



**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

Michigan State University
Teresa K. Woodruff, Ph.D., Interim President
220 Trowbridge Road
East Lansing, MI 48824
EMAIL: president@msu.edu

Alan Haller, Athletic Director
1855 Place, 550 S Harrison Road
East Lansing, MI 48824
EMAIL: ad@ath.msu.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 Michigan State University (“MSU”) 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 MSU’s website indicates that MSU is discriminating on the basis of sex when it provides women with unequal athletic participation opportunities, unequal athletic scholarship dollars, and unequal treatment and benefits, including but not limited to 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 MSU to determine whether it is discriminating against women; whether it is providing women with equal opportunities to participate in varsity sports, equal athletic scholarships and equivalent benefits and treatment, 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 MSU currently violates Title IX’s athletic equity requirements, this complaint is timely.

III. FACTUAL ALLEGATIONS

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

9. Data submitted by MSU 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 MSU 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 Equity
2003-04	14349	16766	31115	53.88%	360	401	761	52.69%	20
2004-05	14785	16913	31698	53.36%	368	402	770	52.21%	19
2005-06	14855	17345	32200	53.87%	369	389	758	51.32%	42
2006-07	14964	17624	32588	54.08%	385	426	811	52.53%	27
2007-08	15307	17606	32913	53.49%	387	413	800	51.63%	32
2008-09	15425	17671	33096	53.39%	404	447	851	52.53%	16
2009-10	15709	17529	33238	52.74%	426	469	895	52.40%	6
2010-11	15627	17093	32720	52.24%	423	460	883	52.10%	3
2011-12	16036	16980	33016	51.43%	458	491	949	51.74%	-6
2012-13	16749	17153	33902	50.60%	452	466	918	50.76%	-3
2013-14	17111	17465	34576	50.51%	460	456	916	49.78%	14
2014-15	17257	17781	35038	50.75%	470	469	939	49.95%	15
2015-16	17376	18049	35425	50.95%	479	482	961	50.16%	16
2016-17	17245	18035	35280	51.12%	465	456	921	49.51%	30
2017-18	17314	17935	35249	50.88%	459	481	940	51.17%	-6
2018-19	17360	18231	35591	51.22%	451	449	900	49.89%	25
2019-20	17461	18114	35575	50.92%	438	438	876	50.00%	16
2020-21	16635	17946	34581	51.90%	449	448	897	49.94%	36
2021-22	16732	18254	34986	52.18%	395	406	801	50.69%	25

11. MSU 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 52.18% of the student body, but just 50.69% 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, MSU's participation gap was 25 athletes. In other words, MSU must add 25 additional athletic opportunities for women in order to provide women athletic opportunities substantially proportionate to their enrollment. 25 athletes is enough to start at least one new team, depending on the size of the team(s). An average of the gap in the past four years would also require Michigan State to add 25 more women's athletic opportunities.

Champion Women also calculated whether MSU was padding women's teams, and the impact of this padding on the student-athlete experience, and on coaching-ratios.

If MSU provided men and women with sports opportunities that are equally valuable and coach-intensive, MSU would need to add up to 125 women's athletic opportunities.

A. *Champion Women* also looked at Michigan State's Roster Sizes on its webpage: <https://msuspartans.com/> and we show how MSU treats its men's and women's programs differently, to the detriment of the women's educational opportunities of the women; the very definition of sex discrimination.

Website: MSU Men Squad Sizes:

Baseball – 36
Basketball – 14
Cross Country – 32
Football – 105
Golf – 8
Ice Hockey – 27
Soccer – 25
Tennis – 10
Track & Field – 58
Wrestling – 26
Total Men at MSU: 341

Website: MSU Women Squad Sizes:

Basketball – 13,
Cross Country – 49,
Field Hockey – 24,
Golf – 9,
Gymnastics – 23,
Rowing – 71,
Soccer – 31,
Softball – 23,
Tennis – 11,
Track & Field – 75,
Volleyball – 18

Total Women at MSU: 347

Using MSU Website data, instead of EADA data, MSU would need to add 25 women to its athletic department, keeping the men's number of athletic opportunities constant. 25 is the same finding using EADA data.

B. BUT: MSU is "padding" its women's teams, but not men's teams. MSU's squad sizes are not gender-neutral.

For men, MSU's squad sizes are roughly consistent with NCAA Division I average squad size of these sports:²

NCAA Average Squad Size, Division I, Men's Teams:

Baseball – 40.3

Basketball – 15.7

Cross Country – 15.4

Football – 124.3

Golf – 10.1

Ice Hockey – 28.5

Soccer – 29.3

Tennis – 10.5

Track & Field – 40

Wrestling – 32.4 – **Total NCAA DI Men Average Squad Size: 346.5**

But for women, Michigan State is inflating the squad sizes by 94 women.

NCAA Average Squad Size, Division I Women's Teams:³

Basketball – 14.6

Cross Country – 16.4

Field Hockey - 23.2

Golf – 8.5

Gymnastics – 19.5

Rowing – 52.4

Soccer – 29.2

Softball – 23.4

Tennis – 9.6

Track and Field – 40.4

Volleyball - 16.9

Total NCAA DI Women Average Squad Size: 253

If MSU adhered to NCAA average squad sizes for women, as it does for men, MSU would need to add 125 women's opportunities to its athletic department, or roughly 5 new teams.

² NCAA Sport Sponsorship and Participation Rates Report, page 85 for NCAA Average Squad Sizes:
https://ncaaorg.s3.amazonaws.com/research/sportpart/2021RES_SportsSponsorshipParticipationRatesReport.pdf

³ Id., p. 86 for NCAA Women's Average Squad Sizes.

This is a common practice called “padding” women’s teams, designed to create the appearance of equality. To demonstrate how padding works, most people would understand that since a basketball team can only play five athletes at a time, a varsity team of 25 is so large that no one would expect most of those athletes to ever compete or receive a varsity experience. This same concept applies to all sports.

When MSU carries 49 women on its Cross Country team, while the nature of the sport is such that only 7 count towards scoring, of those women actually practice and compete, then the “extra” 37 athletes likely do not receive a genuine varsity experience – and likely are not expected to ever compete or earn points for the team, especially if they were not recruited and do not receive athletic aid.

By “padding” women’s teams, schools not only fail to provide varsity benefits to the “extra” women, they also devalue the varsity experience of all women on the team by spreading limited resources and limited playing time too thin. Women on such “padded” teams receive less coaching because of higher coach-to-student-athlete ratios, less benefits, and less (if any) playing time compared to men who play on smaller, more reasonably sized squads.

Whenever there are unusually large women’s squad sizes but not unusually large men’s squad sizes, or unusually large women’s squad sizes and smaller than usual men’s squad sizes, it is important to investigate the size of the individual teams to learn if there are legitimate athletic reasons for these team sizes; (e.g., a team has a high number of injured or red shirt athletes that year). If there are not legitimate reasons for such large numbers, or if those large numbers persist over many years and many teams, it is apparent that the school is manipulating its women’s participation numbers to feign Prong One compliance, without actually providing genuine varsity athletic participation opportunities to them, or certainly not varsity experiences that are provided to male athletes. Ultimately, the analysis is fact specific, but such “red flags” should prompt further investigation of the reported numbers.

C. MSU’s EADA says:

Men have 9 head coaches and 38 assistant coaches – 47 FTE.

Women have 10 head coaches and 31 assistant coaches – 41 FTE.

- 323 male athletes are enjoying the attention of 47 FTE coaches - an instructional ratio of 1 coach for every 6.87 athletes while...
- 335 female athletes are enjoying the coaching services of 41 FTE coaches - 1 coach for every 8.17 athletes.
- Moreover, MSU’s coaches of female athletes are carrying up to 16% heavier instructional ratios than MSU’s coaches of male athletes.

In sum, MSU must add up to 125 more women to its athletic department if they are to be giving men and women equal educational opportunities.

13. Michigan State University cannot comply with Prong 2 when it cut women’s swimming. Prong 2 is now gone forever. Nonetheless, *Champion Women* will show how the

EADA also demonstrates that MSU cannot meet Prong 2.

14. Michigan State University cannot comply with Prong 3 when it cut women's swimming; MSU had women who were interested and athletically able to compete on its campus; the swimmers who were cut had been swimming most of their lives. Nonetheless, Champion Women will provide facts from the EADA, from women's college sports participation, to women's high school sports participation, and MSU's enormous competitive geographic region, to show MSU cannot meet Prong 3.

13. The EADA data and evidence gathered on MSU's website show that MSU 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. MSU has not added any new women's sports in the 19 academic years covered by the available EADA data. MSU was providing women with a peak number of opportunities in 2011 at 491 athletic opportunities for women. Since that time, the total number of women athletes has decreased from 482 to 406, a loss of 76 opportunities for women to compete in varsity sports at MSU.

15. A review of MSU'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. MSU sponsors 10 men's varsity sports (Baseball, Basketball, Cross Country, Football, Golf, Ice Hockey, Soccer, Tennis, Track and Field, and Wrestling) serving 323 men, and 10 women's varsity sports (Basketball, Cross Country, Field Hockey, Golf, Gymnastics, Rowing, Soccer, Tennis, Track and Field and Volleyball) serving 335 women.

17. Information available on MSU'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. MSU women participate in the club sports of Baseball, Competitive Cheer, Crew, Dodgeball, Fencing, Judo, Kendo, Lacrosse, Pompom, Michigan State Rugby, Sailing, Soccer, Softball, Swimming, Table Tennis, Taekwondo, Triathlon, Ultimate Frisbee, Underwater Hockey, Volleyball, and Water Polo, *Recreational Sports and Fitness Services*, MSU, 2023 (last visited July 31, 2023). The existence of these women's club teams indicates that there is unmet interest in women's athletics at MSU.

19. Sport Governing Bodies and the NCAA make it easy to see other competitors' locations. 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.⁴

20. MSU is a member of the Big Ten Athletic Conference, which covers an enormous geographical area. The current members of the Conference are University of Chicago, University of Illinois, University of Michigan, University of Minnesota, University of Wisconsin, Purdue University, Northwestern University, University of Iowa, University of Indiana, Ohio State University, Penn State, University of Nebraska, University of Maryland, and Rutgers University. This large competitive geographic area will allow Michigan State to pick almost any new sport for women.

21. The Big Ten sponsors women’s Lacrosse and **Swimming & Diving** as Championship sports, but MSU does not offer either of these to women. These Championship teams are unique educational experiences, and they demonstrate women’s interest and abilities in these sports, and that competition for these women’s sports exists in MSU’s competitive geographic area.

22. Michigan State University cut its men’s and women’s Swimming & Diving team in October, 2020; the cut became final at the end of the spring season in 2021. But even after winning the sex discrimination argument in August, 2022, the litigation did not result in reinstating the women’s swimming team. [See more here](#). MSU’s Athletic Director Alan Haller told the swimmers that the issue was money, and that “Haller said the holdup had to do with the new standards for Olympic sport programs at MSU, including team nutritionists, chartered plane travel, and designated athletic trainers.” [Here](#). If MSU is providing these services to its men’s

⁴ 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>

teams, it will need to add these “treatment and benefits” to any women’s teams. MSU has agreed to a “comprehensive gender equity review” to be in compliance by... 2026 – 2027. Oy.

22. Members of the Big Ten Conference sponsor Bowling, Fencing, Ice Hockey, Rifle, Synchronized Swimming, Water Polo, Beach Volleyball and Wrestling. MSU does not sponsor any of these 8 sports. These 8 sports demonstrate women’s interest and athletic abilities in these sports, and that competition for these women’s sports exists in MSU’s competitive geographic area.

23. Wrestling, 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.

24. Girls in Michigan compete in a wide variety of sports: Badminton, Bowling, Fencing, Ice Hockey, Lacrosse, Skiing, **Swimming & Diving**, Softball and Wrestling; <https://www.nfhsnetwork.com/states/MI> 9 high school sports that girls play, that MSU does not sponsor for women. These high school teams in Michigan demonstrate women’s interest in these sports and MSU will have ready and able women to compete in these sports.

Michigan’s high school athletes have very few opportunities to compete in college sports, and even fewer opportunities in Division I. According to the NCAA,⁵ in 2020, only 1.3% of high school girls basketball players were provided the opportunity to play in Division I, nationally. Just 2.9% of high school Field Hockey players, 2.8% of Golfers, 8.9% of Ice Hockey players, 3.7% of Lacrosse players, 2.4% of Soccer players, 1.8% of Softball players, 3.3% of Swimmers, 1.5% of Tennis players, 2.8% of Track & Field athletes, 1.2% of Volleyball players in high school nationally are provided opportunities to play their sport in Division I.

High school-age girls in Michigan’s competitive geographic region are also active in club sports or travel teams that are not associated with their school, such as Archery, Artistic Swimming, Badminton, Basketball, Cycling, Fencing, Field Hockey, Golf, Gymnastics, Ice Hockey, Judo, Karate, Skateboarding, Snowboarding, Skiing, Soccer, Rifle, Rowing, Rugby, Sailing, Softball, Sport Climbing, **Swimming & Diving**, Table Tennis, Taekwondo, Team Handball, Tennis, Track & Field, Triathlon, Water Polo, Wrestling.

These metrics demonstrate women’s interest and athletic abilities; women have expressed enormous demand to compete in sports that is unmet.

25. A review of the MSU website does not reveal that MSU 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. Any new sport(s) will need to receive the same treatment and benefits as MSU provides its men’s sports.

⁵ NCAA: Estimated Probability of Competing in College Athletics:
<https://www.ncaa.org/sports/2015/3/2/estimated-probability-of-competing-in-college-athletics.aspx>

26. 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 MSU provided its male and female students with the same opportunities to participate, MSU would need to add **\$3,135,110** *additional* athletic scholarship dollars, to balance out the amount MSU provides to its male students.

27. If, for some reason, the OCR determines that MSU is, in fact, not discriminating against women in providing opportunities in sport, and the student-athlete ratio is used rather than the student-body ratio, then MSU would still need to provide its women students participating in sports with **\$2,620,726** more in athletic scholarship aid, to match the amount MSU provides its male athletes.

28. MSU's EADA data further indicates that the university provides inadequate and unequal funding for the recruitment of female athletes. In 2021-2022, MSU spent \$1,470,722 on men's recruitment and only \$429,586 on women's recruitment; women were allocated only 22.6 percent of the recruiting budget even though they account for 50.69 percent of the athletic population and 52.18 percent of the full-time undergraduate population. If MSU provided its male and female students with the same opportunities to participate, MSU would need to add **\$1,174,917** *additional* athletic scholarship dollars, to balance out the amount MSU provides to its male students.

29. If, for some reason, MSU is, in fact, not discriminating against women in providing opportunities in sport, MSU would still need to provide its women's sports teams – and women's coaches – with **\$537,896** more recruiting dollars in order to be consistent with the school's investment in men's sports.

IV. LEGAL ALLEGATIONS

30. 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).

31. 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).

32. 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).

33. 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*].

34. 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*].

35. 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).⁶

⁶ 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.

36. Therefore, it is understandable that Prong 2 is a very strict 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*.

37. 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 non-discriminatory 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.

38. 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.*

39. 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).

40. 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.*

41. 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.*

42. 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.*

43. 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.*

44. 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.*

45. 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.*

46. 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.

47. 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*.

48. 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*.

49. 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).

50. 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 (D.R.I. 1992) at 996 (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)”).

51. 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."

52. MSU'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, and treatment and benefits requirements under Title IX.

V. RELIEF REQUESTED

53. *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 Michigan State University to determine whether it is discriminating against its women students; whether it is providing women 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 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 MSU, that include full remedies for all 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, increase recruiting budgets and opportunities, and adopt and implement a plan to achieve compliance with Title IX.
- d. Monitor any resulting agreement with Michigan State University to ensure that the school is not discriminating against women and achieves compliance with Title IX, now and in the future.



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

Nancy Hogshead, J.D., OLY
September 26, 2023