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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 there under. *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 the University of South Alabama, (“South Alabama”) 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 South Alabama’s website indicates that South Alabama is discriminating on the basis of sex by providing women with unequal athletic participation opportunities, unequal athletic scholarship dollars, and unequal treatment and benefits, including athletic recruitment funding.

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

II. JURISDICTION

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

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

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

III. FACTUAL ALLEGATIONS

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

9. Data submitted by South Alabama 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 South Alabama 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 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	3044	4498	7542	59.64%	111	119	230	51.74%	45
2004-05	3077	4513	7590	59.46%	88	91	179	50.84%	38
2005-06	2996	4499	7495	60.03%	102	89	191	46.60%	64
2006-07	3067	4501	7568	59.47%	140	146	286	51.05%	59
2007-08	3196	4575	7771	58.87%	127	147	274	53.65%	35
2008-09	3400	4637	8037	57.70%	103	138	241	57.26%	2
2009-10	3696	4820	8516	56.60%	264	153	417	36.69%	191
2010-11	3799	4866	8665	56.16%	282	148	430	34.42%	213
2011-12	3896	4771	8667	55.05%	272	151	423	35.70%	182
2012-13	3887	4809	8696	55.30%	278	157	435	36.09%	187
2013-14	3830	4924	8754	56.25%	287	173	460	37.61%	196
2014-15	4052	5027	9079	55.37%	298	178	476	37.39%	192
2015-16	4151	5222	9373	55.71%	289	186	475	39.16%	178
2016-17	4446	5150	9596	53.67%	299	186	485	38.35%	160
2017-18	3989	5087	9076	56.05%	262	183	445	41.12%	151
2018-19	3516	5101	8617	59.20%	274	175	449	38.98%	223
2019-20	3199	4858	8057	60.30%	288	180	468	38.46%	257
2020-21	2928	4677	7605	61.50%	301	189	490	38.57%	292
2021-22	2785	4604	7389	62.31%	301	189	490	38.57%	309

11. South Alabama does not and has not provided athletic opportunities to female students in numbers substantially proportionate to their enrollment pursuant to part one of the Title IX participation test. Women are 62.31% of the student body, but just 38.57% of the student-athletes.

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/>

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, South Alabama's participation gap was 309 athletes. In other words, South Alabama must add 309 additional athletic opportunities for women in order to provide athletic opportunities substantially proportionate to enrollment; 309 additional opportunities is enough to add almost an entire athletic department, South Alabama is only has 140 women athletes.

13. The EADA data and evidence gathered on South Alabama's website show that South Alabama does not have a history and continuing practice of expanding athletic participation opportunities for women pursuant to Prong 2 of the Title IX participation test. See column "Women" under "Athletic Participation" above. The number of women athletes does not consistently increase over time.

14. Over the 19 academic years covered by the available EADA data, South Alabama's opportunities for women has fluctuated wildly. In the first three years, South Alabama cut 30 opportunities for women. For the next five years, the numbers stagnated. Although the numbers have fluctuated, South Alabama has not added opportunities for its women students since 2015. *Champion Women* cannot know the 28-year history of adding sports between 1975 and 2003, but based on this record, South Alabama cannot show a history of continuous program expansion that is demonstratively responsive to women's growing interest in sports of all kinds.

15. A review of South Alabama'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. South Alabama sponsors 7 men's varsity sports (Baseball, Basketball, Cross Country, Football, Golf, Tennis, Track and Field) for 247 men, and 8 women's varsity sports (Basketball, Cross Country, Golf, Soccer, Softball, Tennis, Track & Field, Volleyball) for 140 women.

17. Information available on South Alabama'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. South Alabama women participate in several club sports, such as Table Tennis, Rugby, Disc Golf, Sailing, and Running. The existence of these women's club teams indicates that there is unmet interest in women's athletics at South Alabama.

19. South Alabama is a member of the Sun Belt Conference, with a vast geographic reach of South Carolina, North Carolina, Arkansas, Georgia, Virginia, Louisiana, West Virginia, Alabama, Virginia, and Texas. It is difficult to imagine a collegiate sport that would not be competing within this enormous geographic region.

20. The Sun Belt Conference includes Beach Volleyball as a Championship sport, a sport South Alabama does not sponsor. The existence of Championship sports demonstrates women's interest and ability to play, and a reasonable expectation within South Alabama's and the Sun Belt Conference's competitive geographic region.

21. Members of the Sun Belt Conference sponsor Bowling, Field Hockey, Lacrosse, Rifle, Rowing, Sailing, and Swimming & Diving. These seven women's sports demonstrate women's interest in more sports, their ability to play, and a reasonable expectation within South Alabama's and the Sun Belt Conference's competitive geographic region.

22. The University of South Alabama recruits its student body and its athletes nationally and internationally.

High school-age girls in Alabama play Badminton, Basketball, Bowling, Gymnastics, Lacrosse, Soccer, Softball, Swimming & Diving, Track & Field, Volleyball, Weightlifting and Wrestling. <https://www.nfhsnetwork.com/states/AL>

High school-age girls in this competitive geographic region compete in both school and club sports or travel teams; sport that are not associated with a school. These include Basketball, Soccer, Golf, Tennis, Track & Field, Soccer, Volleyball, and other sports like Wrestling, Equestrian, 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, Gymnastics, Rowing, Rugby, and all sorts of combat sports, like Judo, Karate, and Taekwondo, to name a few.

According to the NCAA,² in 2020, only 1.3% of high school girls basketball players were provided the opportunity to play in Division I. 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 are provided opportunities to play their sport in Division I. These percentages do not include those girls and women that are competing on travel teams, club teams, or sports not associated with schools.

These metrics demonstrate that women have expressed enormous demand to compete in sports that is unmet. Girls and women have the interest and athletic ability to play additional sports. It cannot be said that there are not women interested and athletically able to compete in many additional sports at the University of South Alabama.

23. Sport Governing Bodies and the NCAA, for its 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.³

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>

³ 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>

24. 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.

25. A review of the South Alabama website does not reveal that South Alabama 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.

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 South Alabama provided its male and female students with the same opportunities to participate, South Alabama would need to add **\$4,502,766** additional athletic scholarship dollars, to balance out the amount South Alabama provides to its male students.

27. If, for some reason, the OCR determine that South Alabama is, in fact, not discriminating against women in providing opportunities in sport, the OCR would use the ratio of student-athletes, instead of the student body, and no more scholarship dollars would be required.

28. South Alabama's EADA data further indicates that the university provides inadequate and unequal funding for recruitment of female athletes. In 2021-2022, South Alabama spent \$326,516 on men's recruitment and only \$80,574 on women's recruitment; women were allocated only 19.79 percent of the recruiting budget even though they account for 38.57 percent of the athletic population and 62.31 percent of the full-time undergraduate

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>

population. To make recruiting equitable, South Alabama would need to add \$459,203.26 to its women's athletics. If South Alabama treated women like it does men, women's teams – and women's coaches – would have an *additional* **\$459,203** in recruiting dollars.

29. If, for some reason, the OCR determines that South Alabama is, in fact, not discriminating against women in providing opportunities in sport, South Alabama would still need to provide its women's sports teams – and women's coaches – with **\$66,693** 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 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. 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.

37. 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.*

38. 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).

39. 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.*

40. 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.*

41. 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.*

42. 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.*

43. 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.*

44. 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.*

45. 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.

46. 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*.

47. 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*.

48. 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).

49. 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)”)

50. 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."

51. South Alabama'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 benefits, including recruitment requirements.

V. RELIEF REQUESTED

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

- a. Investigate the University of South Alabama to determine whether it is discriminating against women; whether it is providing female students with equal participation opportunities in varsity athletics, equal athletic scholarship dollars, and equal treatment and benefits, including equal recruiting budgets.
- b. Take all necessary steps to remedy any unlawful conduct that you identify in your investigation, as required by Title IX and its implementing regulations. Secure assurances of compliance with Title IX from South Alabama, as well as requiring full remedies for all the violations found.
- c. Among other steps to achieve compliance with Title IX in the school's athletic department, require South Alabama to add more athletic opportunities for women, require South Alabama to provide women with the same proportionate athletic scholarships that it provides men, and accord to existing and additional teams and athletes the full range of benefits accorded to men's varsity teams and athletes, including increase recruiting budgets for women's teams.
- d. Finally, we ask the OCR to monitor any resulting agreement with the University of South Alabama to ensure that the school achieves full and complete compliance with Title IX, now and in the future.



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

Nancy Hogshead, J.D., OLY
September 20, 2023