

## **RESOLUTION AGREEMENT**

### **Erie Community College**

#### **Case No. 02-14-2223**

In order to resolve Case No. 02-14-2223, the Erie Community College (the College) assures the U.S. Department of Education, Office for Civil Rights (OCR), that it will take the actions detailed below pursuant to the requirements of Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation at 34 C.F.R. Part 106.

#### **Effective Accommodation of Interest and Abilities**

The College agrees to provide participation opportunities for female and male students that effectively accommodate the athletics interest and abilities of members of both sexes, consistent with the requirements of the regulation implementing Title IX, at 34 C.F.R § 106.41(c)(1). The College will provide athletic participation opportunities that are either substantially proportionate to each sex's enrollment in its programs<sup>1</sup> or demonstrate that the interests and abilities of female students are fully and effectively accommodated by the College's current athletics program.

#### **Action Item I: Determination of Unmet Interest and Ability**

By May 31, 2016, in order to determine whether there is unmet interest and ability among female students, the College will conduct an objective assessment of its student body to determine the existence and/or scope of any unmet athletic interest of female students, the underrepresented sex in the College's athletics program. The assessment will also consider whether the interested students have the ability to sustain an intercollegiate team, noting that they do not need the ability to sustain a successful or elite team, but only need to show that they have the potential to participate in team try-outs, practices and competitions; and with coaching, the potential to attain sufficient ability to participate at the particular level of competition in which they expressed interest. The assessment will be based on multiple indicators of interest, and if applicable, multiple indicators of abilities; and shall include, at a minimum, the following:

1. Conducting a survey of women in its student body to determine possible interest and ability in sports not currently offered by the College. A copy of the draft survey will be submitted to OCR for its review and approval before being distributed. The College will make such revisions and improvements 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 by following up with students who do not respond;

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<sup>1</sup> The College will do so by comparing the rates of enrollment of its female and male students with rates of participation in the College's intercollegiate athletics program (based on participation rates for all sports during the fall, winter, and spring seasons) to determine if these are substantially proportionate. The participation rates of female and male students will reflect the total number of males and females listed on the rosters (for all competitive levels) for each intercollegiate sport on the date of the first competition for each sport. The participation rates should not include participants in intramural, club or non-competitive athletic activities

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2. Reviewing the results of recent surveys of students, if any, 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 its students;
3. Identifying any 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 league in which the College competes or by schools that are within the College's normal competitive region and geographic area;
4. Consideration of any requests to College administrators, coaches, or staff by or on behalf of female students, both enrolled and admitted but not yet enrolled, that a particular sport be added to the program or elevated from a club or intramural sport to intercollegiate sport status;
5. Creating and implementing a nondiscriminatory policy or procedure for requesting the addition of sports/levels (including the elevation of intramural teams) and ensuring the effective communication of the policy or procedure to students and others;
6. Examining participation rates in sports in high schools, amateur athletic associations, and community sports leagues that operate in areas from which the College draws its students to determine possible additional sports for women at the College;
7. Reviewing the number of female students cut from any team in the last four years, and the reasons they were cut, to assess whether any of the students who were cut have the ability to compete in that sport and whether sufficient numbers of students were cut to sustain another level in that sport;
8. Reviewing whether any viable women's team has been suspended or eliminated in the past 10 years and the reason for such decision;
9. Examining the athletic participation opportunities at other intercollegiate schools within the College's normal competitive region to determine if those schools offer sports for women that the College does not currently offer;
10. Reviewing assessments made by College coaches or staff during tryouts, or observations of students participating in club or intramural competition, and other information reflecting the ability of students who are members of the underrepresented sex to compete in a particular sport, prior participation in that sport or a similar sport at the 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; and
11. Consideration of any other information that demonstrates the athletic interests and abilities of the College's students who are members of the underrepresented sex.

**Reporting Requirements:**

- a) By March 30, 2016, the College will provide to OCR a copy of the draft survey referenced in Action Item I above, for OCR's review and approval.
- b) By March 30, 2016, the College will provide to OCR a complete description of the planned methodology for conducting the 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 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 surveys.
- c) By May 31, 2016, the College will provide to OCR a detailed report about the assessment conducted pursuant to Action Item I of this Agreement. The report will include, at a minimum, the following information:
  - i. A copy of the results of the survey referenced in Action Item I 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 surveys, and a copy of any notes or other documents compiled during the review of the surveys.
  - ii. An analysis of the results of any other recent surveys of students, if any, 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.
  - iii. A summary 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 league(s) in which the school competes or by schools that are within the College's normal competitive region and geographic area.
  - iv. If applicable, a summary of the number of female students by sex who were cut from each team and the reasons they were cut.
  - v. A copy 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.
  - vi. For the last two academic years, a summary of any assessments made 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 middle or high school level or club or community level, general athletic ability, participation in other high school intercollegiate sports, the nature of the particular sport, and other relevant factors.

- vii. A description of any team(s) that was eliminated during the past ten school years, including the number of participants who were on the team in the year it was eliminated and the reason for the team's elimination.
- viii. A copy of the College's (new and/or revised) policies and procedures for requesting additional teams including the designation of the person responsible for receiving and responding to such requests, and the College's plan and efforts to ensure wide distribution of such policies and procedures to existing and newly admitted students, as well as to coaches and other employees.
- ix. Any conclusions the College draws regarding unmet interest and ability in light of the same.

### **Action Item II: Actions to Increase Athletic Opportunities**

Beginning with academic year 2016-2017, if, through the above-described assessment, the College identifies a sport or sports in which there is sufficient but unmet interest,<sup>2</sup> and if applicable, ability of female students to participate at the intercollegiate level, the College will add athletics opportunities as described below until such time as either (1) the school is fully and effectively accommodating the expressed interests and abilities of female students (i.e., there remains no unmet interest and ability); or (2) the participation rate for female students in intercollegiate athletics program is substantially proportionate to their rate of enrollment. The College also agrees to conduct periodic assessments of the athletics interests and abilities of its 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.

In providing additional athletic opportunities for female students to either accommodate their expressed interests and abilities or until their rate of participation is substantially proportionate to their rate of enrollment, the College shall do the following:

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<sup>2</sup> For purposes of this Agreement, the College and OCR agree that "sufficient interest" is defined as the minimum number of athletes needed to field a particular sport team. Also, when considering "sufficient ability" within the meaning of this Agreement, the ability necessary for the addition of a new sport need not be varsity-level ability; rather, the term includes athletes who have the potential to become varsity athletes over time with the appropriate budgetary and recruitment support from the College.

1. Sports Not Currently Offered:

The College will determine whether there is a sufficient number of female students with sufficient interest, and if applicable, ability to support the addition of a team in sports not currently offered by the College as intercollegiate sports, and whether there is sufficient competition within the College's normal competitive region and geographic area for those teams/sports. If so, the College will add a team in those sports by the next competitive season.

2. Response to Developing Interests and Abilities:

For any sport that is not currently offered by the College where there is a sufficient number of female students who have sufficient interest, and if applicable, ability in that sport, but where the College determines that there is not sufficient competition within the normal competitive region, the College will take ongoing steps to develop students' interest and ability. These steps may include establishing club sports, exploring the feasibility of establishing competition in the College's normal competitive region and geographic area, and elevating such sports to intercollegiate status when competition becomes available.

OCR has made clear to the College and the College understands that OCR does not require or encourage the elimination of any 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.

3. Additional Intercollegiate Opportunities:

To the extent that the College adds any sports or additional levels of teams, the College will provide to those team(s) in a manner comparable to other intercollegiate teams, sufficient funds in its budgets to cover expenses that include, but are not limited to: coaches, equipment and supplies, travel funds, and publicity and support services. The College will also publicize any new sports or additional levels of teams through written notices, oral announcements, and postings on the College's website.

**Reporting Requirements:**

- a) By May 31, 2016, if the College's assessment demonstrates that it is fully and effectively accommodating the athletic interests and abilities of its female students, the College will submit information detailing its determination of the same.
- b) By May 31, 2016, if the College is obligated to offer additional athletic opportunities pursuant to Action Item II of this Agreement, the College will provide to OCR a detailed report that reflects the steps taken by the College pursuant to Action Item II

of this Agreement, to create new opportunities for female students, as the underrepresented sex. This report will detail the timetable for the addition of new sports, levels of sports or newly-created club and/or other opportunities added pursuant to this Agreement. It will also describe how the creation of additional athletic opportunities taken pursuant to this Agreement will either (1) effectively accommodate the expressed interests and abilities of female students (*i.e.*, there remains no unmet interest and ability); or (2) elevate female students' participation rate in the College's intercollegiate athletics programs to be substantially proportionate to the rate of enrollment.

- c) By December 31, 2016, 2017, and 2018, the College will provide to OCR:
- i. a squad list for each intercollegiate sports team offered; and
  - ii. student enrollment data by gender for each of the reporting years.

The College understands that OCR will not close the monitoring of this agreement until OCR determines that the recipient has fulfilled the terms of this agreement and is in compliance with the regulation implementing Title IX, at 34 C.F.R § 106.41(c)(1), which was at issue in this case. The College also 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. 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 the regulation implementing Title IX, at 34 C.F.R. § 106.41(c)(1). 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.

March 3, 2016 \_\_\_\_\_  
Date

\_\_\_\_\_/s/\_\_\_\_\_  
President  
Erie Community College