

**U.S. Department of Education**  
**Office for Civil Rights**  
**Philadelphia Office**  
The Wanamaker Building  
100 Penn Square East, Suite 515  
Philadelphia, PA 19107-3323

ADMINISTRATIVE CLASS COMPLAINT

**COMPLAINANT**

Women's Law Project  
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**RECIPIENT**

Kutztown University of Pennsylvania  
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**I. PRELIMINARY STATEMENT**

1. This complaint is filed by the Women's Law Project 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. As detailed in the Factual and Legal Allegations below, data submitted by Kutztown University of Pennsylvania ("Kutztown") 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 Kutztown's website indicates that Kutztown is discriminating on the basis of sex by providing unequal athletic participation opportunities and unequal athletic recruitment funding for its female students.

3. In order to address these disparities, the Women's Law Project requests that the Philadelphia Office for Civil Rights ("OCR") investigate Kutztown to determine whether it is providing women equal opportunities to participate in varsity sports and adequately equivalent recruitment funding as required by Title IX and remedy any unlawful conduct.

**II. JURISDICTION**

4. The Philadelphia 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 in this region. 34 C.F.R. §§ 106.71, 100.7.

5. The Women’s Law Project has not filed this complaint with any other agency or institution.

6. As the university currently violates Title IX’s athletic equity requirements, this complaint is timely.

**III. FACTUAL ALLEGATIONS**

7. Kutztown is part of the Pennsylvania State System of Higher Education and is located in central Pennsylvania.

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

9. Data submitted by Kutztown to the U.S. Department of Education pursuant to the EADA that is publicly available on the Office of Postsecondary Education Web site for academic years 2003-04 through 2012-13 indicates that Kutztown 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. Kutztown 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. For the past ten years, the participation gap for women has ranged from 8.21% percent in 2011-12 to 14.7 percent in 2006-07, with significant fluctuation. The gap averaged 10.92 percent over the ten academic years.

<b>Kutztown University of PA</b>										
	<b>Undergraduate Enrollment</b>				<b>Athletic Participation</b>					
<b>Survey Year</b>	<b>Men</b>	<b>Women</b>	<b>Total</b>	<b>Percent Women</b>	<b>Men</b>	<b>Women</b>	<b>Total</b>	<b>Percent Women</b>	<b>Participation Gap</b>	<b>Athletes Needed for Equity</b>
2003-04	2983	4259	7242	58.81%	221	202	423	47.75%	11.06%	114
2004-05	3217	4459	7676	58.09%	295	257	552	46.56%	11.53%	152
2005-06	3360	4591	7951	57.74%	293	247	540	45.74%	12.00%	153
2006-07	3474	4798	8272	58.00%	326	249	575	43.30%	14.70%	201
2007-08	3581	4806	8387	57.30%	348	283	631	44.85%	12.45%	184
2008-09	3667	4817	8484	56.78%	327	270	597	45.23%	11.55%	160
2009-10	3777	4944	8721	56.69%	243	227	470	48.30%	8.39%	91
2010-11	3851	4982	8833	56.40%	306	278	584	47.60%	8.80%	118
2011-12	3740	4888	8628	56.65%	298	280	578	48.44%	8.21%	109
2012-13	3650	4830	8480	56.96%	338	293	631	46.43%	10.52%	154

11. In 2012-13, the most recent academic year for which EADA data is available, Kutztown's participation gap was 10.52 percent.

12. Kutztown must add 154 additional athletic opportunities for women in order to provide athletic opportunities substantially proportionate to enrollment; 154 additional opportunities is far more than the amount needed to add even one new women's team.

13. The EADA data and evidence gathered on Kutztown's website show that Kutztown does not have a history and continuing practice of expanding athletic participation opportunities for women pursuant to part two of the Title IX participation test.

14. Kutztown sponsors 8 men's varsity teams (Baseball, Basketball, Cross Country, Football, Tennis, Indoor Track & Field, Outdoor Track, and Wrestling) and 13 women's varsity teams (Basketball, Bowling, Cross Country, Field Hockey, Golf, Lacrosse, Soccer, Softball, Swimming, Tennis, Indoor Track & Field, Outdoor Track, and Volleyball).

15. Kutztown does not have a record of consistently and continually increasing the number of female athletes. Although Kutztown added varsity women's bowling and women's lacrosse in 2007, these additions have not generated a sufficient number of female athletic opportunities to close the gap and Kutztown has not added any more women's varsity teams since 2007. The actual number of opportunities has alternately increased and decreased, with a larger net increase of men's opportunities than women's opportunities. Between 2003-04 and 2012-13, Kutztown added 117 male opportunities, while adding only 91 women's opportunities. The only consistent variable is that men, who make up 43.04 percent of the full-time undergraduate enrollment, have a greater proportion of the athletic opportunities than women, who account for 56.96 percent of enrollment.

16. A review of Kutztown's website did not uncover 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. Information available on Kutztown'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. Kutztown has several female club sports with no varsity equivalent. Kutztown has a Women's Rugby Team with thirty-seven members. *Kutztown Women's Rugby Fall 2013 Roster*, Kutztown Women's Rugby, <http://www.kutztownwomensrugby.org/> (last visited Oct. 16, 2013). In addition, Kutztown has an Equestrian Team, but the roster is not posted online. *Active Recreational and Sports Clubs*, Kutztown University, <http://www2.kutztown.edu/about-ku/administrative-offices/recreational-services/recreational-and-sports-clubs/active-clubs.htm> (Oct. 16, 2013). The school does not mention whether the Equestrian Team is female-only, but the Team's Facebook page indicates that only women participate. *Kutztown University Equestrian Team*, Facebook, <https://www.facebook.com/pages/Kutztown-University-Equestrian-Team/94666418469> (Oct. 16, 2013). Even though the exact number of women participating in women's club sports is unknown, the existence of these women's club teams indicates that there is unmet interest in women's athletics at Kutztown.

18. A number of universities in PSAC, Pennsylvania, and within Kutztown's competitive region have rugby club teams, making competition viable. Bloomsburg, California, Clarion, East Stroudsburg, Indiana, Kutztown, Lock Haven, Millersville, Shippensburg, Slippery Rock, and Westchester Universities of Pennsylvania all have women's club rugby teams.

19. In addition, Rugby is an NCAA emerging sport. At least six colleges currently sponsor women's varsity rugby (Eastern Illinois, West Chester, Bowdoin, Norwich, Quinnipiac, and Harvard).

20. A review of the Kutztown website does not reveal that Kutztown undertook any athletic interest surveys or other research into interest and competition to support the addition of women's varsity sports.

21. Kutztown's EADA data further indicates that the university provides inadequate and unequal funding for recruitment of female athletes. In 2012-13, Kutztown spent \$32,126 on women's teams while dedicating \$38,311 on men's teams, allocating only 45.6 percent of its recruiting budget to women, who make up 46.43 percent of its athletic population and 56.96 percent of its full-time undergraduate population. This was an improvement from the previous year in which Kutztown invested \$59,203 on men's recruitment and only \$21,329 on women's recruitment, allocating only 26.5 percent of the recruiting budget to women. However, further improvement is necessary to achieve equity in both recruiting and participation.

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

22. 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).

23. 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).

24. 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).

25. 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. Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
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. 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*].

26. In determining substantial proportionality under part one of the three-part test, OCR considers whether the number of opportunities that would have to be added to achieve proportionality 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*].

27. In determining whether an institution has a history and continuing practice of expansion under part two 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*.

28. In determining whether an institution has a continuing practice of program expansion, 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.*

29. 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.*

30. Part three 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.*

31. Whether there is unmet interest and ability will be determined by examining a broad range of indicators, including whether the institution uses nondiscriminatory 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.*

32. 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.*

33. 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.*

34. 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.*

35. Under part three 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.*

36. 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.*

37. Kutztown'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 and recruitment requirements.

## **V. RELIEF REQUESTED**

38. The Women's Law Project requests that OCR:

- a. Investigate Kutztown University of Pennsylvania to determine whether it is providing female students with equal opportunities to participate in varsity athletics sports and equivalently adequate recruitment opportunities.
- b. Take all necessary steps to remedy any 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 Kutztown University, as well as full remedies for the violations found.
- d. Among other steps to achieve compliance with Title IX, require Kutztown University to: elevate interested existing women's club teams to varsity status, add more athletic opportunities for women, accord to additional teams and athletes the full range of benefits accorded to varsity teams and athletes, increase recruiting opportunities for women's teams, and adopt and implement a plan to achieve compliance with Title IX.
- e. Monitor any resulting agreement with Kutztown University to ensure that Kutztown University achieves compliance with Title IX.

Respectfully submitted,



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Date: April 16, 2014