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ADMINISTRATIVE CLASS COMPLAINT

COMPLAINANT

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RECIPIENT

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I. PRELIMINARY STATEMENT

1. This complaint is filed by *Champion Women*, pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”) and the regulations and policies promulgated thereunder. *See* 34 C.F.R. § 106 *et seq.* Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities, including athletics.

2. *Champion Women* is a 501(c)(3) that provides legal advocacy for girls and women in sports.

3. As detailed in the Factual and Legal Allegations below, data submitted by University of Miami (“Miami”) 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 Miami’s website indicates that Miami is discriminating on the basis of sex by providing unequal athletic participation opportunities, unequal athletic scholarship dollars, and unequal treatment, as compared to male athletes, 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 Miami to determine 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 Miami currently violates Title IX’s athletic equity requirements, this complaint is timely.

III. FACTUAL ALLEGATIONS

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

9. Data submitted by Miami 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 Miami 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				Men	Women Prong 2: This # should Rise Continuousl y and Steadily Over Time, Without Going Backwards	Athletic Participation			
	Men	Women	Total	Percent Women			Total	Percent Women	Female Athletes Who Would Need to be Added to Achieve	
2003-04	3908	5276	9184	57.45%	232	213	445	47.87%	100	
2004-05	3936	5403	9339	57.85%	217	235	452	51.99%	63	
2005-06	4250	5516	9766	56.48%	217	256	473	54.12%	26	
2006-07	4376	5298	9674	54.77%	227	256	483	53.00%	19	
2007-08	4429	5082	9511	53.43%	207	228	435	52.41%	10	
2008-09	4555	4958	9513	52.12%	227	282	509	55.40%	-35	
2009-10	4500	4768	9268	51.45%	213	258	471	54.78%	-32	
2010-11	4579	4823	9402	51.30%	237	283	520	54.42%	-33	
2011-12	4759	4873	9632	50.59%	220	237	457	51.86%	-12	
2012-13	4792	4967	9759	50.90%	242	251	493	50.91%	0	
2013-14	5179	5338	10517	50.76%	251	234	485	48.25%	25	
2014-15	5058	5238	10296	50.87%	249	234	483	48.45%	24	
2015-16	5025	5252	10277	51.10%	241	239	480	49.79%	13	
2016-17	4832	5270	10102	52.17%	229	251	480	52.29%	-1	
2017-18	4874	5260	10134	51.90%	230	248	478	51.88%	0	
2018-19	4959	5453	10412	52.37%	222	268	490	54.69%	-24	
2019-20	4946	5678	10624	53.45%	206	219	425	51.53%	17	
2020-21	5032	5704	10736	53.13%	225	227	452	50.22%	28	
2021-22	5339	6156	11495	53.55%	230	231	461	50.11%	34	

¹ See *Champion Women* website for every college and university receiving federal funds: <https://titleixschools.com/2023/05/20/eada-data/> High school data for these schools receiving federal funds is available here: <https://titleixschools.com/2023/06/06/check-your-high-school/>

11. Miami counts 19 men as “women”. According to Miami’s straight EADA report, it needs to add 34 women’s opportunities to participate in sports. The addition of the 19 men means that Miami has a 53-athlete deficit, easily enough for one or two teams, assuming an average of 25 women per team.²

- The University of Miami counts 19 men as “women.”
- The gap grows from 34 to 53.
- Miami offers 188 women with the educational opportunity of sport.
- Miami offers 202 men with the educational opportunity of sport.

12. The EADA data and evidence gathered on Miami’s website show that Miami 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.

13. Over the 19 academic years covered by the available EADA data, Miami’s high of 282 opportunities was back in 2008 and 2010, 12 - 14 years ago. Since that time, Miami is offering women with over 50 fewer athletic opportunities. *Champion Women* cannot know the 28-year history of adding women’s sports between 1975 and 2003, but it is unlikely to show a history of continuous program expansion that is demonstratively responsive to the growing interests of women in sport.

14. A review of Miami’s website did not cover 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.

15. Miami sponsors 6 men’s varsity sports (Baseball, Basketball, Football, Diving, Tennis, Track) sponsoring 202 men, and 8 women’s varsity sports (Basketball, Golf, Rowing, Soccer, Swimming & Diving, Tennis, Track, and Volleyball) sponsoring 188 women. (We have removed the men that are being counted as women.)

16. Information available on Miami’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.

17. Miami women participate in the club sports of basketball, beach volleyball, boxing, equestrian, field hockey, ice hockey, martial arts, rugby, rock climbing, running, sailing, tennis, weightlifting, ultimate frisbee, water polo, and wrestling. The existence of these women’s club teams indicates that there is unmet interest in women’s athletics at Miami.

18. The University of Miami is an NCAA Division I school, a member of the Atlantic Coast Conference, the ACC. Members come from the states of Massachusetts, North Carolina, South Carolina, Florida, Kentucky, Indiana, Pennsylvania, New York, and Virginia. Miami will have no problem finding women’s teams in this competitive geographic region.

19. The ACC sponsors 5 women's Championship sports that Miami does not offer: Fencing, Field Hockey, Gymnastics, Lacrosse, and Softball. Championship sports are a unique educational experience, and they demonstrate women are interested and athletically capable in these sports, and that there is competition for them in Miami's and the ACC's competitive geographic region.

20. Other members of the ACC sponsor women's Beach Volleyball, Ice Hockey, Rifle, Skiing, Sailing, and Squash – all sports Miami does not offer women. These sports demonstrate women are interested and able in these sports, and that there is competition for them in the ACC and Miami's competitive geographic region.

21. The University of Miami recruits its student body and its athletes from the whole country and internationally.

High school-aged girls in Florida compete in several sports the University does not offer. <https://www.nfhsnetwork.com/states/FL> like Lacrosse, Weightlifting, Field Hockey, Water Polo, and Wrestling.

High school-age girls in the competitive geographic region compete in both school and club sports or travel teams; sports that are not associated with schools. They include sports, like Basketball, Soccer, Golf, Tennis, and Track & Field, Wrestling, Badminton, Table Tennis, Team Handball, 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 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 Miami.

22. A review of Miami's website does not reveal that Miami 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.

23. Sport Governing Bodies and the NCAA, for member schools, make it very easy to see where other competitors are located. The NCAA publishes the "NCAA Sports Sponsorship

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>

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

24. The failure to provide women with equal opportunities to play impacts the availability of athletic scholarship dollars for women. Miami gives male athletes \$10,034,225 in scholarship dollars, but only gives women athletes \$8,684,015. 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 Miami provided its male and female students with the same opportunities to participate, Miami would need to add **\$2,885,696** *additional* athletic scholarship dollars, to balance out the amount Miami provides to its male students.

25. If the OCR determines that Miami is not discriminating against women in providing equal opportunities to women in sport, and the student-athlete ratio is used instead of the student body, Miami will need to add **\$654,769** in athletic scholarships for women.

26. Miami’s EADA data further indicates that the university provides inadequate and unequal funding for recruitment of female athletes. In 2021-2022, Miami spent \$2,334,001 on men’s recruitment and only \$464,463 on women’s recruitment. If Miami respected women’s sports like it does men, and gave women’s teams equal opportunities to recruit, the school would need to add an *additional* **\$2,226,698** to women’s recruiting budget.

27. If, for some reason, the OCR determines that Miami is, in fact, not discriminating against women in providing opportunities in sport, and the student-athlete ratio is used instead of the student body, Miami would still need to provide its women’s sports teams – and women’s coaches – with **\$884,540** additional recruiting dollars, in order to be consistent with the school’s investment in men’s sports.

IV. LEGAL ALLEGATIONS

28. 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).

29. 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).

30. 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).

31. 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*].

32. 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*].

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

³ 34 C.F.R. §106.41(d) “*Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as 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 any other non-discrimination civil right. For a school to be able to argue that it is still playing catch-up with its obligation to provide non-discrimination in education – 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 discrimination is acceptable, because the school is “improving”. Title IX’s Prong 2 allows schools to give girls and women less.

34. Therefore, it is understandable that Prong 2 is a strict legal test. In determining whether an institution has a history and continuing practice of expansion under Prong 2 of the three-part test, OCR reviews the entire history of the athletic program and evaluates whether the institution has expanded participation opportunities for the underrepresented sex in a manner that was demonstrably responsive to their developing interests and abilities, considering a number of factors, including:

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

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

35. 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.

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

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

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

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

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

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

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

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

44. Title IX also requires schools to provide equal scholarship dollars, in proportion to the number of students of each sex participating in athletics. 34 C.F.R. §106.37(c) (2000).

45. NCAA limits on scholarships per team is not a legal defense; schools cannot blame a third-party; recipients are responsible for equality. Schools choose which schools to

sponsor, and some schools have chosen scholarship-dense sports for men, like football, and scholarship-light sports for women, like 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, 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. Miami's own data, as outlined in the Factual Allegations above, demonstrate that it is not providing equal opportunities for its female students to participate in sports under Title IX's three-part participation test, in addition to scholarship, treatment, and recruitment requirements.

V. RELIEF REQUESTED

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

- a. Investigate the University of Miami to determine whether it is discriminating against women; whether it is providing female students with equal participation opportunities in varsity athletics, equal and proportionate athletic scholarship dollars, and receiving equal treatment and benefits.
- 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 Miami, that include full remedies for the violations found.
- c. Among other steps to achieve compliance with Title IX, accord to women's 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 full compliance with Title IX, throughout the department.
- d. Monitor any resulting agreement with the University of Miami to ensure that the school achieves full compliance with Title IX, now and in the future.

I give the 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 Sex Discrimination Complaint.



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

Nancy Hogshead, J.D., OLY
September 19, 2023