

EVANSVILLE VANDERBURGH SCHOOL CORPORATION
OCR Compliance Review #05-11-5002
Resolution Agreement

The Evansville Vanderburgh School Corporation (Corporation) agrees to fully implement this resolution agreement (Agreement) to resolve U.S. Department of Education, Office for Civil Rights (OCR), compliance review number 05115002, and to ensure its compliance with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106, with respect to the issues of whether the Corporation is effectively accommodating the athletic interests and abilities of members of both sexes with respect to the opportunity to participate in high school interscholastic athletics and whether the Corporation discriminates against female athletes by not providing them equal opportunity in the provision of locker rooms, practice, and competitive facilities. The Corporation has voluntarily agreed to adhere to the terms of this Agreement.

I. ACCOMMODATION OF INTERESTS AND ABILITIES - DEMONSTRATION OF CURRENT COMPLIANCE

A. Participation opportunities

The Corporation agrees to provide participation opportunities for female and male students at the Corporation's five high schools (Bosse, Central, Harrison, North, and Reitz) that equally effectively accommodate the athletic interests and abilities of members of both sexes, consistent with the requirements of Title IX, the Title IX implementing regulation at 34 C.F.R. § 106.41(c)(1), and applicable OCR policies.

Accordingly, by April 26, 2013, the Corporation will demonstrate compliance with any one part of the three-part test used by OCR to assess whether the interests and abilities of members of both sexes are being effectively accommodated to the extent necessary to provide an equal opportunity to participate in interscholastic athletics by documenting that:

1. The Corporation is providing interscholastic level participation opportunities for female and male students at each of its high schools in numbers that are substantially proportionate to their respective enrollments (Part 1); or
2. The Corporation has a history and continuing practice of interscholastic athletic program expansion at the applicable high school that is demonstrably responsive to the developing interests and abilities of students who are members of the underrepresented sex (Part 2); or
3. The interests and abilities of students at the applicable high school who are members of the underrepresented sex have been fully and effectively accommodated by the Corporation's current interscholastic athletics program (Part 3).

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 Corporation has the option to choose the part of the three-part test with which Bosse, Central, Harrison, North, and Reitz will comply.

B. Substantial proportionality in participation rates in interscholastic athletics program

Should the Corporation elect to demonstrate compliance with Part 1 of the three-part test referenced above, then the Corporation will by April 26, 2013, compare the rates of enrollment of its female and male students at the applicable high school with their rates of participation in the high school's interscholastic athletics program (based on participation rates for all interscholastic sports during the fall, winter, and spring seasons of the 2012-2013 school year) to determine if they are substantially proportionate.

1. Enrollment rates at the applicable high school will be calculated using those enrollment numbers, by sex, the Corporation most recently reported to the Indiana Department of Education for the 2012-2013 school year.
2. The interscholastic athletic participation rates of female and male students at the applicable high school will reflect the total number of females and males listed on the rosters (for all competitive levels) for each interscholastic 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.

C. History and continuing practice of interscholastic athletic program expansion

Should the Corporation elect to demonstrate compliance with Part 2 of the three-part test referenced above, then the Corporation will by April 26, 2013, complete an evaluation that objectively assesses whether it has a history and continuing practice at the applicable high school of program expansion that is demonstrably responsive to the developing interests and abilities of members of the underrepresented sex. The Corporation's evaluation will be based on multiple factors, including:

1. The Corporation's record for the last 20 years of adding interscholastic teams or levels for members of the underrepresented sex at the applicable high school or upgrading teams to interscholastic status and increasing the numbers of participants at the applicable high school who are members of the underrepresented sex in interscholastic athletics;

2. Affirmative responses to requests in the last 10 years made by students or others for addition or elevation of sports/levels for students at the applicable high school who are members of the underrepresented sex;
3. The existence and implementation of a nondiscriminatory policy or procedure for requesting the addition of sports/levels (including the elevation of club or intramural teams) and the effective communication of the policy or procedure to high school students and parents;
4. The existence and implementation of a plan of program expansion that is responsive to the developing interests and abilities of members of the underrepresented sex at the applicable high school; and
5. Efforts to monitor the developing interests and abilities of members of the underrepresented sex at the applicable high school, for example, by conducting periodic nondiscriminatory assessments of developing interests and abilities and taking timely actions in response to the results.

D. Accommodation of student interests and abilities

Should the Corporation elect to demonstrate compliance with Part 3 of the three-part test referenced above, then by April 26, 2013, the Corporation will conduct an objective assessment of its student body at each of its high schools and the eighth grade level of its middle schools to determine the existence and/or scope of any unmet athletic interests of female students, the underrepresented sex in the Corporation's athletics programs. The assessment will also consider whether the interested students have the ability to sustain an interscholastic 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 (varsity, junior varsity, etc.) in which they have expressed interest. The assessment will be based on multiple indicators of interests and, if applicable, multiple indicators of abilities, and shall include the following:

1. A survey of female students at the applicable high school and at the eighth grade level at each middle school. The survey shall seek information on female students' interest and, if applicable, ability to participate in sports currently offered and in sports not currently offered by the Corporation.
2. A review of 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 interscholastic sports among female students.

3. Identification of sports, squads, and levels of sports for female students that are not currently offered by the applicable high school but are offered either by schools that compete within the league(s) in which the Corporation competes or by schools that are within the Corporation's normal competitive region and geographic area.
4. For the 2012-2013 school year, female students' rates of participation in club sports, intramural sports, and physical education courses that are offered in the Corporation's schools, and in community sports leagues, clubs or other youth programs offered in the Corporation's normal competitive region and geographic area.
5. For 2011-12 and 2012-2013, a review of the number of female students who were cut from each team at the applicable high school and the reasons they were cut, if applicable, to assess whether any of those students had or have the ability to compete in that sport and whether sufficient numbers of students were cut to sustain another level in that sport (e.g., junior varsity).
6. A review of any requests (whether oral or written, formal or informal) made to School Board Members, Corporation administrators, coaches, or staff by or on behalf of female students to add a particular sport, squad, or level of sport, or to elevate an existing club or intramural sport to interscholastic sport status. This review may be limited to requests that were received during the 2010-2011, 2011-2012 and 2012-2013 school years.
7. Identification of all viable girls' teams that have been eliminated in the past ten school years.
8. For 2011-12 and 2012-13, if applicable, a review of any assessments made by Corporation coaches or staff during tryouts, or observations of students participating in interscholastic, club, or intramural competition offered by the Corporation or in community sports leagues, clubs or other youth programs offered in the Corporation's normal competitive region and geographic area, and 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 intramural, club or community level, general athletic ability, participation in other high school interscholastic sports, the nature of the particular sport, and other relevant factors.
9. Any other information that demonstrates the athletic interests and, if applicable, abilities of female students in the applicable high school and in the middle schools.

REPORTING REQUIREMENTS - SECTION I

- A. Should the Corporation elect to demonstrate compliance with Part 1 of the three-part test referenced above, by April 26, 2013, the Corporation will provide OCR with a detailed report, with copies of supporting documents, reflecting the Corporation's evaluation of the proportions of female and male students in athletics at the applicable high school conducted pursuant to section I.B. of this Agreement. The report will include, at a minimum, a copy of the enrollment and participation data that the Corporation relied on in determining whether the Corporation is providing substantially proportionate interscholastic athletic participation opportunities, a copy of team rosters for each sport showing students, by sex, and other information reflecting the basis for the Corporation's evaluation. The information provided by the Corporation will be sufficient to allow OCR to determine the number of students, by sex, who were participating on each team on the date of the team's first competition and to identify any changes to the participation numbers that occurred after the first competition.
- B. Should the Corporation elect to demonstrate compliance with Part 2 of the three-part test referenced above, by April 26, 2013, the Corporation will provide OCR with a detailed report containing the Corporation's evaluation as described and enumerated in section I.C. of this Agreement, including the assessment and results therein.
- C. Should the Corporation elect to demonstrate compliance with Part 3 of the three-part test referenced above, the Corporation will submit the following information to OCR:
1. By March 15, 2013, a copy of the draft survey referenced in Section I.D.1., above, for OCR's review and approval.
 2. By March 15, 2013, a complete description of the planned methodology to conduct the survey, including how the survey will be distributed, the number of surveys to be distributed, the grade levels of students who will receive the surveys, 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.
 3. By April 26, 2013, a detailed report about the assessment conducted pursuant to Section I.D of this Agreement for each identified high school and middle school. The report will include, at a minimum, the following information:
 - a. A copy of the results of the survey referenced in Section I.D.1., above, including but not limited to the number of students, 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, the grade levels of students who received the surveys, 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.

- b. 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 interscholastic sports among female students.
- c. A summary of sports, squads, and levels of sports for female students that are not currently offered by each Corporation high school but are offered either by schools that compete within the league(s) in which the Corporation competes or by schools that are within the Corporation's normal competitive region and geographic area.
- d. For 2011-12 and 2012-13, for each high school, rates of participation by female students in:
 - i.) Interscholastic sports;
 - ii.) Club sports;
 - iii.) Intramural sports;
 - iv.) Physical education courses; and
 - v.) Community and youth sports leagues or clubs in the local Evansville area.
- e. If applicable, a summary of the number of female students who were cut from each high school team, and the reasons they were cut.
- f. 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 interscholastic sport status.
- g. For 2011-12 and 2012-13, 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 interscholastic sports, the nature of the particular sport, and other relevant factors.

- h. A description of any team(s) that was eliminated by the Corporation at any high school 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.
- i. Any other information that was considered by the Corporation as part of its assessment in determining whether it is fully and effectively accommodating the athletic interests and abilities of female students in its high schools.

II. ACCOMODATION OF INTERESTS AND ABILITIES - ACTIONS TO INCREASE ATHLETIC OPPORTUNITIES

- A. If the Corporation is unable to demonstrate compliance pursuant to sections I.B., I.C., or I.D. of this Agreement, and if through the above-described assessment, the Corporation identifies a sport or sports in which there is sufficient but unmet interest and, if applicable, ability of female students to participate at the interscholastic level at Bosse, Central, Harrison, North, or Reitz, then the Corporation will add athletics opportunities as described below at the applicable high school until such time as either (1) the high 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 the high school's interscholastic athletics program is substantially proportionate to their rate of enrollment at the high school.

For purposes of this provision, "sufficient interest" is defined as the minimum number of athletes needed to support a team. For "sufficient ability," it is sufficient that interested students and admitted students have the potential to sustain an interscholastic team and students will not be required to demonstrate they have sufficient ability in a new sport or team if students participating in existing sports or teams are not required to demonstrate through try-outs or some other process that they possess sufficient ability to participate in the specific sport or at the particular level of competition (varsity, junior varsity, etc.) in which they have expressed interest.

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 at the applicable high school, the Corporation shall do the following:

1. Sports Currently Offered

- a. The Corporation will determine, for sports that are currently offered as interscholastic sports at the applicable high school, whether there is a sufficient number of female students with the interest and, if applicable, ability to support the creation of additional levels of competition (junior varsity, sophomore, etc.) or multiple squads at the same level of competition, and sufficient competition within the high school's normal competitive region, to support additional levels of competition or multiple squads at the same level of competition in those sports. If so, the Corporation will add additional levels of competition or squads at the same or a lower level of competition at the high school in those sports by the next competitive season consistent with the above determination.
- b. In order to increase the competitive participation opportunities for students who are members of the underrepresented sex, the Corporation will consider expanding the squad sizes for interscholastic sports currently offered at the applicable high school, consistent with the nature of each sport and the level of interest in each sport. The Corporation will increase the size of each squad where determined to be appropriate. If necessary, the Corporation will provide sufficient coaching staff to support the addition of new athletes to any given squad and take any other steps necessary to ensure that the new athletes on each expanded squad are provided meaningful opportunities to participate in interscholastic athletics.

2. Sports Not Currently Offered

The Corporation will determine whether there is a sufficient number of female students at the applicable high school with sufficient interest and, if applicable, ability to support the addition of a team or multiple teams (varsity, junior varsity, sophomore, etc.), in sports not currently offered by the high school as interscholastic sports, and whether there is sufficient competition within the school's normal competitive region and geographic area for those teams/sports. If so, the Corporation will add a team or multiple teams in those sports at the high school by the next competitive season.

3. Response to Developing Interests and Abilities

For any sport that is not currently offered by the applicable high school where there is a sufficient number of female students who have sufficient interest and, if applicable, ability in that sport, but where the Corporation determines that there is not sufficient competition within the high school's normal competitive region, the Corporation will take ongoing steps to develop students' interest and ability. These steps may include establishing intramural

or club sports, exploring the feasibility of establishing competition in the Corporation's normal competitive region and geographic area, and elevating such sports to interscholastic status when competition becomes available.

4. Elimination of Athletic Teams

OCR has made clear to the Corporation and the Corporation understands that OCR does not require or encourage the elimination of any Corporation interscholastic athletic teams and that it seeks action from the Corporation 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 interscholastic 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.

5. Additional Interscholastic Opportunities

To the extent that the Corporation adds any sports or additional levels of teams at Bosse, Central, Harrison, North, or Reitz, the Corporation will provide those teams in a manner comparable to other interscholastic teams, with sufficient funds in their budgets to cover expenses that include, but are not limited to: coaches, equipment and supplies, travel funds, and publicity and support services. The Corporation will also publicize any new sports or additional levels of teams through written notices, verbal announcements and postings on the Corporation's website.

REPORTING REQUIREMENTS - SECTION II

- A. By May 30, 2013, if the Corporation was obligated to offer additional athletic opportunities pursuant to Section II of this Agreement, the Corporation will provide OCR with a detailed report that reflects the steps taken by the Corporation pursuant to Sections II(1)-(5) 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 intramural, club and/or other opportunities added pursuant to this Agreement. It will also describe how the creation of additional athletics 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 Corporation's interscholastic athletics program to be substantially proportionate to their rate of enrollment at the applicable high school.
- B. By August 1 of each subsequent academic year covered by this Agreement (2013-2014 and 2014-2015), the Corporation will provide OCR with a copy of the squad list for each team at the applicable high school.

- C. By August 1 of each subsequent academic year covered by this Agreement (2013-2014, and 2014-2015), the Corporation will provide information demonstrating the breakdown/enrollment by sex at the applicable high school.
- D. By August 1 of each subsequent academic year covered by this Agreement (2013-14, and 2014-15), the Corporation will provide information regarding any increases to the size of its squads, as described by Section II.1.b. above.

III. ADDITIONAL COMMITMENTS TO IMPROVE THE ATHLETIC OPPORTUNITIES FOR THE UNDERREPRESENTED SEX

- A. The Corporation will develop a process or procedure for students or other interested parties, such as coaches or parents, to use in requesting the addition of new sports or levels of sports at each high school. The procedure will be written and notice of it will be published in the Student Handbook and the individual responsible for responding to any requests will be identified by name and contact information. This information will also be displayed on the Corporation's website, including on any athletics web pages.
- B. At the beginning of each school year, the Corporation will provide written notice to coaches, physical education teachers, guidance counselors and principals, of all sports offered at each high school.
- C. At the beginning of each school year, the Corporation will provide a written description of all of its sports offerings at each high school to all students in their physical education classes. This information will also be posted on the Corporation's website, including on any athletics web pages.
- D. The Corporation will maintain the interscholastic athletic squad lists, which shall reflect the participation numbers for each sport, by sex, as of each team's first competitive event. These records will not be destroyed or otherwise altered so that they can be submitted to OCR consistent with the terms of this Agreement.

REPORTING REQUIREMENTS - SECTION III

- A. By April 26, 2013, the Corporation will submit a copy of its procedure for requesting new sports, as required by Section III.A, above, and a link to the location on its webpage where the revised procedure is located.
- B. By April 26, 2013, the Corporation will provide OCR with a copy of the notices provided to coaches and students, as required by Sections III.B and C, above, and a link to the location on its webpage where the notices are located.

IV. LOCKER ROOMS, PRACTICE AND COMPETITIVE FACILITIES

- A. Effective the 2012-2013 academic year, the Corporation will ensure that it provides equal athletic opportunities at each of its high schools for members of both sexes in the provision of locker rooms, practice and competitive facilities. To that end, the Corporation will demonstrate that the Corporation's girls' interscholastic athletic teams at each high school are provided with locker rooms, practice and competitive facilities that are comparable in quality, availability, exclusivity, and maintenance and preparation, to the locker rooms, practice and competitive facilities provided to the boys' interscholastic athletic teams at the same school. In particular, the Corporation will implement its plans to upgrade the practice and competitive facilities it provides for its girls' softball teams and its boys' baseball teams. Further, the Corporation will implement its plan to ensure that the locker rooms provided to individual girls' teams include team rooms large enough to accommodate all team members to the same extent as such team rooms are provided to individual boys' teams.
- B. By April 26, 2013, the Corporation will conduct a self-assessment of the locker rooms, practice and competitive facilities (including team rooms) that are provided at each high school to its boys' and girls' interscholastic athletics teams, including any facilities that are not owned by the Corporation, to ensure that they are comparable. The self-assessment will take into account any planned upgrades or improvements referenced in item IV.A. of this agreement and identify any additional changes or improvements that need to be made to the locker rooms, practice or competitive facilities (including team rooms) provided to the Corporation's boys' and girls' high school interscholastic athletics teams to remedy any unjustified disparities on the basis of sex identified by the self-assessment. The self-assessment will include the Corporation's plan for implementing any identified upgrades or improvements by no later than the conclusion of the 2012-13 school year.
- C. In assessing compliance with Section IV of this agreement, OCR will compare the availability, quality and kinds of benefits, opportunities, and treatment afforded to the Corporation's male and female athletes at each Corporation high school in the provision of locker rooms, practice and competitive facilities to determine whether they are equivalent. Under this equivalency standard, identical benefits, opportunities, or treatment are not required as long as the effects of any differences are negligible. If a comparison of the benefits, opportunities and treatment afforded to males and females in the identified program components indicates that benefits, opportunities, or treatment are not equivalent, the Corporation could still be in compliance with Title IX if the differences are shown to be the result of nondiscriminatory factors, such as the unique aspects of particular sports or athletic activities.

REPORTING REQUIREMENTS - SECTION IV

- A. By April 26, 2013, the Corporation will submit a report to OCR that includes the self-assessment referenced in item IV.B. of this agreement along with the Corporation’s plan for implementing any identified upgrades or improvements by no later than the conclusion of the 2012-13 school year. If the Corporation has begun implementing and/or completed any of the planned upgrades of improvements, the report will include detailed documentation regarding the progress made.

- B. By November 1, 2013, the Corporation will submit a report to OCR demonstrating its full implementation of Section IV of this Agreement.

The Corporation 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 Corporation understands that during the monitoring of this Agreement, if necessary, OCR may visit the Corporation, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the Corporation 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), which was at issue in this case.

The Corporation understands that OCR will not close the monitoring of this Agreement until OCR determines that the Corporation 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), which was at issue in this case.

The Corporation 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 recipient written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

Approved and agreed to on behalf of the Evansville Vanderburgh School Corporation:

/s/

Superintendent
Evansville Vanderburgh School Corporation

2/4/13

Date