

**Resolution Agreement**  
**Missouri Western State University**  
**OCR Compliance Review 07-16-6001**

Missouri Western State University (University) enters into this Resolution Agreement (Agreement), as set forth below, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), to ensure its compliance with the requirements of Title IX of the Education Amendments of 1972, 20 United States Code (U.S.C.) 1681 *et seq.* (Title IX), and its implementing regulations at 34 Code of Federal Regulations (C.F.R.) Part 106. This Agreement is submitted to resolve OCR compliance review 07-16-6001, which was initiated to examine whether the University provides equal opportunities to members of each sex to participate in intercollegiate athletics and whether the University provides awards of athletic scholarships or grants-in-aid for male and female students in proportion to the number of students of each sex participating in intercollegiate athletics. This investigation was not in response to a complaint filed by the public with the agency; rather, OCR initiated this review pursuant to 34 C.F.R. § 100.7(a), which is incorporated by reference in the regulation implementing Title IX at 34 C.F.R. § 106.71. Nothing in this Agreement is to be construed as an admission of liability or wrongdoing by the University. OCR will grant all reasonable requests from the University for an extension of the reporting dates set forth in this Agreement. The University agrees to take the following actions:

**I. EFFECTIVE ACCOMODATION OF INTERESTS AND ABILITIES**

The University 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 and the Title IX implementing regulation at 34 C.F.R. § 106.41(c)(1).<sup>1</sup> Each part of the Three-Part Test is an equally sufficient and separate method of complying with the Title IX regulatory requirement to provide nondiscriminatory athletic participation opportunities. The University has elected to demonstrate compliance with Part III of the Three-Part Test.<sup>2</sup>

**A. Policy – Addition or Elevation of Sports**

The University will develop a policy setting forth the process by which it will review requests (whether oral or written, formal or informal) made to University administrators, coaches, or staff by or on behalf of students to add a particular sport, 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 University'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.

**Reporting Requirement**

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<sup>1</sup> The University may refer to the following OCR policy documents for additional guidance: OCR "Dear Colleague" Letters (April 20, 2010; September 17, 2008; July 11, 2003; and January 16, 1996); and A Policy Interpretation: Title IX Intercollegiate Athletics (December 11, 1979).

<sup>2</sup> The University may be determined compliant by satisfying the requirements of any one part of the Three-Part test.

1. By *June 1, 2018*, the University will submit, for OCR’s review and approval, its proposed draft policy setting forth the process by which it will review requests to add additional or elevate existing sports. The University will describe the method it will use to widely publish and effectively disseminate the policy to its existing and newly-admitted students, potential applicants, and University employees, including coaches.
2. Following OCR’s approval of the University’s proposed draft policy, the University will adopt the policy. By *October 1, 2018*, the University will provide OCR with documentation that the adopted policy has been widely published and disseminated, including relevant links to pages on the University’s website and copies of relevant pages of student, student athlete, and staff handbooks.

## **B. Part III – Effective Accommodation of Interests and Abilities**

### **1. Objective Assessment**

The University will conduct an objective assessment to determine the athletic interests and abilities of female students, the underrepresented sex, and whether the University 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 University’s draft survey or other assessment tool will be submitted to OCR for its review and approval before being distributed. Upon OCR’s written approval, the University will administer the survey, endeavoring to generate as high a response rate as possible, including following up with students who do not respond;
- b. identification of any sports and levels of sports for female students that are not currently offered by the University that are offered by schools that compete within the athletic conference in which the University competes and by schools within the University’s normal competitive region;
- c. reviewing rates of participation by female students in club and intramural sports, if any, at the University;
- d. reviewing any requests (whether oral or written, formal or informal) made to University administrators, coaches, or staff by or on behalf of female students and admitted female students to add a particular sport or level of sport, or to elevate an existing intramural sport or club sport, if any, to intercollegiate sport status;
- e. consideration of information regarding sports generating significant female student

participation in the areas from which the University draws its enrollment, such as publicly available information compiled by the National Federation of State High School Associations;

- f. reviewing the number of students cut from any women's team in the last three years, if any, and the reasons they were cut;
- g. consideration of any other information that demonstrates the athletic interests and abilities of female students at the University.<sup>3</sup>

### **Reporting Requirements**

1. By *July 2, 2018*, the University will provide a copy of the draft student survey or assessment tool required in Section I, Item B.1.a. (student survey), for OCR's review and approval. The University will make revisions to the survey as advised by OCR. The University will provide to OCR a 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 who will evaluate the responses to the survey.
2. By *October 31, 2018*, the University will administer the OCR-approved student survey.
3. After the University has administered the student survey, the University will provide OCR a report by *February 1, 2019*, including the following information and supporting documentation:
  - a. a copy of the results of the student survey administered, including the number of students by sex who indicated an interest in each sport, a 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;
  - b. the University's analysis of the results of the student survey and any other information collected from students;
  - c. a list of sports and levels of sports for female students that are not currently offered by the University but are offered either by schools that compete within the athletic conference in which the University competes or by schools within the University's normal competitive region and geographic area;

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<sup>3</sup> 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 University's other athletes is conclusive evidence of lack of ability. For the purposes of assessing ability, it is sufficient that interested students and admitted students have the potential to sustain an intercollegiate team.

- d. information compiled and examined pursuant to Section I, Item B.1.c.-g.;
- e. the University's analysis and conclusions as to whether the University is fully and effectively accommodating the athletic interests and abilities of female students.

## **2. Actions to Increase Athletic Opportunities**

The University will submit a plan with timeframes for actions which it will take 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 2019-20 school year. The University's plan will incorporate each of the considerations below. The University will conduct periodic assessments of the athletic interests and abilities of its students and admitted students to ensure it is equally and effectively accommodating the athletic interests and abilities of students of each sex.

- a. Sports currently offered: The University 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 University 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 University as intercollegiate sports and sufficient competition in those sports within the University's normal competitive region.
- c. Response to developing interests and abilities: For any sport not currently offered by the University 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 University determines that there is not sufficient competition in that sport within the University's normal competitive region, the University will take ongoing steps to address such interest and ability. Steps may include establishment of intramural or club sports, exploring the establishment of competition in the University's normal competitive region, and elevating such sports to intercollegiate status when competition becomes available.
- d. Elimination of athletic teams: The University acknowledges that OCR does not require or encourage the elimination of any University intercollegiate athletic teams and that OCR seeks action from the University that does not involve the elimination of athletic opportunities, because nothing in Title IX requires an institution to do so in order to comply with the Title IX implementing regulation at 34 C.F.R. § 106.41(c)(1). The University 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 University adds any sports, the University will provide those team(s) equivalent treatment, benefits, and services, consistent with Title IX and its implementing regulations at 34 C.F.R. § 106.37(c)(1) and 34 C.F.R. § 106.41(c)(1)-(10).<sup>4</sup>

### **Reporting Requirements**

1. By *October 31, 2018*, the University will submit to OCR for review and approval a copy of its detailed plan to effectively accommodate the interests and abilities of members of both sexes. The University will incorporate in to its plan a discussion of the actions and considerations contained in Section I, Items B.2.(a)-(e) of this Agreement and will submit supporting documentation as appropriate. The plan will include timeframes and a description of the actions that will be taken by the University during the 2017-18 and 2018-19 school years to increase intercollegiate athletic opportunities for female students by the 2019-2020 school year.
2. By *October 1, 2018*, and *October 1, 2019*, the University will submit to OCR status reports regarding its implementation of its plan to effectively accommodate the interests and abilities of members of both sexes.
3. By *August 3, 2020*, the University will submit for OCR’s review and approval, a report that includes information demonstrating that its intercollegiate athletics program effectively accommodates the athletic interests and abilities of its female students.

## **II. ATHLETIC FINANCIAL ASSISTANCE (AFA)**

The University will develop an athletic financial assistance plan that provides reasonable opportunities for each sex to receive athletic financial assistance (AFA) in proportion to the number of students of each sex participating in intercollegiate athletics, consistent with the requirements of Title IX and the Title IX implementing regulation at 34 C.F.R. § 106.37(c).

### **A. Assessment of Current AFA Opportunities**

The University will compare the amount of athletic scholarships and/or grants-in-aid it awarded to male and female athletes during the 2017-18 school year to determine if the amount of AFA awarded was substantially proportionate to the intercollegiate athletic participation rates of each sex after taking into consideration any legitimate, nondiscriminatory reasons for any differences.

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<sup>4</sup> This compliance review was limited to the provision of athletic scholarships or grants-in-aid for members of each sex in a manner pursuant to 34 C.F.R. § 106.37(c) and the effective accommodation of the athletic interests and abilities of members of both sexes pursuant to 34 C.F.R. § 106.41(c)(1). The Title IX implementing regulations at 34 C.F.R. § 106.41(c)(2)-(10) require equivalent treatment, benefits, and services to male and female athletes in the provision of equipment and supplies; scheduling of games and practice time; travel and per diem allowance; coaching and academic tutoring services; the provision of locker rooms and practice and competitive facilities, medical and training facilities and services, housing and dining facilities and services; and publicity.

- a. The University will compare the intercollegiate athletic participation rates<sup>5</sup> of male and female students as reflected on the squad or eligibility lists for each sport to the amounts of AFA awarded to each sex.
- b. The University will examine whether there are any legitimate, nondiscriminatory explanations for any differences that exist and adjust the total amounts of AFA to take those differences into account. Legitimate, nondiscriminatory reasons for disparities may include actions taken to promote athletic program development, differences between in-state and out-of-state tuition, or unexpected fluctuations in the participation rates of males and females from year-to-year. Efforts undertaken to redress historical patterns or practices of withholding AFA to athletes of the underrepresented sex may also be a legitimate, nondiscriminatory reason for a disparity.
- c. After taking all legitimate, nondiscriminatory explanations into account, the University 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 athletes of each sex and determine whether any resultant disparity is 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.

### **Reporting Requirement**

By *August 31, 2018*, the University will provide OCR with a report reflecting its evaluation of the award of AFA to male and female intercollegiate athletes pursuant during the 2017-18 school year. The report will include, at a minimum, the participation data the University relied on in determining the number of male and female students in the University'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 University to make adjustments in its award of AFA, as well as a description of the adjustments made.

### **B. Actions to Ensure Future Compliance**

The University will take the following actions to ensure future compliance with Title IX.

The University will 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

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<sup>5</sup> For the purpose of calculating the participation rates, all students, including students who participated in more than one intercollegiate sport, are to be counted only once.

necessary, that will be taken by the University during the 2018-19 and 2019-20 school years. The AFA Plan will incorporate the following considerations and actions:

- a. The University understands that nothing in this Agreement requires the University to reduce the amounts of AFA it offers to either sex and that any such reductions are discouraged. In making its calculations, the University will use intercollegiate athletic participation numbers that take into account any increase in intercollegiate athletic participation opportunities the University is providing or plans to provide to female students in accordance with Section I of this Agreement.
- b. The University will identify all legitimate, nondiscriminatory factors that apply and describe how they will be taken into account. For any asserted nondiscriminatory justification, the University must demonstrate that its asserted rationale is in fact reasonable and does not reflect underlying discrimination. For instance, if the University asserts the phase-in of scholarships for a new team as a justification for a disparity, the University 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.
- c. The University will show that after taking all legitimate, nondiscriminatory factors into account, any remaining disparity between the intercollegiate athletic participation rates of male and female students and the rates at which athletic scholarships and grants-in-aid are awarded to male and female athletes will be less than or equal to 1% of the total amount 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.
- d. The University 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 Requirements**

1. By *October 1, 2018*, the University 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 University will incorporate in to the AFA Plan a discussion of the actions and considerations contained in Section II, Items B.1.(a)-(d) 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 University during the 2018-19 and 2019-20 school years.
2. By *October 1, 2019*, and *October 3, 2020*, the University will provide OCR with reports documenting the steps it has taken to implement the AFA Plan. The report will include the University'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.

3. By *October 1, 2021*, the University will provide OCR with a report and copies of supporting documents reflecting the University’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 University relied on in determining the number of male and female students in the University’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 University to make adjustments in its award of AFA, as well as a description of the adjustments made.

### **III. GENERAL REQUIREMENTS**

The University understands that OCR will not close the monitoring of this Agreement until OCR determines that the University has fulfilled the terms of this Agreement and is in compliance with Title IX implementing regulations at 34 C.F.R. § 106.37(c) and 34 C.F.R. §§ 106.41(c)(1), which were at issue in this compliance review. The University understands that by signing this Agreement, it agrees to provide the foregoing information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the University understands that during the monitoring of this Agreement, if necessary, OCR may visit the University, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University has fulfilled the terms of this Agreement and is in compliance with Title IX and its implementing regulations identified above. Upon completion of the obligations under this Agreement, OCR shall close this compliance review.

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

For Missouri Western State University:

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President, Missouri Western State University

4/12/2018

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Date