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ADMINISTRATIVE CLASS COMPLAINT

COMPLAINANT

Champion Women
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RECIPIENT

Salve Regina University
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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 f University (“Salve Regina”) 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 Salve Regina’s website indicates that Salve Regina is discriminating on the basis of sex by providing unequal athletic participation opportunities and unequal treatment and benefits, 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 Salve Regina to determine whether it is discriminating against women; whether it is providing women equal opportunities to participate in varsity sports and 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 Salve Regina currently violates Title IX’s athletic equity requirements, this complaint is timely.

III. FACTUAL ALLEGATIONS

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

9. Data submitted by Salve Regina 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 Salve Regina 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				Athletic Participation				
	Men	Women	Total	Percent Women	Men	Women Prong 2: This # should Rise Continuousl y and Steadily Over Time, Without Going Backwards	Total	Percent Women	Female Athletes Who Would Need to be Added to Achieve
2003-04	596	1331	1927	69.07%	205	199	404	49.26%	259
2004-05	581	1384	1965	70.43%	191	201	392	51.28%	254
2005-06	572	1419	1991	71.27%	192	193	385	50.13%	283
2006-07	570	1416	1986	71.30%	209	189	398	47.49%	330
2007-08	647	1396	2043	68.33%	223	189	412	45.87%	292
2008-09	631	1371	2002	68.48%	206	191	397	48.11%	257
2009-10	604	1284	1888	68.01%	250	203	453	44.81%	328
2010-11	604	1327	1931	68.72%	259	209	468	44.66%	360
2011-12	605	1335	1940	68.81%	251	197	448	43.97%	357
2012-13	604	1368	1972	69.37%	251	224	475	47.16%	344
2013-14	562	1314	1876	70.04%	249	236	485	48.66%	346
2014-15	610	1349	1959	68.86%	280	228	508	44.88%	391
2015-16	586	1408	1994	70.61%	275	235	510	46.08%	426
2016-17	608	1367	1975	69.22%	266	222	488	45.49%	376
2017-18	704	1383	2087	66.27%	290	236	526	44.87%	334
2018-19	650	1307	1957	66.79%	280	219	499	43.89%	344
2019-20	738	1347	2085	64.60%	319	224	543	41.25%	358
2020-21	719	1363	2082	65.47%	106	47	153	30.72%	154
2021-22	667	1398	2065	67.70%	317	254	571	44.48%	410

10. *Champion Women* has edited the EADA 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

11. Salve Regina does not and has not provided athletic opportunities to female students in numbers substantially proportionate to their enrollment pursuant to part one of the

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/>

Title IX participation test. Women are 67.70% of the student body, but just 44.48% 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, Salve Regina's participation gap was 410 athletes. In other words, Salve Regina must add 410 additional athletic opportunities for women in order to provide athletic opportunities substantially proportionate to enrollment. To put this in perspective, if the average sports team is 25 athletes – some more and some less – Salve Regina will need to add 16 new teams for its female students.

13. The EADA data and evidence gathered on Salve Regina's website show that Salve Regina 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, Salve Regina went backwards numerous times, including 2005, 2006, 2007 and 2008, and again in 2011, 2014, 2016, and 2018. Between 2004 and 2008, Salve Regina cut up to 11 women's opportunities. *Champion Women* does not know the history of adding sports since 1975, 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, Salve Regina added men at twice the overall rate it added for women.

The participation gap has stayed egregiously large, consistently over 300 since 2009.

15. A review of Salve Regina'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. Salve Regina sponsors 10 men's varsity sports (Baseball, Basketball, Cross Country, Football, Ice Hockey, Lacrosse, Soccer, and Tennis) serving 317 men, and 12 women's varsity sports (Basketball, Cross Country, Equestrian, Field Hockey, Ice Hockey, Track & Field, Lacrosse, Soccer, Softball, Tennis, and Volleyball) serving 213 women. Salve Regina has a co-ed sport, Sailing.

17. Information available on Salve Regina'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. Salve Regina women participate in the club sports of golf, rugby, and swimming. The existence of these women's club teams indicates that there is unmet interest in women's athletics at Salve Regina.

19. Salve Regina is a member of the New England Women's and Men's Athletic Conference, serving NCAA Division III schools. Members are from Massachusetts, Rhode

Island and Connecticut. Affiliate members are in New York, Vermont, and Maine. This expansive geographic region will provide opportunities for Salve Regina to sponsor almost every collegiate woman's sport.

20. The New England Women's and Men's Athletic Conference provides Conference Championships in Swimming & Diving, making competition viable. Women's championship are unique educational experiences. These teams demonstrate women's interest in these sports, their ability to play, and that competition is within the schools competitive geographic region.

21. High school-age girls in Rhode Island and in the Conference competitive geographic region compete in several sports Salve Regina does not offer, Badminton, Swimming & Diving, and Wrestling. <https://www.nfhsnetwork.com/states/RI> These high school sports will provide a steady stream of athletes that are interested and who have the athletic abilities and skills to compete.

Rhode Island's girls in high school are provided very few college sports opportunities. According to the NCAA,² in 2020, only 1.7% of high school girls basketball players were provided the opportunity to play in Division III, nationally. 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 nationally in high school are provided opportunities to play their sport in Division III.

Girls in Rhode Island and in the Conference also compete in club sports, travel teams, or sports not associated with a school. These sports include Wrestling, Badminton, Table Tennis, Team Handball, Sailing, Field Hockey, Fencing, Swimming & Diving, Skateboarding, Water Polo, Archery, Field Hockey, Rifle, Triathlon, Ice Hockey, Sport Climbing, Artistic Swimming, Skiing, Snowboarding, Speedskating, Gymnastics, Rowing, Wrestling, Rugby, and all sorts of combat sports, like Judo, Karate, and Taekwondo, to name a few.

These metrics demonstrate that women have the athletic abilities and skills, and that they have expressed enormous demand to compete in sports; demand that is unmet.

22. 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.

23. 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.

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

24. A review of the Salve Regina website does not reveal that Salve Regina 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. Salve Regina's EADA data further indicates that the university provides inadequate and unequal funding for the recruitment of female athletes. In 2021-2022, Salve Regina spent \$22,821 on men's recruitment and only \$12,943 on women's recruitment; women were allocated only 36.19 percent of the recruiting budget even though they account for 44.48 percent of the athletic population and 67.70 percent of the full-time undergraduate population. If Salve Regina gave women's teams the same funding as it provides men, Salve Regina would need to add **\$34,888** additional budgeting for recruiting to women's teams.

26. If, for some reason, the OCR determines that Salve Regina is, in fact, not discriminating against women in providing opportunities in sport, Salve Regina would still need to provide its women's sports teams – and women's coaches – with **\$2,094** more recruiting dollars in order to be consistent with the school's investment in men's sports.

IV. LEGAL ALLEGATIONS

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

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

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

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

1. Prong 1: Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
2. Prong 2: Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the

institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or

3. Prong 3: Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a history and continuing practice of program expansion, as described above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

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

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

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

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

33. Therefore, it is understandable that Prong 2 is a strict legal test. In determining whether an institution has a history and continuing practice of expansion under Prong 2 of the three-part test, OCR reviews the entire history of the athletic program and evaluates whether the

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

institution has expanded participation opportunities for the underrepresented sex in a manner that was demonstrably responsive to their developing interests and abilities, considering a number of factors, including:

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

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

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

- an institution's current implementation of a 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.

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

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

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

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

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

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

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

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

43. Title IX also requires equal opportunity in the recruitment of student-athletes where equal athletic opportunities are not present for male and female students. Compliance will be assessed by examining the recruitment practices of the athletic programs for both sexes and evaluating whether the financial and other resources made available for recruitment in male and female athletic programs are equivalently adequate to meet the needs of each program. *1979 Policy Interpretation.*

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

45. Lack of money is not a legal defense to sex discrimination. *See, e.g., Roberts Colorado State Univ.*, 814 F. Supp. 1507, 1518 (D. Colo. 1993) (“[A] financial crisis cannot justify gender discrimination.”); *Favia v Indiana University of Pennsylvania*, 812 F. Supp. 578,

585 (W.D. Pa. 1993) (finding that financial concerns alone cannot justify gender discrimination); *Cook v. Colgate University*, 802 F. Supp. 737, 750 (1992) (“[I]f schools could use financial concerns as a sole reason for disparity of treatment, Title IX would become meaningless.”); *Haffer v. Temple*, 678 F. Supp. 517, 520 (1987) (finding that financial concerns alone cannot justify gender discrimination).

46. Monies and in-kind benefits from third-party sources, such as donors, sponsorships, television rights, ticket sales, 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)”)

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

- i. Men’s and Women’s sports would be equally featured, with equal prominence, on school and Athletic Department websites and social media.
- ii. Schools would invest equally in cameras and production equipment for Women’s and Men’s sports.
- iii. Schools would optimize Google searches for their Men’s and Women’s teams to receive equal search results.
- iv. Women’s and Men’s sports would employ an equal caliber of talent in their sports information and marketing departments, and they would be paid and promoted equally.
- v. Women’s and Men’s sports jerseys, apparel, and memorabilia would be equally and easily accessible.
- vi. The needs of Women’s teams would not revolve around Men’s football and men’s basketball teams.
- vii. The Women’s and Men’s teams would have equal access to dining halls, nutrition, etc. at times equally convenient to both teams.
- viii. Men’s and Women’s teams would have equal access to optimal practice times when they share facilities.

- ix. Men's and Women's sports marketing efforts would focus on performance; Broadcasters and schools would not focus on a woman athlete's appearance or sexuality.
- x. Women's and Men's medical care and athletic training access would be equal; Neither male or female athletes would have priority accessing these resources.
- xi. Schools would hire competition officials of the same quality, with equal compensation, for the Women's and Men's teams.
- xii. Men's and Women's sports performance staff would be equal and would be paid and promoted comparably.
- xiii. Schools would intentionally use language that equally prioritizes Men's and Women's sports.
 - 1. Teams would be referred as "Women's Basketball" and "Men's Basketball."
 - 2. "Basketball" would not be used to refer to Men's Basketball.
 - 3. Schools would have Social Media handles that referred to men's and women's teams; "Oregon Soccer" would be changed to "Oregon Men's Soccer."

48. Salve Regina'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 equal treatment benefits, as required by Title IX.

V. RELIEF REQUESTED

49. *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 Salve Regina University to determine whether it is discriminating against its female students, in providing females with unequal educational opportunities in its athletic department, including participation opportunities and equal treatment and benefits, including equal recruiting budgets.
- b. Take all necessary steps to remedy any sex discrimination and unlawful conduct that the OCR identifies in its investigation, as required by Title IX and its implementing regulations. Secure assurances that sex discrimination will cease, and that Salve Regina University will comply with Title IX, and that includes full remedies for the violations found.
- c. Among other steps to achieve compliance with Title IX, require Salve Regina University to add more athletic opportunities for women, accord to additional teams and athletes the full range of benefits accorded to men's varsity teams and athletes, increase recruiting budgets and opportunities, and adopt and implement a plan to achieve compliance with Title IX.
- d. Monitor any resulting agreement with Salve Regina University to ensure that the school achieves compliance with Title IX, now and into the future.

I give OCR my consent to disclose my name and Champion Women's name contained in this letter to others for OCR's investigation of, and enforcement activities related to, the Discrimination Complaint.

Respectfully submitted,



Nancy Hogshead, J.D., OLY
September 24, 2023

