

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

ADMINISTRATIVE CLASS COMPLAINT

COMPLAINANT

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RECIPIENT

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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 Millersville University of Pennsylvania ("Millersville") 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 Millersville's website indicates that Millersville is discriminating on the basis of sex by providing unequal athletic participation opportunities 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 Millersville to determine whether it is providing women equal opportunities to participate in varsity sports 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 Millersville currently violates Title IX’s participation requirements, this complaint is timely.

III. FACTUAL ALLEGATIONS

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

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

9. Data submitted by Millersville 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 Millersville 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. Millersville does not and has not provided athletic opportunities to female students in numbers substantially proportionate to their enrollment pursuant to part I of the Title IX participation test. For the past ten years, the participation gap for women has ranged from 5.32 percent in 2012-13 to 13.84 percent in 2003-04, with the gap in double digits in each of those years except for the most recent year. The gap averaged 11.6 percent over the ten academic years.

Millersville University										
	Undergraduate Enrollment				Athletic Participation					
Survey Year	Men	Women	Total	Percent Women	Men	Women	Total	Percent Women	Participation Gap	Athletes Needed for Equity
2003-04	2667	3476	6143	56.58%	296	221	517	42.75%	13.84%	165
2004-05	2772	3597	6369	56.48%	301	232	533	43.53%	12.95%	159
2005-06	2709	3593	6302	57.01%	267	231	498	46.39%	10.63%	123
2006-07	3128	4078	7206	56.59%	235	195	430	45.35%	11.24%	111
2007-08	3177	4082	7259	56.23%	273	224	497	45.07%	11.16%	127
2008-09	2829	3691	6520	56.61%	298	237	535	44.30%	12.31%	152
2009-10	2893	3779	6672	56.64%	300	237	537	44.13%	12.51%	155
2010-11	3026	3864	6890	56.08%	301	229	530	43.21%	12.87%	155
2011-12	3021	3792	6813	55.66%	297	219	516	42.44%	13.22%	154
2012-13	2964	3686	6650	55.43%	226	227	453	50.11%	5.32%	54

11. In 2012-13, the most recent year for which EADA data is available, Millersville's participation gap was 5.32 percent.

12. Millersville must add 54 additional athletic opportunities for women in order to provide athletic opportunities substantially proportionate to enrollment; 54 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 Millersville's website show that Millersville 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. Millersville sponsors 7 men's varsity teams (Baseball, Basketball, Football, Golf, Soccer, Tennis, and Wrestling) and 12 women's varsity teams (Basketball, Cross Country, Field Hockey, Golf, Lacrosse, Soccer, Softball, Swimming, Tennis, Indoor Track, Outdoor Track, and Volleyball). Although Millersville added varsity women's golf in 2008-09, this addition has not generated sufficient number of female athletes to close the gap and Millersville has not added any more women's varsity teams since 2009.

15. Millersville does not have a record of consistently and continually increasing the number of female athletes. Instead, the numbers have alternately increased and decreased in fairly small increments except for 2006-07 when the women's numbers dropped by 36. The addition of women's golf added only 4-5 women's opportunities a year.

16. The reduction in the Title IX gap to 5.32 percent is not the result of an increase in women's opportunities but is solely the consequence the university's elimination of men's cross country, indoor track and field, and outdoor track and field, which included 77 men's opportunities in Millersville's 2011-12 EADA report under the category of "All Track Combined". While justifying its elimination of the men's programs based on reduction of its athletic budget, Millersville asserted that the elimination addresses its Title IX imbalance by moving it "closer to compliance with Title IX." *Millersville to Consolidate Athletics Programs* (Feb. 14, 2012) http://www.millersvilleathletics.com/news/2012/2/14/GEN_0214125204.aspx?path=general. However, the elimination of the men's teams neither increased women's opportunities nor eliminated the Title IX gap. From 2003-04 to 2012-13, women experienced only a net gain of 6 athletic opportunities.

17. A review of Millersville'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.

18. Information available on Millersville'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. Millersville has a women's rugby club team, which does not have a varsity equivalent. According to the profile on the club's website, the women's rugby club team was founded in 1993 and is a "part of the Women's College East Division, competing in the Small College-Division III league of the EPRU. We compete in matches in the local area and have had teams from as far as Washington DC travel to Millersville to compete against us. We are

currently coached by Max DiGiulio and have a roster of 22 girls.”

<https://getinvolved.millersville.edu/organization/wrugby/about> (Jan. 22, 2014). The existence of the women’s club team and the level of participation indicates that there may be unmet interest in Millersville’s women’s varsity program.

19. 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 number of universities in the Pennsylvania State Athletic Conference (PSAC), of which Millersville is a member, in Pennsylvania, and in Millersville’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.

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

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 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*].

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. Millersville'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.

V. RELIEF REQUESTED

37. The Women's Law Project requests that OCR:
- a. Investigate Millersville University of Pennsylvania to determine whether it is providing female students with equal opportunities to participate in varsity athletics sports.
 - 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 Millersville University, as well as full remedies for the violations found.
 - d. Among other steps to achieve compliance with Title IX, require Millersville 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, and adopt and implement a plan to achieve compliance with Title IX.
 - e. Monitor any resulting agreement with Millersville University to ensure that Millersville University achieves compliance with Title IX.

Respectfully submitted,



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