



**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](mailto: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](mailto: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](mailto:Suzanne.goldberg@ed.gov)

**ADMINISTRATIVE CLASS COMPLAINT**

**COMPLAINANT**

*Champion Women*  
Nancy Hogshead, J.D., OLY, CEO  
EMAIL: [Hogshead@ChampionWomen.org](mailto:Hogshead@ChampionWomen.org)

**RECIPIENT**

University of Saint Francis-Fort Wayne  
Mike Mccaffrey, Director of Athletics  
2701 Spring Street  
Fort Wayne, IN 46808  
EMAIL: [mmccaffrey@sf.edu](mailto:mmccaffrey@sf.edu)

Rev. Dr. Eric A. Zimmer, President  
2701 Spring Street  
Fort Wayne, IN 46808  
EMAIL: [president@sf.edu](mailto:president@sf.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 University of Saint Francis-Fort Wayne (“Saint Francis-Fort Wayne”) 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 Saint Francis-Fort Wayne’s website indicates that Saint Francis-Fort Wayne is discriminating on the basis of sex by providing unequal athletic participation opportunities, unequal athletic scholarship dollars, and unequal treatment for its female students, including recruiting funding for its female students.

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

## **II. JURISDICTION**

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

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

7. As Saint Francis-Fort Wayne currently violates Title IX’s athletic equity requirements, this complaint is timely.

## **III. FACTUAL ALLEGATIONS**

8. Saint Francis-Fort Wayne receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex, pursuant to Title IX.

9. Data submitted by Saint Francis-Fort Wayne 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 Saint Francis-Fort Wayne 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				Men	Women Prong 2: This # should Rise Continuously 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	414	815	1229	66.31%	256	111	367	30.25%	393	
2004-05	419	863	1282	67.32%	254	107	361	29.64%	416	
2005-06	454	889	1343	66.20%	270	136	406	33.50%	393	
2006-07	470	952	1422	66.95%	282	160	442	36.20%	411	
2007-08	508	961	1469	65.42%	172	142	314	45.22%	183	
2008-09	512	948	1460	64.93%	260	137	397	34.51%	344	
2009-10	511	964	1475	65.36%	267	156	423	36.88%	348	
2010-11	522	1005	1527	65.82%	259	170	429	39.63%	329	
2011-12	546	1037	1583	65.51%	293	129	422	30.57%	427	
2012-13	508	1079	1587	67.99%	257	113	370	30.54%	433	
2013-14	492	1124	1616	69.55%	166	107	273	39.19%	272	
2014-15	504	1054	1558	67.65%	287	131	418	31.34%	469	
2015-16	475	1027	1502	68.38%	265	153	418	36.60%	420	
2016-17	461	1014	1475	68.75%	260	179	439	40.77%	393	
2017-18	500	1022	1522	67.15%	258	170	428	39.72%	357	
2018-19	476	1034	1510	68.48%	290	182	472	38.56%	448	
2019-20	501	996	1497	66.53%	285	161	446	36.10%	406	
2020-21	506	969	1475	65.69%	273	164	437	37.53%	359	
2021-22	495	1021	1516	67.35%	307	174	481	36.17%	459	

10. *Champion Women* has edited the EADA data in just one instance: <https://titleixschools.com/> 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.<sup>1</sup>

<sup>1</sup> 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. Saint Francis-Fort Wayne 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 67.35% of the student body, but just 36.17% 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, Saint Francis-Fort Wayne's participation gap was 459 female athletes. In other words, Saint Francis-Fort Wayne must add 459 additional athletic opportunities for women in order to provide athletic opportunities substantially proportionate to enrollment. To put this number in perspective, assuming athletic teams average 25 students – some more and some less - Saint Francis-Fort Wayne will need to add over 18 new athletic teams for women. Saint Francis-Fort Wayne athletic department has just 152 women.

13. The EADA data and evidence gathered on Saint Francis-Fort Wayne's website show that Saint Francis-Fort Wayne 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, Saint Francis-Fort Wayne's numbers decreased in 2004, 2007, 2008 and 2011. In 2012 and 2013, the school was back to the numbers it started with in 2003, just 107 women athletes. As recently as 2016 and 2018, the number of women was higher than it is now. *Champion Women* cannot know the history of adding women's sports since 1975, but it is unlikely to show a history of continuous women's program expansion that is demonstratively responsive to the growing interests of women in sport.

15. A review of Saint Francis-Fort Wayne'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.

16. Saint Francis-Fort Wayne sponsors 7 men's varsity sports (Baseball, Basketball, Football, Golf, Soccer, Tennis, and Track) giving 290 men with this educational experience, and 9 women's varsity sports (Basketball, Cheerleading, Golf, Soccer, Softball, Tennis, Track, and Volleyball), giving 152 women with this educational experience. It is not clear how Saint Francis-Fort Wayne is treating Cheerleading, and whether it would "count" as a sport for Title IX purposes. We could not find a schedule of competitions in either the school or the Conference website.

17. Information available on Saint Francis-Fort Wayne'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. Saint Francis-Fort Wayne does not offer club sports opportunities for students, so Saint Francis-Fort Wayne women participate in the intramural sports of basketball, flag football, soccer, and volleyball. The existence of these women's intramural teams indicates that there may be unmet interest in women's athletics at Saint Francis-Fort Wayne.

19. The University of Saint Francis-Fort Wayne is a member of the Crossroads League, serving NAIA Division II schools. Participating members are throughout Ohio, Michigan, and Indiana.

20. Crossroads League sponsor women's varsity Bowling, and Saint Francis-Fort Wayne does not sponsor the sport. Conference sports are a unique educational experience. The existence of this team demonstrates women's interest and athletic abilities for competition, and that competition exists in Saint Francis-Fort Wayne competitive geographic area.

21. Saint Francis is in Indiana, where high school girls play Lacrosse and Wrestling, two sports Saint Francis-Fort Wayne does not offer for women, even though the state could offer a steady supply of women interested and athletically able to compete in these sports.

<https://www.nfhsnetwork.com/states/IN>

In Ohio, high school girls compete in Badminton, Field Hockey, Ice Hockey, Lacrosse, Water Polo and Wrestling. All sports Saint Francis-Fort Wayne does not offer women.

In Michigan, high school girls compete in Badminton, Fencing, Field Hockey, Gymnastics, Ice Hockey, Lacrosse, Rugby, Skiing, Swimming & Diving, Water Polo, Weightlifting, and Wrestling. All sports Saint Francis-Fort Wayne does not offer women.

High school-age girls in the Indiana and Crossroads League competitive geographic region also compete in club sports, travel teams, sports, not associated with schools, like Basketball, Soccer, Golf, Tennis, and Track & Field, and other sports like Wrestling, Badminton, Cycling, Table Tennis, Team Handball, Speedskating, Sailing, Field Hockey, Fencing, Swimming & Diving, Skateboarding, Water Polo, Archery, Field Hockey, Rifle, Triathlon, Ice Hockey, Sport Climbing, Artistic Swimming, Skiing, Snowboarding, Equestrian, Gymnastics, Rowing, Rugby, and all sorts of combat sports, like Judo, Karate, and Taekwondo, to name a few.

These sports in the competitive geographic area demonstrate that women are athletically ready, and they have expressed enormous demand to compete in sports, demand that is unmet.

22. Flag Football and Beach Volleyball are NAIA emerging sports. Wrestling and Cheer are now a full sports.

23. Sport Governing Bodies make it easy to see other competitors' locations. Even the NCAA provides valuable resources, including the "NCAA Sports Sponsorship and Participation

Rates Report, 1956 - 2022” for schools to find competitors within the school’s normal competitive region.<sup>2</sup>

24. A review of the Saint Francis-Fort Wayne website does not reveal that Saint Francis-Fort Wayne undertook any athletic interest surveys or other research into interest and competition to support the addition of women’s varsity sports. While surveys are never sufficient to deny women sports opportunities, they are often helpful in determining *which sports* the school should add.

25. The failure to provide women with equal opportunities to play impacts the availability of athletic scholarship dollars for women. These are important sources of funding for educational attainment that women are being denied because of their sex. If Saint Francis-Fort Wayne provided its male and female students with the same opportunities to participate, Saint Francis-Fort Wayne would need to add **\$3,881,276** additional athletic scholarship dollars, to balance out the amount Saint Francis-Fort Wayne provides to its male students.

26. If, for some reason, the OCR determines that Saint Francis-Fort Wayne is, in fact, not discriminating against women in providing opportunities in sport, then Saint Francis-Fort Wayne would still need to provide its women students participating in sports with **\$122,643** more in athletic scholarship aid, to match the amount Saint Francis-Fort Wayne provides its male athletes.

27. Saint Francis-Fort Wayne’s EADA data further indicates that the university provides inadequate and unequal funding for the recruitment of female athletes. In 2021-2022, Saint Francis-Fort Wayne spent \$40,507 on men’s recruitment and only \$13,849 on women’s recruitment; women were allocated only 25.48 percent of the recruiting budget even though they

---

<sup>2</sup> See NCAA Sports Sponsorship and Participation Rates Report, available at: [https://ncaaorg.s3.amazonaws.com/research/sportpart/2022RES\\_SportsSponsorshipParticipationRatesReport.pdf](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>

account for 36.17 percent of the athletic population and 67.35 percent of the full-time undergraduate population. If Saint Francis-Fort Wayne provided its male and female students with the same opportunities to participate, Saint Francis-Fort Wayne would need to add **\$69,701** additional recruiting dollars, to balance out the amount Saint Francis-Fort Wayne provides to its male students.

28. If, for some reason, the OCR determines that Saint Francis-Fort Wayne is, in fact, not discriminating against women in providing opportunities in sport, Saint Francis-Fort Wayne would still need to provide its women's sports teams – and women's coaches – with **\$4,843** more recruiting dollars in order to be consistent with the school's investment in men's sports.

#### **IV. LEGAL ALLEGATIONS**

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

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

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

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

1. Prong 1: Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
2. Prong 2: Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or
3. Prong 3: Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a history and continuing practice of program expansion, as described above, whether it can be demonstrated that the interests and abilities of the



members of that sex have been fully and effectively accommodated by the present program.

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

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

34. In determining whether certain sports “count” for Title IX purposes, the OCR will inquire “Whether the regular season competitive opportunities differ quantitatively and/or qualitatively from established varsity sports; whether the team competes against intercollegiate or interscholastic varsity opponents in a manner consistent with established varsity sports;” and “whether the primary purpose of the activity is to provide athletic competition at the intercollegiate or interscholastic varsity levels rather than to support or promote other athletic activities. When analyzing this factor, the following may be taken into consideration:

- a. Whether the activity is governed by a specific set of rules of play adopted by a state, national, or conference organization and/or consistent with established varsity sports, which include objective, standardized criteria by which competition must be judged;
- b. Whether resources for the activity (e.g., practice and competition schedules, coaching staff) are based on the competitive needs of the team;
- c. If post-season competition opportunities are available, whether participation in post-season competition is dependent on or related to regular season results in a manner consistent with established varsity sports; and
- d. Whether the selection of teams/participants is based on factors related primarily to athletic ability.

For more, please see *Letter from Stephanie Monroe, Assistant Sec’y for Civil Rights, Dear Colleague Letter: Athletic Activities Counted for Title IX Compliance*, (Sept. 17, 2008) (“2008 OCR Letter”) Available at: <http://www2.ed.gov/print/about/offices/list/ocr/letters/colleague-20080917.html>

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. The OCR only gave schools three



years to comply in the case of athletic opportunities – or until 1978. That deadline passed 45 years ago. 34 C.F.R. §106.41(d).<sup>3</sup>

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 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*.

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;

---

<sup>3</sup> 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.”

- 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. (9<sup>th</sup> 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, 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)”).

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. Saint Francis-Fort Wayne'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 scholarship, treatment, and recruitment 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 the University of Saint Francis-Fort Wayne to determine whether it is discriminating against women students in its athletic department. Determine whether the school is providing female students with equal opportunities to participate in varsity athletics, equal and proportionate athletic scholarship dollars, and are receiving equal treatment, including but not limited to equal recruiting budgets.
- b. Take all necessary steps to remedy any unlawful sex discrimination that it identifies in its investigation, as required by Title IX and its implementing regulations. Secure assurances of compliance with Title IX from the University of Saint Francis, that include full remedies for all the violations found.
- c. Among other steps to achieve compliance with Title IX, require the University of Saint Francis 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 the University of Saint Francis-Fort Wayne to ensure that the school achieves compliance with Title IX, now and in the future.

Respectfully submitted,



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

Nancy Hogshead, J.D., OLY  
September 25, 2023