



**U.S. Department of Education
Office for Civil Rights**

Dr. Miguel Cardona
Secretary of Education, Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202
Phone (202) 401 – 3000
ocr@ed.gov

Catherine Lhamon, J.D.
Ass't Secretary, Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202 - 1100
Catherine.lhamon@ed.gov

Suzanne B. Goldberg, J.D.
Acting Ass't Secretary, Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202 - 1100
Suzanne.goldberg@ed.gov

ADMINISTRATIVE CLASS COMPLAINT

COMPLAINANT

Champion Women
Nancy Hogshead, J.D., OLY, CEO
EMAIL: Hogshead@ChampionWomen.org

RECIPIENT

Carroll University
Michael Schulist, Director of Athletics
100 N East Ave.
Waukesha, WI 53186
EMAIL: mschulis@carrollu.edu

Dr. Cindy Gnadinger, President
100 N East Ave.
Waukesha, WI 53186
EMAIL: kedavis@carrollu.edu

I. PRELIMINARY STATEMENT

1. This complaint is filed by *Champion Women*, pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”) and the regulations and policies promulgated thereunder. *See* 34 C.F.R. § 106 *et seq.* Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities, including athletics.

2. *Champion Women* is a 501(c)(3) that provides legal advocacy for girls and women in sports.

3. As detailed in the Factual and Legal Allegations below, data submitted by Carroll University (“Carroll”) to the Office of Postsecondary Education of the U.S. Department of Education pursuant to the Equity in Athletics Disclosure Act (“EADA”), 20 U.S.C. § 1092, as well as information collected from Carroll’s website indicates that Carroll is discriminating on the basis of sex by providing women with unequal athletic participation opportunities, unequal athletic scholarship dollars, and unequal treatment and benefits, including athletic recruitment funding.

4. In order to address these disparities, *Champion Women* requests that the Office for Civil Rights (“OCR”) investigate Carroll to determine whether it is discriminating against women in its athletic department, in providing women equal opportunities to participate in varsity sports, equal opportunities to earn athletic scholarships, and equivalent treatment and benefits, including recruitment funding as required by Title IX and, if not, to remedy any unlawful conduct.

II. JURISDICTION

5. The OCR is responsible for ensuring compliance with Title IX and receiving information about, investigating, and remediating violations of Title IX and its implementing regulations and guidelines. 34 C.F.R. §§ 106.71, 100.7.

6. *Champion Women* has not filed this complaint with any other agency or institution.

7. As Carroll currently violates Title IX’s athletic equity requirements, this complaint is timely.

III. FACTUAL ALLEGATIONS

8. Carroll receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex pursuant to Title IX.

9. Data submitted by Carroll to the U.S. Department of Education pursuant to the EADA that is publicly available on the Office of Postsecondary Education website for academic years 2003-04 through 2021-2022 indicates that Carroll is not currently and has not in the past been providing female athletes equal opportunities to participate in athletics under Title IX's three-part participation test.

Year	Undergraduate Enrollment				Men	Women Prong 2: This # should Rise Continuously and Steadily Over Time, Without Going Backwards	Athletic Participation			
	Men	Women	Total	Percent Women			Total	Percent Women	Female Athletes Who Would Need to be Added to Achieve	
2003-04	692	1370	2062	66.44%	217	162	379	42.74%	268	
2004-05	716	1443	2159	66.84%	242	168	410	40.98%	320	
2005-06	778	1536	2314	66.38%	247	172	419	41.05%	316	
2006-07	823	1672	2495	67.01%	242	148	390	37.95%	344	
2007-08	823	1672	2495	67.01%	258	161	419	38.42%	363	
2008-09	811	1682	2493	67.47%	282	180	462	38.96%	405	
2009-10	866	1734	2600	66.69%	329	207	536	38.62%	452	
2010-11	889	1732	2621	66.08%	332	198	530	37.36%	449	
2011-12	978	1811	2789	64.93%	330	223	553	40.33%	388	
2012-13	976	1815	2791	65.03%	329	213	542	39.30%	399	
2013-14	946	1757	2703	65.00%	308	192	500	38.40%	380	
2014-15	947	1741	2688	64.77%	340	251	591	42.47%	374	
2015-16	960	1765	2725	64.77%	352	293	645	45.43%	354	
2016-17	944	1771	2715	65.23%	345	265	610	43.44%	382	
2017-18	954	1770	2724	64.98%	365	301	666	45.20%	376	
2018-19	896	1783	2679	66.55%	370	283	653	43.34%	453	
2019-20	884	1868	2752	67.88%	349	281	630	44.60%	456	
2020-21	829	1936	2765	70.02%	196	235	431	54.52%	223	
2021-22	796	1873	2669	70.18%	346	288	634	45.43%	526	

10. *Champion Women* has edited the EADA data on our website in just one instance: <https://titleixschools.com/> to remove male practice players who are counted up in the tally as

“women”. These male practice players are not female athletes and have therefore been subtracted from the totals in the EADA.¹

11. Carroll does not and has not provided athletic opportunities to female students in numbers substantially proportionate to their enrollment pursuant to part one of the Title IX participation test. Women are 70.18% of the student body, but just 45.43% of the student-athletes.

12. In 2021-2022, the most recent academic year for which EADA data is available that is not corrupted by disruptions related to Covid-19, Carroll’s participation gap was 526 female athletes. In other words, Carroll must add 526 additional athletic opportunities for women in order to provide athletic opportunities substantially proportionate to enrollment. Assuming the average squad size is 25 athletes – some more and some less – Carroll would need to add 21 new teams for its women students to the current 206 female athletes.

13. The EADA data and evidence gathered on Carroll’s website show that Carroll does not have a history and continuing practice of expanding athletic participation opportunities for women pursuant to Prong 2 of the Title IX participation test. The number of women athletes does not consistently increase over time.

14. Over the 19 academic years covered by the available EADA data, Carroll’s opportunities for women have bounced up and down. Carroll has backslid in 2006, 2010, 2012, 2013, 2016, 2018, 2019, and 2020. Carroll offered more opportunities for women in 2016. Carroll offered 13 more opportunities for women in 2017. Carroll seems to have ignored the enormous gaps between men’s and women’s athletic opportunities, as the men’s athletic offerings have grown by 153, while the gap has grown by 258 athletes since 2003. *Champion Women* cannot know the 28-year history of adding sports between 1975 and 2003, but Nazareth cannot show a history of continuous program expansion that is demonstratively responsive to women’s growing interest in sports of all kinds.

15. A review of Carroll’s website did not cover any policy or procedure for adding new sports or elevating existing club sports to varsity status. Nor did it reveal any athletic gender equity plan, or any gender equity committee.

16. Carroll sponsors 11 men’s varsity sports (Baseball, Basketball, Cross Country, Football, Golf, Lacrosse, Soccer, Swimming & Diving, Tennis, Indoor Track, and Outdoor Track) serving 297 men, and 12 women’s varsity sports (Basketball, Bowling, Cross Country, Golf, Lacrosse, Soccer, Softball, Swimming, Tennis, Track, and Volleyball), serving 206 women.

¹ See *Champion Women* website for every college and university receiving federal funds: <https://titleixschools.com/2023/05/20/eada-data/> High school data for these schools receiving federal funds is available here: <https://titleixschools.com/2023/06/06/check-your-high-school/>

17. Information available on Carroll’s website also suggests that the university is not accommodating the interests and abilities of female athletes as required by part three of the Title IX participation test.

18. Carroll women participate in the club sports of powerlifting, soccer, and volleyball, pickleball, dodgeball. The existence of these women’s club teams indicates that there may be unmet interest in women’s athletics at Carroll.

19. Carroll University is a member of “College Conference of Illinois and Wisconsin” (CCIW) serving Division III NCAA schools. Member schools come from Illinois and Wisconsin, with affiliate members in Iowa, Kentucky and Missouri. This large geographic area will easily sustain additional varsity sports for women, when they’ve expressed such interest and ability to take part of the educational opportunity of sport.

20. The CCIW sponsors women’s Wrestling as a championship sport, and Carroll University does not sponsor women’s Wrestling. Wrestling will provide Carroll with women’s sports for its competitive geographic region. Women’s championship teams demonstrate women’s interest in these sports and that competition for these women’s sports exists in the competitive geographic area.

21. Members of the CCIW sponsor women’s water polo and women’s triathlon. These sports will provide Carroll with women’s sports for its competitive geographic region. Women have therefore demonstrated their interest in these sports and that competition for these women’s sports exists in the competitive geographic area.

22. Rugby, Equestrian, Triathlon, and Competitive Cheer are NCAA emerging sports. There are 163 college women’s Wrestling programs, 42 NCAA schools sponsor Triathlon, 26 colleges sponsor women’s varsity Equestrian, and at least 32 colleges currently sponsor women’s varsity Rugby.

23. Sport Governing Bodies and the NCAA, for member schools, make it very easy to see where other competitors are located. The NCAA publishes the “NCAA Sports Sponsorship and Participation Rates Report, 1956 - 2022” for schools to find competitors within the school’s normal competitive region: NCAA Sports Sponsorship and Participation Rates Report.²

² See

https://ncaaorg.s3.amazonaws.com/research/sportpart/2022RES_SportsSponsorshipParticipationRatesReport.pdf

See individual sports’ governing bodies for more, e.g.,

Women’s College Rugby: <https://www.urugby.com/teams/womens-teams>

Collegiate Equestrian: <https://collegiateequestrian.com/sports/2020/5/6/schools.aspx>

Women’s Collegiate Wrestling: <https://wrestlelikeagirl.org/college-opportunities>

Collegiate Competitive Cheer Teams: <https://www.ncsasports.org/cheerleading/colleges> (not to be confused with sideline cheerleading)

Women’s Collegiate Triathlon: <https://www.usatriathlon.org/multisport/ncaa-triathlon>

24. A review of the Carroll website does not reveal that Carroll undertook any athletic interest surveys or other research into interest and competition to support the addition of women’s varsity sports. While surveys are never sufficient to deny women sports opportunities, they are often helpful to determine *which sports* the school should add.

25. Carroll’s EADA data indicates that the university provides inadequate and unequal funding for recruitment of female athletes. In 2021-2022, Carroll spent \$32,237 on men’s recruitment and only \$11,339 on women’s recruitment; women were allocated only 26.02 percent of the recruiting budget even though they account for 45.43 percent of the athletic population and 70.18 percent of the full-time undergraduate population. Carroll University needs to add **\$23,460** to its women’s recruiting budget.

26. If, for some reason, the OCR determines that Carroll is, in fact, not discriminating against women in providing opportunities in sport, Carroll would still need to provide its women’s sports teams – and women’s coaches – with **\$6,507** more recruiting dollars in order to be consistent with the school’s investment in men’s sports.

IV. LEGAL ALLEGATIONS

27. Title IX provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. §1681(a).

28. Title IX regulations prohibit athletic programs from discriminating on the basis of sex in interscholastic, intercollegiate, club or intramural athletics offered by the institution. 34 C.F.R. §106.41(a) (2000).

29. Title IX regulations require institutions that offer athletics programs to provide equal athletic opportunities to members of both sexes to participate in athletics. 34 C.F.R. §106.41(c)(1).

Collegiate Sailing is governed by the Inter-Collegiate Sailing Association (ICSA) with 220 schools: <https://www.collegesailing.org/about/overview>

Women’s Collegiate Ice Hockey: <https://www.uscho.com/teams/#d1women>

Collegiate Field Hockey: <https://www.teamusa.org/USA-Field-Hockey/PLAYERS/College/Team-Websites>

Collegiate Synchronized/ Artistic Swimming: <https://www.collegexpress.com/lists/list/colleges-with-notable-synchronized-swimming-teams/581/>

Collegiate Bowling - <https://collegebowling.bowl.com/teams>

Collegiate Rifle - <https://competitions.nra.org/competitions/nra-national-matches/collegiate-championships/collegiate-shooting-sports-directory/>

Collegiate Skiing – <https://www.uscsa.org/>

Collegiate Water Polo - <https://collegiatewaterpolo.org/>

Collegiate Women’s Gymnastics <https://www.ncaa.com/sports/gymnastics-women>

30. Pursuant to the 1979 Title IX Policy Interpretation, compliance with Title IX's equal athletic participation requirement is measured by determining whether the educational institution meets one part of the following three-part test:

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

United States Department of Health, Education, and Welfare, Office for Civil Rights, *Policy Interpretation; Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71413 (Dec. 11, 1979) [hereinafter *Policy Interpretation*].

31. In determining substantial proportionality under part one of the three-part test, OCR considers the number of opportunities that would have to be added to achieve proportionality and whether it would be sufficient to support another team. If there are a significant number of unaccommodated women, it is likely that a viable sport could be added and therefore the institution has not satisfied part one of the three-part test. United States Department of Education, Office for Civil Rights, *Clarification of Intercollegiate Athletics Policy Guidance: the Three-Part Test* (Jan. 16, 1996) [hereinafter *1996 Clarification*].

32. In 1975, schools were given three years to be in compliance with the equal participation mandate under Title IX. Schools had only one year to end sex-discrimination in all other areas of Title IX's non-discrimination mandate. Only athletics gave schools three years to add athletic opportunities and to stop discriminating against women – or until 1978. That deadline passed 45 years ago. 34 C.F.R. §106.41(d).³

³ 34 C.F.R. §106.41(d) “*Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.”

It is worth noting how odd Prong 2 is as a legal test, in comparison to other non-discrimination civil rights. For a school to be able to argue that it is still playing catch-up with non-discrimination – exists nowhere else in law. This is especially true 51 years after the passage of Title IX, and 48 years after the passage of the regulations OCR depends on, regulations that were passed by Congress. When a school uses Prong 2, it is admitting that it is not providing women with equal educational opportunities, but that their actions are acceptable, because the school is “improving.” Title IX’s Prong 2 allows schools to provide girls and women with less.

33. Therefore, it is understandable that Prong 2 is a strict legal test. In determining whether an institution has a history and continuing practice of expansion under Prong 2 of the three-part test, OCR reviews the entire history of the athletic program and evaluates whether the institution has expanded participation opportunities for the underrepresented sex in a manner that was demonstrably responsive to their developing interests and abilities, considering a number of factors, including:

- an institution’s record of adding intercollegiate teams, or upgrading teams to intercollegiate status, for the underrepresented sex;
- an institution’s record of increasing the numbers of participants in intercollegiate athletics who are members of the underrepresented sex;
- an institution’s affirmative responses to requests by students or others for addition or elevation of sports; and
- whether the institution has effective ongoing procedures for collecting, maintaining and analyzing information on the interest and abilities of students of the underrepresented sex, including monitoring athletic participation, and assessing interest and ability on a periodic basis.

United States Department of Education, Office for Civil Rights, *Intercollegiate Athletics Policy Clarification: The Three-Part Test- Part Three* (Apr. 20, 2010) [hereinafter *2010 Clarification*]; *1996 Clarification*.

34. In determining whether an institution has a continuing practice of program expansion under Prong 2, OCR will consider a number of factors, including:

- an institution’s current implementation of a nondiscriminatory policy or procedure for requesting the addition of sports (including the elevation of club or intramural teams) and the effective communication of the policy or procedure to students;
- an institution’s current implementation of a plan of program expansion that is responsive to developing interests and abilities; and
- an institution’s efforts to monitor developing interests and abilities of the underrepresented sex, for example, by conducting periodic nondiscriminatory assessments of developing interests and abilities and taking timely actions in response to the results.

2010 Clarification, 1996 Clarification.

35. OCR will not find a history and continuing practice of program expansion where an institution increases the proportional participation opportunities for the underrepresented sex by reducing opportunities for the overrepresented sex alone or by reducing participation opportunities for the overrepresented sex to a proportionately greater degree than for the underrepresented sex. *2010 Clarification, 1996 Clarification.*

36. Courts have found that schools must have both a history *and* continuing practice of expanding opportunities for women for Prong 2 compliance. *Mansourian v. Bd. Of Regents of Univ. of Cal.*, 594 F. 3d 1095, 1108. (9th Cir. Cal. 2010).

37. Prong 3 of the three-part test requires an examination of whether there is an unmet interest in a particular sport, a sufficient ability to sustain a team in the sport, and a reasonable expectation for competition for a team in the sport. *2010 Clarification, 1996 Clarification.*

38. Whether there is unmet interest and ability will be determined by examining a broad range of indicators, including whether the institution uses non-discriminatory methods of assessing interest and ability, the elimination of a viable team for the unrepresented sex, multiple indicators of interest and ability, and frequency of conducting assessments. *2010 Clarification.*

39. Sufficient interest can be established by student requests to add a sport or elevate a club sport, increases in club or intramural sport participation, responses to interviews and interest surveys, assessments of student athletic participation before entering the institution or in the secondary schools from which the university draws its students, and assessments of participation in intercollegiate sports in the institution's normal competitive regions. *Id.*

40. Ability may be established by the athletic accomplishments and competitive experience of club sports and admitted students, the opinions of coaches, administrators, and athletes, and student participation in other sports. *Id.*

41. Expectation of competition may be established through athletic opportunities offered by other schools with which the school competes or opportunities at other schools in the school's geographic area, including those against which the institution does not compete. *Id.*

42. Under Prong 3 of the three-part test, OCR will also examine an institution's recruitment practices. If an institution recruits potential student-athletes for its men's teams, OCR will examine whether the institution is providing women's teams with substantially equal opportunities to recruit potential student-athletes. *Id.*

43. Title IX also requires equal opportunity in the recruitment of student-athletes where equal athletic opportunities are not present for male and female students. Compliance will be assessed by examining the recruitment practices of the athletic programs for both sexes and evaluating whether the financial and other resources made available for recruitment in male and

female athletic programs are equivalently adequate to meet the needs of each program. 1979 *Policy Interpretation*.

44. Title IX requires schools to provide women with equal treatment, including equipment and supplies; game and practice times; travel and per diem allowances; coaching and academic tutoring; assignment and compensation of coaches and tutors; locker rooms, practice and competitive facilities; medical and training facilities and services; housing and dining facilities and services; and publicity. 34 C.F.R. §106.41(a) (2000), *Policy Interpretation*.

45. Lack of money is not a legal defense to sex discrimination. See, e.g., *Roberts Colorado State Univ.*, 814 F. Supp. 1507, 1518 (D. Colo. 1993) (“[A] financial crisis cannot justify gender discrimination.”); *Favia v Indiana University of Pennsylvania*, 812 F. Supp. 578, 585 (W.D. Pa. 1993) (finding that financial concerns alone cannot justify gender discrimination); *Cook v. Colgate University*, 802 F. Supp. 737, 750 (1992) (“[I]f schools could use financial concerns as a sole reason for disparity of treatment, Title IX would become meaningless.”); *Haffer v. Temple*, 678 F. Supp. 517, 520 (1987) (finding that financial concerns alone cannot justify gender discrimination).

46. Monies and in-kind benefits from third-party sources, such as donors, sponsorships, television rights, ticket sales, student-fees, are not a defense to a sex discrimination charge, whether those resources were used to build facilities, fund scholarships, provide equipment and uniforms, or any other benefit of sports participation. None of those sources of money creates a legal defense to sex discrimination. Schools must ensure that their students are not receiving second class educational opportunities because they are female. See 20 U.S.C. § 1687 (2005); See Office for Civil Rights, *Department of Education, Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance* (June 11, 2003), *Cohen v. Brown Univ.*, 809 F. Supp. 978, 996 (D.R.I. 1992) (concluding that “all monies spent by Brown’s Athletic Department, whether originating from university coffers or from the Sports Foundation [booster club] must be evaluated as a whole under § 106.41(c)”)

47. It is *Champion Women’s* experience that most athletes and former athletes are acutely aware of all the ways they are treated as second-class within their athletics department, because they are women. As NIL monies become more available, equal promotion and publicity will be important for female athletes. *Champion Women* asked current collegiate athletes what equality would look like under this list. Here’s what the athletes came up with:

- i. Men’s and Women’s sports would be equally featured, with equal prominence, on school and Athletic Department websites and social media.
- ii. Schools would invest equally in cameras and production equipment for Women’s and Men’s sports.
- iii. Schools would optimize Google searches for their Men’s and Women’s teams to receive equal search results.

- iv. Women’s and Men’s sports would employ an equal caliber of talent in their sports information and marketing departments, and they would be paid and promoted equally.
- v. Women’s and Men’s sports jerseys, apparel and memorabilia would be equally and easily accessible.
- vi. The needs of Women’s teams would not revolve around Men’s football and men’s basketball teams.
- vii. The Women’s and Men’s teams would have equal access to dining halls, nutrition, etc. at times equally convenient to both teams.
- viii. Men’s and Women’s teams would have equal access to optimal practice times when they share facilities.
- ix. Men’s and Women’s sports marketing efforts would focus on performance; Broadcasters and schools would not focus on a woman athlete’s appearance or sexuality.
- x. Women’s and Men’s medical care and athletic training access would be equal; Neither male or female athletes would have priority accessing these resources.
- xi. Schools would hire competition officials of the same quality, with equal compensation, for the Women’s and Men’s teams.
- xii. Men’s and Women’s sports performance staff would be equal and would be paid and promoted comparably.
- xiii. Schools would intentionally use language that equally prioritizes Men’s and Women’s sports.
 - 1. Teams would be referred to as “Women’s Basketball” and “Men’s Basketball.”
 - 2. “Basketball” would not be used to refer to Men’s Basketball.
 - 3. Schools would have Social Media handles that referred to men’s and women’s teams; “Oregon Soccer” would be changed to “Oregon Men’s Soccer.”

48. Carroll’s own data, as outlined in the Factual Allegations above, demonstrate that it is not providing equal opportunities for its female students to participate in sports under Title IX’s three-part participation test, in addition to scholarship, treatment and recruitment requirements.

V. RELIEF REQUESTED

49. *Champion Women* requests that OCR:
- a. Investigate Carroll University to determine whether it is discriminating against women; whether it is providing female students with equal participation opportunities in varsity athletics, equal athletic scholarship dollars, and equal treatment and benefits, including equal recruiting budgets.
 - b. Take all necessary steps to remedy any and all unlawful conduct that it identifies in its investigation, as required by Title IX and its implementing regulations.
 - c. If any violations are found, secure assurances of compliance of non-discrimination and with Title IX from Carroll University, that include full remedies for all the violations found.
 - d. Among other steps to achieve compliance with Title IX, require Carroll University to add more athletic opportunities for women, accord to additional teams and athletes the full range of benefits accorded to men's varsity teams and athletes, increase recruiting budgets and opportunities, and adopt and implement a plan to achieve compliance with Title IX.
 - e. Monitor any resulting agreement with Carroll University to ensure that the school is not discriminating against women students and that it achieves compliance with Title IX, now and in the future.
 - f. I give OCR my consent to disclose my name and *Champion Women's* name contained in this letter to others for OCR's investigation of, and enforcement activities related to, the Discrimination Complaint.



A handwritten signature in blue ink that reads "Nancy Hogshead". The signature is fluid and cursive.

Nancy Hogshead, J.D., OLY
September 5, 2023