

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
125 South 9th Street, Suite 300
Philadelphia, PA 19107
PHONE: 215-928-5771
FAX: 215-928-9848
EMAIL: tfromson@womenslawproject.org

RECIPIENT

Shippensburg University of Pennsylvania
1871 Old Main Drive
Shippensburg, PA 17257
PHONE: 717-477-7447

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 Shippensburg University of Pennsylvania ("Shippensburg") 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 Shippensburg's website indicates that Shippensburg 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 Shippensburg 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 Shippensburg currently violates Title IX’s athletic equity requirements, this complaint is timely.

III. FACTUAL ALLEGATIONS

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

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

9. Data submitted by Shippensburg 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 Shippensburg 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. Shippensburg 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 4.52 percent in 2012-13 to 10.88 percent in 2007-08. The gap averaged 7.45 percent over the ten academic years.

Shippensburg University of PA										
	Undergraduate Enrollment				Athletic Participation					
Survey Year	Men	Women	Total	Percent Women	Men	Women	Total	Percent Women	Participation Gap	Athletes Needed for Equity
2003-04	2959	3335	6294	52.99%	332	263	595	44.20%	8.79%	111
2004-05	3043	3248	6291	51.63%	326	244	570	42.81%	8.82%	104
2005-06	2956	3219	6175	52.13%	334	263	597	44.05%	8.08%	101
2006-07	2953	3143	6096	51.56%	334	265	599	44.24%	7.32%	91
2007-08	3102	3519	6621	53.15%	351	257	608	42.27%	10.88%	141
2008-09	3000	3350	6350	52.76%	351	295	646	45.67%	7.09%	97
2009-10	3141	3453	6594	52.37%	356	301	657	45.81%	6.56%	90
2010-11	3296	3500	6796	51.50%	379	324	703	46.09%	5.41%	78
2011-12	3297	3491	6788	51.43%	359	287	646	44.43%	7%	93
2012-13	3180	3162	6342	49.86%	334	277	611	45.34%	4.52%	55

11. In 2012-13, the most recent academic year for which EADA data is available, Shippensburg's participation gap was 4.52 percent.

12. Shippensburg must add 55 additional athletic opportunities for women in order to provide athletic opportunities substantially proportionate to enrollment; 55 additional opportunities is more than the amount needed to add even one new women's team.

13. The EADA data and evidence gathered on Shippensburg's website show that Shippensburg 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. Shippensburg sponsors 9 men's varsity teams (Baseball, Basketball, Cross Country, Football, Indoor Track, Outdoor Track, Soccer, Swimming and Wrestling) and 11 women's varsity teams (Basketball, Cross Country, Field Hockey, Indoor Track, Lacrosse, Outdoor Track, Soccer, Softball, Swimming, Tennis, and Volleyball). Shippensburg has not added any varsity teams in the last 10 years. Shippensburg last added a women's sport in 1994 when it added Women's soccer. In 1992 it discontinued women's diving.

15. While the participation gap between male and female athletes has fluctuated over the last ten years, to the extent it has decreased in some years such decreases resulted primarily from decreases in female enrollment at Shippensburg rather than any increases in female athletic opportunities. This is evident by the fact that the number of female athletes between 2003 and 2013 has only minimally increased. Furthermore, the fluctuating participation gap between female athletes and total female students correlates to the fluctuating number of total female students. For example, the highest participation gap of 10.88% at Shippensburg occurred during the 2007-08 school year. During this year, Shippensburg had its largest female student population of 3,519 female students, 53.15% of the entire student body.

16. In response to a request for documents under Pennsylvania's Right to Know Law, Shippensburg provided results of athletic interest surveys freshmen have been asked to complete almost every two years since 1994. These surveys inquired primarily about the sports in which students participated and lettered in high school. They appear to have asked about other sports in which students were interested and letters describing the answers to that query acknowledge that several sports, including rugby, were identified but Shippensburg took no steps to add any additional teams for women. Nor is there any indication that Shippensburg appointed a gender equity committee or created any plan to achieve athletic gender equity.

17. Information available on Shippensburg'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. The existence of a club women's rugby team, established in 1983 and in existence at Shippensburg for over three decades, indicates that there is unmet interest in women's athletics at Shippensburg. This club team currently fields 26 players and is a member of the Mid Atlantic Rugby Conference (MARC), a USA Rugby Collegiate Division II rugby conference featuring teams from Eastern Pennsylvania, New Jersey and Delaware. In the fall of 2013, the team had an undefeated regular season and advanced to MARC playoffs in Denison, Ohio.

18. According to documents received from Shippensburg pursuant to the above-referenced Right to Know Law request, on October, 2010, a student on the women's rugby team raised the question to then Shippensburg President William Rudd about elevating the women's club rugby team to varsity status. She followed up her verbal request with an email to which Rudd responded "Appreciate the information and we will begin the analysis and investigation of the next appropriate steps. We appreciate you being [sic] the issue forward and being persistent." No further steps were taken thereafter.

19. A number of universities in the Pennsylvania State Athletic Conference, and within Shippensburg'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.

20. 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).

21. A review of Shippensburg's website did not uncover any policy or procedure for adding new sports or elevating existing club sports to varsity status.

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).

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. Shippensburg'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 Shippensburg University of Pennsylvania to determine whether it is providing female students with equal participation 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 Shippensburg University, as well as full remedies for the violations found.
 - d. Among other steps to achieve compliance with Title IX, require Shippensburg 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 Shippensburg University to ensure that Shippensburg University achieves compliance with Title IX.

Respectfully submitted,



Terry L. Fromson
Women's Law Project
125 S. 9th Street, Suite 300
Philadelphia, PA 19107
215-928-5771

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