Manual* (CPM).¹ This Agreement shall become effective upon the College's receipt of a letter from OCR advising the College that this Agreement resolves the allegations raised in the complaint. This Agreement is not intended to constitute, nor shall it be deemed to constitute, an admission by the College of any violation of Title IX, its implementing regulation, or any other law or regulation pertaining to the allegations of this complaint.

Action Item 1: Athletic Financial Assistance

The College will 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). OCR will determine whether the College has provided equivalent benefits and services for members of both sexes with regard to this component.

A. Commitment: The College shall develop a plan (AFA Plan) for ensuring it provides reasonable opportunities for each sex to receive athletic scholarships and/or grants-in-aid in proportion to the number of students of each sex participating in intercollegiate athletics by the beginning of the 2020-21 academic year. The AFA Plan will include a description of the methodology and factors considered when awarding AFA and, any interim steps, if necessary, that will be taken by the College during the 2018-19 and 2019-20 academic years. The AFA Plan will incorporate the following considerations and actions:

- i. The College understands that nothing in this Agreement requires the College to reduce the amounts of AFA it offers to either sex and that any such reductions are discouraged.
- ii. The College will identify all legitimate, nondiscriminatory factors that apply and describe how they will be taken into account. For any asserted

¹The CPM may be accessed at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

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 scholarships is reasonable in light of generally accepted college sports practices to aggressively recruit athletes for the purpose of building start-up teams quickly.

- iii. 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 of AFA awarded. A disparity greater than 1% of the total amount of AFA awarded is permissible if less than the value of one full scholarship.
- iv. The College will annually compare the intercollegiate athletic participation rates of male and female students for each sport to the amounts of AFA awarded to each sex.

Reporting Requirement

- i. By June 1, 2019, the College will submit to OCR for review and approval a copy of its AFA Plan, with timeframes, to ensure that it provides reasonable opportunities for each sex to receive athletic scholarships and/or grants-in-aid in proportion to the number of students of each sex participating in intercollegiate athletics by the beginning of the 2020-21 academic year. The College will incorporate in to the AFA Plan the actions and considerations contained in Items 1 (A)(i)-(iv) of this Agreement. The AFA Plan will include a description of the methodology for and factors considered when awarding AFA and, any interim steps, if necessary, that will be taken by the College during the 2018-19 and 2019-20 school years.
- ii. By June 1, 2020, the College will provide OCR with reports documenting the steps it has taken to implement the AFA Plan. The report will include the College's comparison and analysis of the unduplicated intercollegiate athletic participation rates for male and female student athletes and the total amount of athletic financial assistance awarded by sex during the most recent academic year.
- iii. By June 1, 2021, the College will provide OCR with a report and copies of supporting documents reflecting the College's evaluation of the awarding of AFA to male and intercollegiate athletes during the 2020-21 school year. The report will include, at a minimum, the participation data the College relied on in determining the number of male and female students in the College's intercollegiate athletics program, such as a copy of the squad or

eligibility lists for each sport showing student athletes by sex; the amounts of athletic scholarships or grants-in-aid awarded to each sex; and a description of any legitimate, nondiscriminatory factors that led the College to make adjustments in its award of AFA, as well as a description of the adjustments made.

Action Item 2: Equipment and Supplies

The College will ensure that it provides equal athletic opportunities for members of both sexes in the component of equipment and supplies, in accordance with 34 C.F.R. § 106.41(c)(2). OCR will determine whether the College has provided equivalent benefits and services for members of both sexes with regard to this component.

- A. **Commitment:** The College will complete an assessment of equipment and supplies 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 uniforms, equipment and supplies offered to the softball team as compared to the baseball team; whether any fundraising requirements are imposed on men's and women's teams equally; whether student manager positions are funded equally for men's and women's teams; whether all teams have exclusive use of their storage facilities; 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 equipment and supplies 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 equipment and supplies budget allocated to each team, including a review and explanation of why the College set each team's budget at a particular level; an assessment of whether each team's 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 budgets are allocated between comparable sports in an equitable manner; whether some teams are limiting equipment and supplies purchases or limiting other areas (since coaches are allowed to move funds within their overall budgets) in order to stay within budget while others are not; and any other inquiry necessary to ascertain the sufficiency of the current equipment and supplies 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.

Reporting Requirement:

- i. By February 1, 2019, the College will submit a written report containing the result of the review further described in Action Item 2(A)(i) to OCR for its review and approval.
- ii. By April 1, 2019, the College will submit to OCR the written policy governing equipment and supplies further described in Action Item 2(A)(ii). Within 45 days after OCR's approval of the policy, the College shall publish same in the athletic department handbook and any other appropriate publication. Within 30 days 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. By February 1, 2019, the College will submit to OCR a written report containing the result of the reviews further described in Action Item 2(A)(iii).
- iv. By April 1, 2019, the College will submit to OCR the written plan to address budgetary disparities further described in Action Item 2(A)(iv). Within 45 days of OCR's approval of the plan, the College shall begin implementation of the plan. Within 30 days thereafter, the College shall provide to OCR documentation evidencing the implementation of the plan.

Action Item 3: Travel and Per Diem

The College will 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). OCR will determine whether the College has provided equivalent benefits and services for members of both sexes with regard to this component.

- A. **Commitment:** The College will complete an assessment of the provision of travel and per diem allowances in the following areas to ensure that female and male student athletes are provided with equivalent benefits and services in this area:
 - i. 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 (in particular whether they are adequate to meet the travel needs of each team with comparable housing furnished during travel) 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; a specific review of the travel budget allocated to the soccer team, and, if the budget for the male and female teams are still combined, determine an equitable allocation of

the joint funds so that each team has a separate budget; and any other inquiry necessary to ascertain the sufficiency of the current travel budget allocation to each team; and

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

Reporting Requirement:

- i. By February 1, 2019, the College will submit a written report containing the result of the review further described in Action Item 3(A)(i) to OCR for its review and approval.
- ii. By April 1, 2019, the College will submit to OCR the written plan to address budgetary disparities further described in Action Item 3(A)(ii). Within 45 days of OCR's approval of the plan, the College shall begin implementation of the plan. Within 30 days thereafter, the College shall provide to OCR documentation evidencing the implementation of the plan.

Action Item 4: Opportunity to Receive Coaching and Compensation of Coaches

The College will 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). OCR will determine whether the College has provided equivalent benefits and services for members of both sexes with regard to this component.

- A. **Commitment:** 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 head and assistant coaches of comparable experience; the hours that each part-time coach works and overall coach availability for practices and competitions; the budget for compensation of part-time coaches; the total budget allocated to men's versus women's teams for coaching salaries; the assignment of coaches to men's and women's teams; and the teaching versus administrative responsibilities assigned to coaches of men's and women's teams, and the consequence of the different assignments on availability to student athletes.
 - ii. the development of a written plan to address disparities identified after conducting the review in the preceding paragraph.

Reporting Requirement:

- i. By February 1, 2019, the College will submit a written report containing the results of the review further described in Action Item 4(A)(i) to OCR for its review and approval.
- ii. By April 1, 2019, the College will submit to OCR the plan to address any disparities identified and further described in Action Item 4(A)(ii). Within 45 days of OCR's approval of the plan, the College shall begin to implement same. Within 30 days thereafter, the College shall provide to OCR documentation evidencing the implementation of the plan.

Action Item 5: Locker Rooms, Practice and Competitive Facilities

The College will 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). OCR will determine whether the College has provided equivalent benefits and services for members of both sexes with regard to this component.

- A. **Commitment:** 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 funding for maintenance of locker room, practice and competitive facilities provided to men's and women's teams (e.g., does one team have funding for a paid staff member to maintain the facility, and another does not?);
 - ii. a review and comparison of the locker room facilities and amenities provided to men's and women's teams, including examination of the water supply to the outdoor softball and baseball fields; and
 - iii. the development of a written plan to address disparities in the locker room, practice and competitive facilities and amenities identified after conducting the review in the preceding two paragraphs.

Reporting Requirement

- i. By March 1, 2019, the College will submit to OCR a written report containing the results of the reviews further described in Action Item 5(A)(i) and (ii) to OCR for its review and approval.
- ii. By May 1, 2019, the College will submit to OCR the plan to address locker room and practice facilities disparities, as further described in Action Item 5(A)(iii). Within 45 days of OCR's approval of the plan, the College shall begin to implement same. Within 30 days thereafter, the College shall provide to OCR documentation evidencing implementation of the plan.

Action Item 6: Housing and Dining

The College will ensure that it provides equal athletic opportunities for members of both sexes in the provision of housing and dining services, in accordance with 34 C.F.R. § 106.41(c)(9). OCR will determine whether the College has provided equivalent benefits and services for members of both sexes with regard to this component.

- A. Commitment:** By March 1, 2019, the College will complete an assessment of the provision of housing and dining services offered to athletes when they need to be on campus but the housing and dining facilities are closed. The assessment will include, at a minimum:
- i. a review of the housing and dining services offered by coaches of men's and women's teams when housing and dining facilities are closed but athletes need to be on campus (e.g., sack meals, stipends, groceries, restaurants, etc.) using multiple indicators, including but not limited to interviews of coaches, students, and housing/dining staff, to ensure equal athletic opportunities; and
 - ii. the development of a written plan to address disparities identified after conducting the review in the preceding paragraph.

Reporting Requirement:

- i. By April 1, 2019, the College will submit to OCR a written report containing the results of the review further described in (Action Item 6(A)(i)).
- ii. By June 1, 2019, the College will submit to OCR the written plan to address any disparities in housing and dining services, as further described in Action Item 6(A)(ii). Within 45 days of OCR's approval of the plan, the College shall begin to implement same. Within 30 days thereafter, the College shall provide to OCR documentation evidencing implementation of the plan.

Action Item 7: Publicity

The College will 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). OCR will determine whether the College has provided equivalent benefits and services for members of both sexes with regard to this component.

- A. Commitment:** 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; and
- iv. the development of a written publicity policy to address disparities identified after conducting the reviews in the preceding paragraphs Action Item 7 (A)(i)-(iii). The policy should apply uniformly to men and women's teams and should be neutral both on its face and in practice.

Reporting Requirement:

- i. By March 1, 2019, the College will submit to OCR a written report containing the results of the review described in Action Item 7(A)(i)-(iii) to OCR for its review and approval.
- ii. By May 1, 2019, the College will submit to OCR the written policy governing publicity described in Action Item 7(A)(iv). Within 45 days of OCR's approval of the policy, the College shall publish same in the athletic department handbook and any other appropriate publication. Within 30 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 8: Recruitment of Athletes

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). OCR will determine whether the College has provided equivalent benefits and services for members of both sexes with regard to this component.

- A. **Commitment:** 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; whether some coaches are reimbursed for international travel and 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 March 1, 2019, the College will submit to OCR a written report containing the result of the review further described in Action Item 8(A)(i).
- ii. By May 1, 2019, the College will submit to OCR the written policy with respect to recruitment budgets further described in Action Item 8(A)(ii). Within 45 days of OCR's approval of the policy, the College shall publish same in the athletic department handbook and any other appropriate publication. Within 30 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.

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.

Todd R. Holcomb, President
Western Nebraska Community College

Date