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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 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.

As detailed in the Factual and Legal Allegations below, data submitted by University of Sioux Falls (“Sioux Falls”) 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 Sioux Falls’s website indicates that Sioux Falls 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.

3. In order to address these disparities, *Champion Women* requests that the Office for Civil Rights (“OCR”) investigate Sioux Falls to determine whether it is discriminating against women; whether it is providing women equal opportunities to participate in varsity sports and equivalent recruitment funding as required by Title IX and, if not, to remedy any unlawful conduct.

II. JURISDICTION

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

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

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

III. FACTUAL ALLEGATIONS

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

9. Data submitted by Sioux Falls 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 Sioux Falls 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	470	561	1031	54.41%	258	171	429	39.86%	137	
2004-05	489	578	1067	54.17%	239	128	367	34.88%	154	
2005-06	472	554	1026	54.00%	176	106	282	37.59%	101	
2006-07	459	540	999	54.05%	262	124	386	32.12%	184	
2007-08	533	597	1130	52.83%	261	134	395	33.92%	158	
2008-09	490	535	1025	52.20%	279	141	420	33.57%	164	
2009-10	492	523	1015	51.53%	323	170	493	34.48%	173	
2010-11	451	529	980	53.98%	268	152	420	36.19%	162	
2011-12	413	541	954	56.71%	217	136	353	38.53%	148	
2012-13	446	550	996	55.22%	304	214	518	41.31%	161	
2013-14	377	549	926	59.29%	263	196	459	42.70%	187	
2014-15	350	546	896	60.94%	271	199	470	42.34%	224	
2015-16	402	603	1005	60.00%	316	187	503	37.18%	287	
2016-17	400	631	1031	61.20%	303	213	516	41.28%	265	
2017-18	375	658	1033	63.70%	370	240	610	39.34%	409	
2018-19	420	717	1137	63.06%	367	253	620	40.81%	374	
2019-20	436	770	1206	63.85%	311	191	502	38.05%	358	
2020-21	432	749	1181	63.42%	318	261	579	45.08%	290	
2021-22	426	757	1183	63.99%	437	244	681	35.83%	533	

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.¹

11. Sioux Falls 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 63.99% of the student body, but just 35.83% 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, Sioux Falls’s participation gap was 533 athletes. In other words, Sioux Falls must add 533 additional athletic opportunities for women in order to provide athletic opportunities substantially proportionate to enrollment; Sioux Falls currently only has 244 women athletes. Assuming a new team would have an average of 25 athletes – some more, some less – Sioux Falls would need to add over 21 new women’s sports teams. As women become a bigger percentage of the student body, they deserve the same educational opportunities offered to men.

13. The EADA data and evidence gathered on Sioux Falls’s website show that Sioux Falls 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, Sioux Falls’ opportunities for women to participate in sports have gone up and down. In 2003, Sioux Falls offered women 171 athletic opportunities; the school did not reach the same number until 2012. The same pattern in 2012, and then offering fewer opportunities until 2017. *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 Sioux Falls’s website did not show any policy or procedure for elevating existing club sports to varsity status. Nor did it reveal any athletic gender equity plan, or any gender equity committee.

16. Sioux Falls sponsors eight men’s varsity sports (Baseball, Basketball, Football, Golf, Track, and Wrestling) giving 265 men this educational experience, and ten women’s varsity sports (Basketball, Golf, Track, Soccer, Softball, Swimming & Diving, Tennis, and Volleyball, but the addition of Wrestling the upcoming academic year will bring the women’s total sports to 11) giving 178 women with this educational experience.

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/>

17. Information available on Sioux Falls’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. Sioux Falls competes in The Northern Sun Intercollegiate Conference (NSIC), which serves NCAA Division II schools. Members hail from South Dakota, Minnesota and Nebraska, an expansive competitive geographic region to find women’s teams that are interested and able to compete.

19. Members of the NSIC offer women’s Bowling, Acrobatics and Tumbling, Gymnastics, Ice Hockey, Lacrosse and Skiing, all six sports that would provide Sioux Falls women with the educational opportunity of sport.

20. High school girls in South Dakota and the NSIC competitive geographic region compete in both school and club sports, including Wrestling, Badminton, Table Tennis, Team Handball, Sailing, Field Hockey, Fencing, Swimming & Diving, Skateboarding, Water Polo, Archery, Field Hockey, Rifle, Triathlon, Ice Hockey, Sport Climbing, Artistic Swimming, Skiing, Snowboarding, Gymnastics, Rowing, Wrestling, Rugby, and all sorts of combat sports, like Judo, Karate, and Taekwondo, to name a few. Sioux Falls does not sponsor any of these sports, despite these girls expressing interest and ability in these sports.

21. Sioux Falls offers club sports and intramural sports of volleyball, kickball, flag football, basketball, indoor soccer and softball. The school offers tournaments, including Frisbee golf, doubles table tennis, dodgeball, spike ball, 3v3 basketball, and ultimate frisbee. The existence of these women’s intramural teams indicates that there is unmet interest in women’s athletics at Sioux Falls.²

² See

https://ncaaorg.s3.amazonaws.com/research/sportpart/2022RES_SportsSponsorshipParticipationRatesReport.pdf

See individual sports’ governing bodies for more, e.g.,

Women’s College Rugby: <https://www.urugby.com/teams/womens-teams>

Collegiate Equestrian: <https://collegiateequestrian.com/sports/2020/5/6/schools.aspx>

Women’s Collegiate Wrestling: <https://wrestlelikeagirl.org/college-opportunities>

Collegiate Competitive Cheer Teams: <https://www.ncsasports.org/cheerleading/colleges> (not to be confused with sideline cheerleading)

Women’s Collegiate Triathlon: <https://www.usatriathlon.org/multisport/ncaa-triathlon>

Collegiate Sailing is governed by the Inter-Collegiate Sailing Association (ICSA) with 220 schools: <https://www.collegesailing.org/about/overview>

Women’s Collegiate Ice Hockey: <https://www.uscho.com/teams/#d1women>

Collegiate Field Hockey: <https://www.teamusa.org/USA-Field-Hockey/PLAYERS/College/Team-Websites>

Collegiate Synchronized/ Artistic Swimming: <https://www.collegexpress.com/lists/list/colleges-with-notable-synchronized-swimming-teams/581/>

Collegiate Bowling - <https://collegebowling.bowl.com/teams>

22. Rugby, Equestrian, Triathlon, and Competitive Cheer are NCAA emerging sports. There are 163 college women's Wrestling programs, 42 NCAA schools sponsor Triathlon, 26 colleges sponsor women's varsity Equestrian, and at least 32 colleges currently sponsor women's varsity Rugby.

23. A review of the Sioux Falls website does not reveal that Sioux Falls 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.

24. 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 Sioux Falls provided its male and female students with the same opportunities to participate, Sioux Falls would need to add **\$1,143,402** additional athletic scholarship dollars, to balance out the amount Sioux Falls provides to its male students.

25. If, for some reason, the OCR determines that Sioux Falls is, in fact, not discriminating against women in providing opportunities in sport, then Sioux Falls would still need to provide its women students participating in sports with **\$385,846.34** more in athletic scholarship aid, to match the amount Sioux Falls provides its male athletes.

26. Sioux Falls's EADA data further indicates that the university provides inadequate and unequal funding for recruitment of female athletes. In 2021-2022, Sioux Falls spent \$78,049 on men's recruitment and only \$15,827 on women's recruitment; women were allocated only 16.86 percent of the recruiting budget even though they account for 35.83 percent of the athletic population and 63.99 percent of the full-time undergraduate population. If Sioux Falls provided women's teams – and women's coaches – with equal recruiting budget, it would need to allocate an additional **\$122,865** to women's teams.

27. If, for some reason, the OCR determines that Sioux Falls is, in fact, not discriminating against women in providing opportunities in sport, Sioux Falls would still need to provide its women's sports teams – and women's coaches – with **\$21,892.93** more recruiting dollars in order to be consistent with the school's investment in men's sports.

IV. LEGAL ALLEGATIONS

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>

Champion Women, Sex Discrimination in Athletics in Violation of Title IX, 2023

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

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.

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*.

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.”

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 nondiscriminatory 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). 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.

45. 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.*

46. 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.*

47. 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).

48. 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)”)

49. 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.”

50. Sioux Falls’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

51. *Champion Women* requests that OCR:

- a. Investigate the University of Sioux Falls 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, including equal recruiting budgets.
- b. Take all necessary steps to remedy any and all unlawful conduct that it identifies in its investigation, as required by Title IX and its implementing regulations.
- c. If any violations are found, secure assurances of compliance with Title IX from Sioux Falls, that include full remedies for all the violations found.
- d. Among other steps to achieve compliance with Title IX, require the University of Sioux Falls 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.
- e. Monitor any resulting agreement with the University of Sioux Falls to ensure that the school achieves compliance with Title IX, now and in the future.

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



A handwritten signature in blue ink, appearing to read "Nancy Hogshead". The signature is fluid and cursive, written in a professional style.

Nancy Hogshead, J.D., OLY
September 5, 2023