

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

Clarion University of Pennsylvania
840 Wood Street
Clarion PA 16214
PHONE: 814-393-2000

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

III. FACTUAL ALLEGATIONS

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

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

9. Data submitted by Clarion 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 Clarion 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. Clarion 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. The participation gap from 2003-04 to 2012-13 for women at Clarion ranged from 8.84 percent in 2009-10, the only year with a one digit gap, to 18.80 percent in 2005-06, averaging 14.27 percent over the ten academic years.

Year	Undergraduate Enrollment				Athletic Participation					
	Men	Women	Total	Percent Women	Men	Women	Total	Percent Women	Participation Gap	Athletes Needed for Equity
2003-04	2096	3181	5277	60.28%	226	183	409	44.74%	15.54%	160
2004-05	2083	3083	5166	59.68%	253	186	439	42.37%	17.31%	188
2005-06	2040	3029	5069	59.76%	222	154	376	40.96%	18.80%	176
2006-07	2020	3001	5021	59.77%	225	157	382	41.10%	18.67%	177
2007-08	2156	2983	5139	58.05%	209	166	375	44.27%	13.78%	123
2008-09	2125	2988	5113	58.44%	205	182	387	47.03%	11.41%	106
2009-10	2204	3052	5256	58.07%	197	191	388	49.23%	8.84%	82
2010-11	2145	3118	5263	59.24%	197	153	350	43.71%	15.53%	133
2011-12	2013	3003	5016	59.87%	189	187	376	49.73%	10.13%	95
2012-13	1840	2766	4606	60.05%	189	170	359	47.35%	12.70%	114

11. In 2012-13, the most recent academic year for which EADA data is available, Clarion's participation gap was 12.70 percent.

12. Clarion must add 114 additional athletic opportunities for women in order to provide athletic opportunities substantially proportionate to enrollment; 114 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 Clarion's website show that Clarion 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. Clarion added a new women's varsity sport in 2008 when it added varsity women's golf, but the addition of this one team created only an additional 7 to 13 new women's opportunities each year.

15. Over the ten academic years covered by the available EADA data, Clarion achieved a total net gain of only 7 women's athletic opportunities through the first 7 years. By 2012-13, the total number of women athletes had actually decreased from 183 in 2003-04 to 170.

16. A review of Clarion'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. Clarion sponsors 6 men's varsity sports (Baseball, Basketball, Football, Golf, Swimming & Diving, and Wrestling) and 10 women's varsity sports (Basketball, Cross Country, Indoor Track, Outdoor Track, Golf, Soccer, Softball, Swimming & Diving, Tennis, and Volleyball).

18. Information available on Clarion'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. Clarion women participate in the club sports of equestrian and rugby. *Center for Sports and Recreation*, Clarion University, <http://www.clarion.edu/8027/> (last visited Oct. 11, 2013). The existence of these women's club teams indicates that there may be unmet interest in women's athletics at Clarion.

20. Moreover, Clarion does not sponsor women's varsity lacrosse and field hockey, sports for which the league to which Clarion belongs, the Pennsylvania State Athletic Conference (PSAC), sponsors varsity women's championships. The existence of these teams demonstrates that interest and competition exist in the geographic area from which Clarion draws its students and with whom it competes to sustain additional varsity sports.

21. A number of universities in PSAC, Pennsylvania, and within the 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.

22. 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).

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

24. Clarion's EADA data further indicates that the university provides inadequate and unequal funding for recruitment of female athletes. In 2012-13, Clarion spent \$22,525 on men's recruitment and only \$10,203 on women's recruitment; women were allocated only 31 percent of the recruiting budget even though they account for 47.35 percent of the athletic population and 60 percent of the full-time undergraduate population.

IV. LEGAL ALLEGATIONS

25. 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).

26. 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).

27. 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).

28. 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*].

29. 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*].

30. 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*.

31. 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.

32. 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.*

33. 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.*

34. 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.*

35. 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.*

36. 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.*

37. 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.*

38. 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.*

39. 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.*

40. Clarion'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

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

Date: April 16, 2014