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ADMINISTRATIVE CLASS COMPLAINT

COMPLAINANT

Champion Women
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RECIPIENT

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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 Emporia State University (“Emporia”) 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 Emporia’s website indicates that Emporia is discriminating on the basis of sex by providing unequal athletic participation opportunities and unequal benefits and treatment, including athletic recruitment funding for its female students.

4. In order to address these disparities, *Champion Women* requests that the Office for Civil Rights (“OCR”) investigate Emporia to determine whether it is providing women equal opportunities to participate in varsity sports, whether it is providing equal benefits and treatment, including equivalent 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 Emporia currently violates Title IX’s athletic equity requirements, this complaint is timely.

III. FACTUAL ALLEGATIONS

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

9. Data submitted by Emporia 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 Emporia 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.

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

Year	Undergraduate Enrollment				Athletic Participation				
	Men	Women	Total	Percent Women	Men	Women Prong 2: This # should Rise Continuously and Steadily Over Time, Without Going Backwards	Total	Percent Women	Female Athletes Who Would Need to be Added to Achieve
2003-04	1519	2333	3852	60.57%	260	132	392	33.67%	267
2004-05	1457	2339	3796	61.62%	245	139	384	36.20%	254
2005-06	1468	2329	3797	61.34%	232	129	361	35.73%	239
2006-07	1468	2329	3797	61.34%	237	112	349	32.09%	264
2007-08	1472	2342	3814	61.41%	250	137	387	35.40%	261
2008-09	1520	2227	3747	59.43%	271	130	401	32.42%	267
2009-10	1468	2183	3651	59.79%	247	132	379	34.83%	235
2010-11	1365	2156	3521	61.23%	298	155	453	34.22%	316
2011-12	1342	2008	3350	59.94%	283	163	446	36.55%	260
2012-13	1323	1981	3304	59.96%	288	155	443	34.99%	276
2013-14	1328	2056	3384	60.76%	288	163	451	36.14%	283
2014-15	1373	2097	3470	60.43%	287	160	447	35.79%	278
2015-16	1380	2129	3509	60.67%	289	176	465	37.85%	270
2016-17	1288	2082	3370	61.78%	313	180	493	36.51%	326
2017-18	1236	2053	3289	62.42%	315	173	488	35.45%	350
2018-19	1226	2030	3256	62.35%	310	174	484	35.95%	339
2019-20	1118	1944	3062	63.49%	349	188	537	35.01%	419
2020-21	1038	1870	2908	64.31%	327	174	501	34.73%	415
2021-22	946	1707	2653	64.34%	369	202	571	35.38%	464

11. Emporia 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

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/>

participation test. Women are 64.34% of the student body, but just 35.38% 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, Emporia's participation gap was 464 athletes. In other words, Emporia must add 464 additional athletic opportunities for women in order to provide athletic opportunities substantially proportionate to enrollment. To put this gap into perspective, assuming the average squad size is 25 athletes – some more and some less – Emporia will need to add 18.5 new teams for women. Moreover, 464 is over double the number of current women offered a sports experience, at 176.

13. The EADA data and evidence gathered on Emporia's website show that Emporia 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, Emporia did not increase its opportunities for women's athletic opportunities through the first 6 years. Emporia has gone backwards several times, including 2005, 2006, 2012, 2014, 2017, 2019. Emporia did not increase opportunities between 2015 and 2018. *Champion Women* cannot know the 28-year history of adding sports between 1975 and 2003, but it is unlikely to show a history of continuous program expansion that is demonstratively responsive to the growing interests of women in sport.

Meanwhile, men's sports offerings at Emporia increased by 109 and the gap between men's and women's equality widened by 200 women's athletic opportunities.

15. A review of Emporia'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. Emporia sponsors 7 men's varsity sports (Baseball, Basketball, Cross Country, Disc Golf, Football, Tennis, and Track & Field) serving 301 men, and 8 women's varsity sports (Basketball, Cross Country, Disc Golf, Track & Field, Soccer, Softball, Tennis, and Volleyball), serving 176 women.

17. Information available on Emporia'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. Emporia women participate in the club sports of disc golf and soccer, spikeball, 7x7 flag football, sand volleyball, "Punt, Pass, Kick", Table Tennis, 3x3 basketball, cornhole, pickleball, badminton, dodgeball, golf, "home run derby" and disc golf, *Recreation Services*, WOU, 2023 (last visited August 1, 2023). The existence of these women's club teams indicates that there is unmet interest in women's athletics at WOU.

19. Emporia is an NCAA DII school, and a member of the Mid-America Intercollegiate Athletics Association, the MIAA. Members compete in a wide competitive region; Missouri, Oklahoma, Kansas, and Nebraska. In 2024, a new member is joining from Arkansas. Affiliate members are in South Dakota, Arkansas; this broad competitive geographic region will give Emporia lots of choices for new sports for women.

20. The Mid-America Conference sponsors women's Golf as a Championship sport, and Emporia does not offer women's golf. Championship sports are special types of educational opportunities, and they demonstrate women's interest and ability to compete, as well as competition for these women's sports exists in the MIAA and Emporia's competitive geographic area.

21. Other members of the Mid-America Conference sponsor Bowling, Rowing, Swimming & Diving and Lacrosse. Emporia does not sponsor any of these four sports. These teams demonstrate women's interest in and ability in these sports and that competition for these women's sports exists in the Emporia and the Mid-America Conference competitive geographic area.

22. Rugby, Equestrian, and Triathlon 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>

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>

Champion Women, Sex Discrimination in Athletics in Violation of Title IX, 2023

24. A review of the Emporia website does not reveal that Emporia 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.

25. The failure to provide women with equal opportunities to play impacts the availability of athletic scholarship dollars for women. These are important sources of funding for educational attainment that women are being denied because of their sex. If Emporia provided its male and female students with the same opportunities to participate, Emporia would need to add **\$1,462,623** *additional* athletic scholarship dollars, to balance out the amount Emporia provides to its male students.

26. If, for some reason, the OCR determines Emporia is, in fact, not discriminating against women in providing opportunities in sport, then Emporia would still need to provide its women students participating in sports with **\$43,836** more in athletic scholarship aid, to match the amount Emporia provides its male athletes.

27. Emporia's EADA data further indicates that the university provides inadequate and unequal funding for recruitment of female athletes. In 2021-2022, Emporia spent \$67,508 on men's recruitment and only \$19,867 on women's recruitment; women were allocated only 22.74 percent of the recruiting budget even though they account for 35.38 percent of the athletic population and 64.34 percent of the full-time undergraduate population. If Emporia was providing women with equal proportionate recruiting funds, it would give women's teams – and women's coaches an *additional* **\$101,947** in recruiting funds.

28. If, for some reason, the OCR determines Emporia is, in fact, not discriminating against women in providing opportunities in sport, then Emporia would still need to provide its women students participating in sports with **\$12,372** more in recruiting funds, to match the amount Emporia provides its male athletes.

IV. LEGAL ALLEGATIONS

29. 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).

30. 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).

31. 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).

32. 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*].

33. 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*].

34. 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

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.

35. 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*.

36. 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*.

37. 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).

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.”

38. 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.*

39. 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.*

40. 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.*

41. 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.*

42. 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.*

43. 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.*

44. 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.

45. 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.*

46. 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*.

47. 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 the 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).

48. 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, fund scholarships, provide equipment and uniforms, or any other benefit of sports participation. None of those sources of money creates a legal defense against 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)”).

49. 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."

50. Emporia'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

51. *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 Emporia State University to determine whether it is providing female students with equal participation opportunities in varsity athletics, equal and proportionate athletic scholarship dollars, and receiving 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. Secure assurances of compliance with Title IX from Emporia State University, that include full remedies for all the violations found.
- c. Among other steps to achieve compliance with Title IX, require Emporia State 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 end sex discrimination and achieve compliance with Title IX.
- d. Monitor any resulting agreement with Emporia State University to ensure that the school achieves compliance with Title IX, now and in the future.



A handwritten signature in blue ink that reads "Nancy Hogshead". The signature is located to the right of the superhero silhouette.

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