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ADMINISTRATIVE CLASS COMPLAINT

COMPLAINANT

Champion Women
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RECIPIENT

College of Mount Saint Vincent
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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 College of Mount Saint Vincent, (“Mount Saint Vincent”) 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 Mount Saint Vincent’s website indicates that Mount Saint Vincent 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 Mount Saint Vincent to determine whether it is discriminating against women; whether it is 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 remedying 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 Mount Saint Vincent currently violates Title IX’s athletic equity requirements, this complaint is timely.

III. FACTUAL ALLEGATIONS

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

9. Data submitted by Mount Saint Vincent 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 Mount Saint Vincent 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	244	873	1117	78.16%	65	99	164	60.37%	134
2004-05	319	890	1209	73.61%	88	91	179	50.84%	155
2005-06	344	905	1249	72.46%	99	111	210	52.86%	149
2006-07	344	905	1249	72.46%	115	128	243	52.67%	175
2007-08	372	938	1310	71.60%	115	115	230	50.00%	175
2008-09	352	961	1313	73.19%	113	117	230	50.87%	192
2009-10	365	983	1348	72.92%	86	111	197	56.35%	121
2010-11	384	963	1347	71.49%	146	114	260	43.85%	252
2011-12	410	986	1396	70.63%	122	97	219	44.29%	196
2012-13	437	1022	1459	70.05%	136	109	245	44.49%	209
2013-14	439	1050	1489	70.52%	144	109	253	43.08%	235
2014-15	490	1087	1577	68.93%	144	103	247	41.70%	216
2015-16	472	1033	1505	68.64%	115	112	227	49.34%	140
2016-17	482	1101	1583	69.55%	121	116	237	48.95%	160
2017-18	505	1106	1611	68.65%	144	98	242	40.50%	217
2018-19	461	1101	1562	70.49%	141	112	253	44.27%	225
2019-20	501	1283	1784	71.92%	121	98	219	44.75%	212
2020-21	524	1679	2203	76.21%	60	41	101	40.59%	151
2021-22	498	1625	2123	76.54%	148	85	233	36.48%	398

10. *Champion Women* has edited the EADA data on our website <https://titleixschools.com/> in just one instance: 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

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/>

11. Mount Saint Vincent 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 76.54% of the student body, but just 36.48% 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, Mount Saint Vincent's participation gap was 398 athletes. In other words, Mount Saint Vincent must add 398 additional athletic opportunities for women in order to provide athletic opportunities substantially proportionate to enrollment; 398 additional opportunities is enough to add 16 new women's teams. Note that Mount Saint Vincent currently only has 85 women athletes. Presumably, women pay the same tuition as male students, yet they are provided far fewer educational opportunities in the athletic department.

13. The EADA data and evidence gathered on Mount Saint Vincent's website show that Mount Saint Vincent 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. See column "Women" under "Athletic Participation" above. The number of women athletes does not consistently increase over time.

14. Over the 19 academic years covered by the available EADA data, Mount Saint Vincent has gone backwards, from 99 in 2003 to 85 currently. Mount Saint Vincent provided the most opportunities for women in sport in 2006, at 128. Since then, numbers have fluctuated, up to 27 opportunities less. It is currently offering women 42 fewer athletic opportunities. Mount Saint Vincent provided more opportunities for women to engage in the educational opportunity called sports all but one prior year.

Meanwhile, Mount Saint Vincent has more than doubled opportunities for men. In 2021, men had an all-time high number of athletic opportunities.

15. A review of Mount Saint Vincent's website did not show 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. Mount Saint Vincent sponsors 7 men's varsity sports (Baseball, Basketball, Golf, Lacrosse, Soccer, Track and Volleyball) and 6 women's varsity sports (Basketball, Lacrosse, Soccer, Softball, Track and Volleyball).

17. Information available on Mount Saint Vincent's website 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. Mount Saint Vincent women participate in the club sports of equestrian, dance, stepping, cheerleading, track and field. The existence of these women's club teams indicates that there may be unmet interest in women's athletics at Mount Saint Vincent.

19. Mount Saint Vincent is a member of the Skyline Conference, NCAA Division III. The Skyline Conference is in New York, with affiliate members in New Jersey. Almost all the NCAA Emerging sports are in New York and New Jersey, a collegiate-dense area, with lots of choices for adding new women's sports within this competitive geographic region.

20. The Skyline Conference sponsors women's Tennis as a championship sport, and Mount Saint Vincent does not offer women students with this educational experience.

21. Rugby, Equestrian, Triathlon, and Wrestling 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.

22. 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

23. Girls in New York compete in numerous high school sports, Badminton, Basketball, Fencing, Field Hockey, Flag Football, Gymnastics, Ice Hockey, Lacrosse, Soccer,

² See NCAA:

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>

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>

Softball, Swimming & Diving, Track & Field, Volleyball, and Wrestling.

<https://www.nfhsnetwork.com/states/NY> The College of Mount Saint Vincent will have a steady supply of prepared athletes to expand opportunities.

High school female athletes are provided very few college sports opportunities. According to the NCAA,³ in 2020, only 1.7% of high school girls' basketball players were provided the opportunity to play in Division III. Just 5.8% of high school Field Hockey players, 2.1% of Golfers, 16.2% of Ice Hockey players, 6.2% of Lacrosse players, 2.9% of Soccer players, 2.2% of Softball players, 3% of Swimmers, 2% of Tennis players, 1.9% of Track & Field athletes, 1.6% of Volleyball players, 1.2% of Water Polo players in high school are provided opportunities to play their sport in Division III.

These metrics demonstrate the enormous demand for women to compete in collegiate sports that is unmet. Girls and women have the interest and athletic ability to play additional sports. It cannot be said that there are not women interested and athletically able to compete in many additional sports at the College of Mount Saint Vincent.

23. A review of the Mount Saint Vincent website does not reveal that Mount Saint Vincent 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 in determining *which sports* the school should add.

24. If Mount Saint Vincent provided its male and female students with the same opportunities to participate, Mount Saint Vincent would need to add \$6,514.64 additional athletic recruiting dollars, to balance out the amount New Mexico State provides to its male students.

25. If, for some reason, the OCR determined that Mount Saint Vincent was not discriminating against women in the provision of athletic opportunities, and the student-athlete ratio is used instead of the student-body ratio, Mount Saint Vincent would not owe women's sports additional money for recruiting budgets.

IV. LEGAL ALLEGATIONS

26. 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).

27. 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).

³ NCAA: Estimated Probability of Competing in College Athletics:
<https://www.ncaa.org/sports/2015/3/2/estimated-probability-of-competing-in-college-athletics.aspx>

28. 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).

29. 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*].

30. 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*].

31. 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).⁴

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.

32. 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*.

33. 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;

⁴ 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.”

- 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.

34. 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.*

35. 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).

36. 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.*

37. Whether there is unmet interest and ability will be determined by examining a broad range of indicators, including whether the institution uses nondiscriminatory 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.*

38. 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.*

39. 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.*

40. 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.* 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.*

41. Title IX also requires schools to provide equal scholarship dollars, in proportion to the number of students of each sex participating in athletics. 34 C.F.R. §106.37(c) (2000). NCAA limits on scholarships per team is not a legal defense; schools cannot blame a third-party for sex discrimination; recipients are responsible for equality. Schools choose which sports to sponsor, and some schools have chosen scholarship-dense sports for men, such as football and basketball, and scholarship-light sports for women, such as track.

42. 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.*

43. 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.*

44. 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).

45. Monies and in-kind benefits from third-party sources, such as donors, sponsorships, television rights, ticket sales, and student fees, are not a defense to a sex discrimination charge, whether those resources were used to build facilities, 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)”)

46. 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 nor 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."

47. Mount Saint Vincent'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 treatment requirements.

V. RELIEF REQUESTED

48. *Champion Women* expects OCR investigators will find additional violations of Title IX, the law guaranteeing women equal educational opportunities, including athletics. *Champion Women* requests that OCR:

- a. Investigate the College of Mount Saint Vincent 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 unlawful conduct that you identify in your investigation, as required by Title IX and its implementing regulations. Secure assurances of compliance with Title IX from Mount Saint Vincent, that include full remedies for the violations found.
- c. Among other steps to achieve compliance with Title IX, 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, and adopt and implement a plan to achieve compliance with Title IX.
- d. Monitor any resulting agreement with the College of Mount Saint Vincent to ensure that the school achieves compliance with Title IX.



A handwritten signature in blue ink that reads "Nancy Hogshead".

Nancy Hogshead, J.D., OLY
September 22, 2023