

2. Under Title IX, West Chester University must structure its intercollegiate athletics program so that (1) the participation rate of women is “substantially proportionate” to their undergraduate enrollment rate; or (2) the program demonstrates a “history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities” of women; or (3) the present program “fully and effectively” accommodates women’s interests and abilities. See 44 Fed. Reg. 71418 (Dec. 11, 1979). West Chester University’s intercollegiate athletic program fails to meet any of these standards, and the recent elimination of its women’s gymnastics team perpetuates the continuing violation. Through this action, the Plaintiffs seek immediate reinstatement of the women’s gymnastics team and the other judicial remedies available to them to ensure Defendants’ compliance with Title IX.

II. Jurisdiction And Venue

3. This Court has jurisdiction over Plaintiffs’ claims under 28 U.S.C. §§ 1331, 1343, 2201 and 42 U.S.C. § 2000d-7.

4. Venue is proper in the United States District Court for the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to Plaintiffs’ claim occurred within this judicial district.

III. Parties

5. Plaintiff Elizabeth C. Barrett is a resident of Stafford, Virginia.

6. Plaintiff Jessica Deutsch is a resident of Butler, Pennsylvania.

7. Plaintiff Ashley Gillman is a resident of Sidman, Pennsylvania.

8. Plaintiff Melanie Heckert is a resident of Mount Holly Springs, Pennsylvania.

9. Plaintiff Stephanie Herrmann is a resident of Harrisburg, Pennsylvania.

10. Plaintiff Caroline Krystopolski is a resident of West Chester, Pennsylvania.

11. Plaintiff Kyla-Dawn Lenti is a resident of Hatfield, Pennsylvania.

12. Plaintiff Carmen Mills is a resident of Harrisburg, Pennsylvania.

13. Plaintiff Cecile Allen is a resident of State College, Pennsylvania.

14. All of the individual Plaintiffs, except Cecile Allen, are now full-time students at West Chester University. Cecile Allen was a full-time student at West Chester University who was forced to transfer to Penn State this fall as a consequence of Defendants' decision to eliminate the women's gymnastics team.

15. All of the Plaintiffs, who are women, elected to attend West Chester University in significant part because West Chester University offered them an opportunity to compete on an intercollegiate gymnastics team. All of the Plaintiffs were members of the women's gymnastics team last year, and desire to participate in the team this year and throughout their collegiate careers.

16. All of the Plaintiffs are eligible to participate in intercollegiate athletics under the applicable rules. Specifically, Stephanie Herrmann and Carmen Mills have one year of eligibility remaining; Cecile Allen, Ashley Gillman, Melanie Heckert and Elizabeth Barrett have two years of eligibility remaining; Caroline Krystopolski and Jessica Deutsch have three years of eligibility remaining; and Kyla-Dawn Lenti has four years of eligibility remaining.

17. Defendant West Chester University, which has its principal place of business in West Chester, Pennsylvania, is a public corporation and a member of the Pennsylvania State System of Higher Education. West Chester University receives federal financial assistance.

18. Defendant Madeleine Wing Adler is the President of West Chester University. As the President, Dr. Adler is responsible for the operation of West Chester University and for

ensuring that West Chester University complies with all federal and state anti-discrimination mandates. Dr. Adler is being sued in her official capacity.

19. Defendant Edward M. Matejkovic is the Director of Athletics of West Chester University. As the Director of Athletics, Dr. Matejkovic is primarily responsible for the day-to-day operation of West Chester University's intercollegiate athletic program, including its compliance with Title IX. Dr. Matejkovic is being sued in his official capacity.

20. Defendant Barbara Cleghorn is the Assistant Director of Athletics for Eligibility and Compliance of West Chester University and, as such, is also responsible for West Chester University's compliance with Title IX. Ms. Cleghorn is being sued in her official capacity.

IV. Class Action Allegations

21. The individual Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(b)(2) on behalf of themselves and on behalf of a class consisting of all present and future West Chester University female students, admitted students and potential students who participate, seek to participate, were deterred or prevented from participating in, or obtaining the benefits of, intercollegiate athletics sponsored by West Chester University.

22. All class members are aggrieved persons under federal civil rights law as a result of the actions, policies and practices of Defendants. The named individual Plaintiffs seek declaratory and injunctive relief on behalf of themselves and all class members to prevent Defendants from engaging in future illegal conduct and to rectify the effects of present and past discrimination.

23. This matter is properly maintainable as a class action pursuant to Fed. R. Civ. P. 23(b)(2) in that:

(a) The class members are so numerous as to make the joinder of all of them impracticable. Based on information and belief, while over 5000 women are enrolled in West Chester University's undergraduate program as full-time students, and women compromise approximately 60 percent of the West Chester University's full-time undergraduate student body, less than 50 percent of the participants in West Chester University's intercollegiate varsity sports program are women. Each year new female students enroll in West Chester University who desire or seek to participate in such athletic activities but are either prevented or deterred from doing so because of the practices of Defendants. All women students at West Chester University face unlawful and inappropriate barriers to intercollegiate athletic opportunities. The failure of West Chester University to take remedial action to overcome the effects of past policies and practices that have discriminated against women in connection with the intercollegiate athletic program continues adversely to affect both individual Plaintiffs and potential class members. Furthermore, West Chester University's recent decision to disband the women's gymnastics team denies equal athletic opportunities to present and future West Chester University students who have the interest and ability to compete at the varsity level in gymnastics.

(b) There are questions of law and fact common to the class members. These common questions of law and fact predominate over questions affecting individual class members. Among the questions of law and fact common to the class is whether the practices and conduct of Defendants, as described below, violate the class members' right to enjoy the benefits of West Chester University's athletic program on an equal basis with male students.

(c) The claims of the named individual Plaintiffs are typical of the claims of the proposed class members. They, as the other class members, are women and they

have participated in and/or desire to participate in an intercollegiate athletic program. They were members of a viable women's gymnastics team that was disbanded by West Chester University in an illegal and discriminatory fashion. The named individual Plaintiffs, like the class as a whole, are victims of specific discriminatory practices described below. It is these discriminatory practices that form the bases of the named individual Plaintiffs' and class members' claims.

(d) The named individual Plaintiffs will fairly and adequately protect the interests of the class members. They are represented by counsel with extensive experience in Title IX, civil rights / civil liberties, and class action litigation.

(e) Defendants have acted on grounds generally applicable to the class, thereby making final declaratory and injunctive relief with respect to the class as a whole appropriate.

V. Facts

24. During the 2001-02 academic year approximately 8,725 undergraduate students attended West Chester University full time. Women then comprised roughly 61 percent of the undergraduate student body. Upon information and belief, the percentage of undergraduate students who are women is approximately the same today, as it was in the 2002-03 academic year, and in previous years.

25. According to the most recent publicly available report that West Chester University has apparently filed with the United States Department of Education pursuant to the Equity in Athletics Disclosure Act, 20 U.S.C. § 1092, during the 2001-02 academic year 534 students participated in West Chester University's varsity athletic program. Although women comprised over 60 percent of the student population, women comprised only 44.6 percent of the

participants on the intercollegiate varsity teams offered by West Chester University. Upon information and belief, the disparity between the rate of participation in intercollegiate athletics among women and women's enrollment is approximately the same today.

26. West Chester University's practice of providing its male students with greater athletic opportunities has continued over time. Upon information and belief, West Chester University does not offer its female students opportunities to participate in intercollegiate athletics substantially proportionate to the percentage of women enrolled as students. West Chester has favored male athletes in other ways as well, such as by consistently providing the men's teams with more coaches at higher salaries and allocating men's teams greater resources for recruiting, student aid and operating expenses.

27. Gymnastics numbers among the women's sports traditionally offered by West Chester University. West Chester University formed one of the first women's collegiate gymnastics teams in the United States, and has regularly competed nationally since the 1960s, garnering, among other achievements, over 200 victories and two undefeated seasons while boasting numerous AIAW and NCAA All-Americans.

28. Despite this proud history, West Chester University has in recent years withheld adequate support from the women's gymnastics team, frequently changing coaches, failing to hire assistant coaches, providing coaches with inadequate and unequal compensation, neglecting to provide the team with adequate publicity and recruiting resources, and denying the members of the team necessary equipment, practice opportunities and the chance to compete in meets and prestigious national competitions for which they have qualified.

29. Gymnastics continues to be a highly popular sport among girls of high school age in Pennsylvania, from which West Chester University draws approximately 90 percent of its undergraduate students.

30. Nine students participated in the West Chester University women's gymnastics team in the 2002-03 academic year. One team member, Plaintiff Kyla-Dawn Lenti, could not compete last year due to injury but has now recovered. Only one member of the team graduated last year, while five newly recruited female students gained admission to West Chester University and were planning to join the team for the 2003-04 season.

31. Last season, the West Chester University women's gymnastic team, an NCAA Division II team, completed a full competitive season of nine meets against schools in all three NCAA divisions, including Division I teams at the University of Pennsylvania and Temple University. The team bettered its record three times and two team members qualified to compete in the USAG National Collegiate Championship, while one team member, was named Eastern Collegiate Athletic Conference ("E.C.A.C") Rookie of the Year in Division II women's gymnastics.

32. Upon information and belief, the coach of the West Chester University women's gymnastics team had arranged for a full schedule of meets for the upcoming season, which was scheduled to begin in January 2004.

33. On or about April 28, 2003, citing budgetary problems, West Chester University announced that it would be cutting women's gymnastics team, as well as the men's lacrosse team, in the 2003-04 academic year.

34. West Chester University simultaneously announced that it would add women's golf to its roster of intercollegiate sports in the 2003-04. Upon information and belief, the

number of slots on the golf team open to female students will be no greater than the number of female students who have participated in women's gymnastics.

35. Upon information and belief, at the time that West Chester University made the announcement that it would add a women's golf team, West Chester University had not undertaken adequate efforts to determine whether there presently were female students at West Chester University who had interest in participating in an intercollegiate golf team or the ability to compete at the varsity level.

36. Upon information and belief, although the West Chester University golf team engages in intercollegiate competition in September and October, and advertises its team as a men's and women's team in university-sponsored promotional literature, there are now no women on the team.

37. Upon learning of West Chester University's decision to eliminate the women's gymnastics team, four of the five new recruits elected to enroll elsewhere. Plaintiff Cecile Allen reluctantly transferred to another school offering intercollegiate gymnastics, although she will have to try out for a spot on the team, she may not be permitted to complete her major, and the cost of her education has consequently increased significantly.

38. The remaining individual Plaintiffs cannot transfer to schools offering intercollegiate gymnastics without incurring similar significant costs and face the uncertainty of whether they will be permitted to join the schools' gymnastics teams. They have the interest and ability to participate in women's intercollegiate gymnastics at West Chester University this year and for the remaining years of their eligibility.

39. West Chester University has failed to provide equal opportunities for female athletes and has provided more opportunities for male athletes than female athletes.

40. Notwithstanding the elimination of the men's lacrosse team and the alleged addition of women's golf, the opportunities available to female students at West Chester University to participate in intercollegiate athletics still are not substantially proportionate to the enrollment of women at the institution.

41. West Chester University does not have a continuing practice of program expansion in response to the developing interests and abilities of women. West Chester University historically has made unsatisfactory efforts to equalize women's and men's athletic opportunities. Rather than significantly increasing support in a manner that would proportionately reflect West Chester University's student population and enhance women's athletic opportunities, West Chester continues to favor men's athletic teams.

42. The interest and abilities of women are not fully and effectively accommodated by West Chester University's present intercollegiate athletic program.

43. West Chester University fails and continues to fail to provide women athletes with opportunities to participate in intercollegiate athletics equal to or similar to that provided to its male athletes. It has consistently provided greater athletic benefits and opportunities to male athletes.

44. Rather than increasing intercollegiate athletic opportunities for women so as to bring West Chester University into compliance with Title IX, West Chester University has implemented program cuts that perpetuate the gender-based inequalities historically present in its intercollegiate athletic program.

45. The individual Defendants have operated the intercollegiate athletic program in a manner that permits and fosters the gender-based inequalities described above. They are

responsible for the program cuts that have diminished participation opportunities for women at West Chester University.

46. Although the individual Defendants were put on notice that eliminating the women's gymnastics team would violate Title IX, the individual Defendants nevertheless eliminated the team and have refused to reinstate it.

47. The individual Plaintiffs, who selected West Chester University due, in significant part, to its gymnastics program, have lost their opportunity to compete in intercollegiate athletics through Defendants' actions. Each has also been placed in the position of attending a college that she would not have selected had she known that there would be no gymnastics team. Each has therefore lost the prestige, status, reputation, personal growth, development and financial support that come from participation on intercollegiate athletic teams.

48. The class Plaintiffs are deprived of opportunities to participate in intercollegiate athletics, the enjoyment derived from observing and following their school's teams, and the pride inherent in being a part of a University which values and appreciates the accomplishments of women athletes, and the financial support that they would have received as members of the women's gymnastics team.

COUNT I
(Title IX, 20 U.S.C. § 1681(a) *et seq.*)

49. The preceding allegations are re-alleged and incorporated herein.

50. Title IX of the Education Amendments of 1972 provides in relevant part:

No 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).

51. Regulations interpreting the requirements of Title IX were promulgated by the United States Department of Education and/or its predecessor and have the force and effect of law. The regulations enumerate specific requirements that apply to athletic programs. 34 C.F.R. §§ 106.37, 106.41.

52. The regulations require schools receiving federal financial assistance and offering athletic programs to provide equal athletic opportunity for both men and women. 34 C.F.R. § 106.41(c).

53. The Office for Civil Rights (“OCR”) of the United States Department of Education is charged with enforcement of Title IX. OCR and/or its predecessor have promulgated the 1979 Policy Interpretation of Title IX (the “Policy Interpretation”), the 1996 Clarification of Intercollegiate Athletics Policy Guidance: the Three-Part Test (the “Clarification”), and the 2003 Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance (the “Further Clarification”), which provide in pertinent part that compliance with Title IX’s requirement of effectively accommodating the interests and abilities of female students will be evaluated by determining:

(a) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or

(b) 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

(c) Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion such as that cited 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.

Policy Interpretation, 44 Fed. Reg. 71418 (Dec. 11, 1979). If the institution cannot meet any of these three standards, then the institution is in violation of Title IX. See id.

54. As described above, West Chester University does not meet any of the three standards for compliance with Title IX.

55. The elimination of the women's gymnastics team further violates the three-part accommodation compliance test because it further burdens women, who are already disadvantaged by the present athletic program, and deprives West Chester University female students of a viable program that has sufficient interest, ability and available competition to sustain it.

56. Defendants have a duty actively to encourage the development of intercollegiate competition for women's gymnastics because overall athletic opportunities within West Chester University's competitive region have been historically limited for women.

57. Under Title IX, West Chester University must also afford its female students equivalence of other athletic benefits. The implementing regulations consider, *inter alia*, the provision of equipment and supplies; scheduling of games and practice time; travel and per diem allowance; opportunity to receive coaching and academic tutoring; assignment and compensation of coaches and tutors; provision of locker rooms, practice and competitive facilities; provision of medical and training facilities and services; provision of housing and dining facilities and services; and publicity. 34 C.F.R. § 106.41(c)(2)-(10).

58. As described above, West Chester University does not afford its female students equivalent athletic benefits.

59. Defendants have intentionally adopted and implemented policies and have engaged in a course of conduct, as described above, which discriminates against the individual and class Plaintiffs on the basis of their gender.

60. Since the above-described conduct subjects Plaintiffs to exclusion from participation and/or discrimination on account of gender in an educational program or activity receiving Federal financial assistance, Title IX has been violated.

WHEREFORE, Plaintiffs request judgment in their favor and request that this Court:

(a) Certify this action as a class action for declaratory and injunctive relief on behalf of all present and future West Chester University female students, admitted students and potential students who participate, seek to participate, and/or are deterred from participating in intercollegiate athletics at West Chester University;

(b) Declare that Defendants have engaged in a past or continuing pattern and practice of discrimination against women on the basis of sex in intercollegiate athletics in violation of Title IX, the Title IX regulations, and Policy Interpretation, the Clarification, and the Further Clarification;

(c) Pending a trial on the merits, issue a preliminary injunction ordering Defendants to reinstate women's gymnastics as a West Chester University-funded intercollegiate athletic team, to employ a fully qualified coach for the team, to provide the team with funding and other benefits commensurate with its status as an intercollegiate team, and prohibit Defendants from eliminating any West Chester University-funded women's intercollegiate athletic team unless, both before and after the elimination, equality of opportunity for women has been achieved;

(d) After a hearing on the merits, issue a final injunction ordering Defendants to reinstate women's gymnastics as a West Chester University-funded intercollegiate athletic team and prohibit Defendants from eliminating any West Chester University-funded intercollegiate athletic team unless, both before and after the elimination, male and female students are provided equal opportunities to participate in West Chester University-funded intercollegiate athletics; and prohibit Defendants from treating West Chester University's female athletes in a gender-discriminatory manner;

(e) Award Plaintiffs their expenses and costs, including reasonable attorneys' fees;

(f) Award such other and further relief as the Court deems necessary and proper.

Respectfully submitted,

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