



**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

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

Suzanne B. Goldberg, J.D.
Acting Assistant Secretary, Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202 - 1100
Suzanne.goldberg@ed.gov

ADMINISTRATIVE CLASS COMPLAINT

COMPLAINANT

Champion Women
Nancy Hogshead, J.D., OLY, CEO
EMAIL: Hogshead@ChampionWomen.org

RECIPIENT

University of Virginia
Carla Williams, Director of Athletics
Charlottesville, VA, 22904
EMAIL: cgw4j@virginia.edu

James E. Ryan, President
Charlottesville, VA, 22904
EMAIL: president@virginia.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 Virginia (“UVA”) 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 UVA’s website indicates that UVA is discriminating on the basis of sex. UVA is providing women with unequal athletic participation opportunities, unequal athletic scholarship dollars, and unequal athletic treatment and benefits, including athletic recruitment funding.

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

II. JURISDICTION

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

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

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

III. FACTUAL ALLEGATIONS

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

9. Data submitted by UVA 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 UVA is discriminating against women; it 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				Athletic Participation				
	Men	Women	Total	Percent Women	Men	Women Prong 2: This # should Rise Continuously and Steadily Over Time, Without Going Backwards	Total	Percent Women	Female Athletes Who Would Need to be Added to Achieve
2003-04	6077	6973	13050	53.43%	449	354	803	44.08%	161
2004-05	6260	7118	13378	53.21%	443	345	788	43.78%	159
2005-06	6137	7258	13395	54.18%	413	325	738	44.04%	163
2006-07	6029	7122	13151	54.16%	439	343	782	43.86%	176
2007-08	6083	7553	13636	55.39%	432	359	791	45.39%	177
2008-09	5992	7625	13617	56.00%	427	362	789	45.88%	181
2009-10	6074	7775	13849	56.14%	456	360	816	44.12%	224
2010-11	6128	7698	13826	55.68%	457	371	828	44.81%	203
2011-12	6294	7787	14081	55.30%	463	372	835	44.55%	201
2012-13	6399	7766	14165	54.83%	431	339	770	44.03%	184
2013-14	6586	7858	14444	54.40%	429	381	810	47.04%	131
2014-15	6753	8186	14939	54.80%	465	374	839	44.58%	190
2015-16	6880	8338	15218	54.79%	422	350	772	45.34%	161
2016-17	7065	8355	15420	54.18%	426	379	805	47.08%	125
2017-18	7211	8486	15697	54.06%	426	405	831	48.74%	96
2018-19	7240	8665	15905	54.48%	464	397	861	46.11%	158
2019-20	7320	8854	16174	54.74%	485	413	898	45.99%	174
2020-21	7188	9118	16306	55.92%	503	421	924	45.56%	217
2021-22	7173	9199	16372	56.19%	536	463	999	46.35%	224

11. UVA’s EADA report counts 26 men as women. The charts are calculated directly from EADA, but we can add the numbers into the narrative.

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/>

- Taking these men into account, the gap between the athletic opportunities provided to men and women is 250.
- Taking these men into account, the number of woman athletes shrinks from 463 to 437.

12. UVA 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 56.19% of the student body, but just 44.91% of the student-athletes.

13. In 2021-2022, the most recent academic year for which EADA data is available that is not corrupted by disruptions related to Covid-19, UVA's participation gap was 224 athletes; including the men that UVA is counting as women, the participation gap is now at 250. In other words, UVA must add 250 additional athletic opportunities for women in order to provide athletic opportunities substantially proportionate to enrollment; 250 additional athletes equate to about 10 new teams, assuming a women's roster of about 25 for each team – some more and some less.

14. The EADA data and evidence gathered on UVA's website show that UVA 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.

15. Over the 19 academic years covered by the available EADA data, the opportunities for women do not steadily climb; they fluctuate wildly. By 2005, UVA had dropped 29 athletic opportunities for women since 2003. By 2012, the total number of women athletes had actually decreased from 372 in 2011 to 339 – or 33 fewer women's opportunities. The same pattern was in 2015, with 24 opportunities dropped for women. *Champion Women* does not know the history of adding sports since 1975, but UVA cannot show a history of continuous program expansion that is demonstratively responsive to the growing interests of women in sports.

16. A review of UVA's website did not show any policy or procedure for adding new sports or elevating existing club sports to varsity status. Nor did it reveal any athletic gender equity plan or any gender equity committee.

17. UVA sponsors 13 men's varsity sports (Baseball, Basketball, Cross Country, Football, Golf, Lacrosse, Soccer, Squash, Swimming & Diving, Tennis, Indoor Track, Outdoor Track, and Wrestling) serving 434 men, and 14 women's varsity sports (Basketball, Cross Country, Field Hockey, Golf, Lacrosse, Rowing, Soccer, Softball, Squash, Swimming & Diving, Tennis, Indoor Track, Outdoor Track, and Volleyball) serving 362 women.

18. Information available on UVA'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.

19. UVA women participate in the club sports of badminton, bowling, dance, figure skating, equestrian, fencing, ice hockey, polo, sailing, skiing, water polo, triathlon, and rugby. *Club Sports*, University of Virginia, 2023 (last visited August, 2023). The existence of these women's club teams indicates that there is unmet interest in women's athletics at UVA.

20. Virginia is a member of the NCAA's Power Five, the Atlantic Coast Conference. The ACC has 15 member institutions from 10 states; Florida, Georgia, Indiana, Kentucky, Massachusetts, New York, North Carolina, Pennsylvania, South Carolina, and Virginia. It is difficult to imagine a collegiate sport that would not be competing within this enormous geographic region.

21. Virginia does not offer women's Fencing or Gymnastics, even though the Atlantic Coast Conference has made it a conference Championship sport, a unique educational experience. These teams demonstrate women's interest and athletic abilities in these sports and that competition exists in UVA's competitive geographic area.

23. Members of the ACC sponsor Beach Volleyball, Ice Hockey, Rifle, Sailing, Skiing, and Squash for their women students; all 6 sports that Virginia does not offer. These teams demonstrate women's interest and athletic abilities in these sports and competition exists in UVA's competitive geographic area.

24. The University of Virginia recruits its student body and its athletes from the whole country and internationally.

In Virginia alone, high school-age girls compete in both school and club sports, some traditional sports, like Badminton, Bowling, Fencing, Field Hockey, Flag Football, Gymnastics, Lacrosse, Snowboarding, Swimming & Diving, Basketball, Soccer, Golf, Tennis, Track & Field, Soccer, Volleyball, and Wrestling. See <https://www.nfhsnetwork.com/states/VA>

High school girls in Virginia and the ACC's competitive region include other club sports, not associated with their high school, like Wrestling, Badminton, Table Tennis, Team Handball, Sailing, Field Hockey, Fencing, Skateboarding, Water Polo, Archery, Field Hockey, Rifle, Triathlon, Ice Hockey, Sport Climbing, Artistic Swimming, Skiing, Rowing, Rugby, and all sorts of combat sports, like Judo, Karate, and Taekwondo, to name a few.

According to NFHS data, girls participate in school-sponsored sports in high numbers across the country: Track and Field leads the way for girls with 486,355 participants, followed by Volleyball (470,488), Basketball (373,366), Soccer (377,838), Softball (377,838), Tennis (191,036), Swimming & Diving (191,036), and Lacrosse (98,014).²

Meanwhile, NCAA schools sponsor far fewer opportunities, roughly less than a tenth of the athletic opportunities: Track and Field (30,425), Volleyball (17,610), Basketball (16,090),

² See, *NFHS, High School Athletics Participation Survey*, Conducted By the National Federation of State High School Associations; Based on Competition at the High School Level in the 2022-23 School Year https://www.nfhs.org/media/7212351/2022-23_participation_survey.pdf

Soccer (27,986), Softball (21,478), Tennis, (21,478), Swimming & Diving (12,889), Lacrosse (12,921).³

Division 1 offers far fewer opportunities, and FBS schools offer a smaller set of opportunities still. Division I only offers Basketball (5,068), Equestrian (745), Gymnastics (1,188), Lacrosse, (4,109), Rowing, (4,609), Soccer (9,766), Softball (6,892) Swimming & Diving (5,718), Tennis (2,873) Track & Field (13,076), Volleyball, (5,639).⁴

According to the NCAA,⁵ 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 an enormous unmet demand to compete in sports; that 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 Virginia.

25. Rugby, Wrestling, Equestrian, and Triathlon are NCAA emerging sports. There are 163 college women's Wrestling programs. 42 NCAA schools sponsor Triathlon. At least 32 colleges currently sponsor women's varsity Rugby.

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

27. 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 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.⁶

³ See, *NCAA Sports Sponsorship and Participation Rates Report (1956-57 through 2020-21)* https://ncaaorg.s3.amazonaws.com/research/sportpart/2021RES_SportsSponsorshipParticipationRatesReport.pdf Page 86.

⁴ Id.

⁵ NCAA: Estimated Probability of Competing in College Athletics: <https://www.ncaa.org/sports/2015/3/2/estimated-probability-of-competing-in-college-athletics.aspx>

⁶ 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>

28. A review of the UVA website does not reveal that UVA 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.

29. 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 UVA provided its male and female students with the same opportunities to participate, UVA would need to add **\$4,696,692** *additional* athletic scholarship dollars, to balance out the amount UVA provides to its male students.

30. If the OCR determines that Virginia is not discriminating against women in the number of opportunities, and the ratio used is the student-athletes, instead of the student body, no additional scholarship dollars would be required.

31. UVA's EADA data further indicates that the university provides inadequate and unequal funding for the recruitment of female athletes. In 2021-2022, UVA spent \$1,698,518 on men's recruitment and only \$456,518 on women's recruitment; women were allocated only 21.18 percent of the recruiting budget even though they account for 44.91 percent of the athletic population and 56.19 percent of the full-time undergraduate population. If UVA treated women like it does men, women's teams – and women's coaches – would have an *additional* **\$1,721,743** in recruiting dollars.

32. If, for some reason, the OCR determines Virginia does not need to add more sports opportunities for women, and UVA is not discriminating against women in providing opportunities in sport, UVA would still need to provide its women's sports teams – and women's coaches – with **\$523,536** more recruiting dollars in order to be consistent with the school's investment in men's sports.

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>

IV. LEGAL ALLEGATIONS

33. 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).

34. 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).

35. 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).

36. 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*].

37. 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*].

38. In 1975, schools were given three years to provide equality for men and women in athletics, under 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).⁷

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.

39. 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*.

⁷ 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.”

40. 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.

41. 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.*

42. 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).

43. 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.*

44. 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.*

45. 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.*

46. 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.*

47. 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.*

48. 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.*

49. 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.

50. 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.*

51. 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.*

52. 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).

53. 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)”)

54. 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."

55. UVA'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, benefits, and recruitment requirements.

V. RELIEF REQUESTED

56. *Champion Women* expects OCR investigators will find additional violations of the law. *Champion Women* requests that OCR:

- a. Investigate the University of Virginia to determine whether it is discriminating against women; whether Virginia 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 discriminatory conduct 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 Virginia, that include full remedies for all the violations found.
- c. Among other steps to achieve compliance with Title IX, require the University of Virginia 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 Virginia to ensure that the school achieves full and complete compliance with Title IX throughout its athletic department, 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". The signature is located to the right of the athlete silhouette.

Nancy Hogshead, J.D., OLY
September 17, 2023