

August 2, 2023

Via e-mail: president@fsu.edu

Richard D. McCullough
President
Florida State University
211 Westcott Building
Tallahassee, FL 32306

RE: Refusal to Upgrade Women's Lacrosse to Varsity Team in Violation of Title IX

Dear President McCullough:

I and my co-counsel have been retained by members of the women's club lacrosse team at Florida State University ("FSU") because the school has refused to upgrade the team to varsity status in violation of Title IX of the Education Amendments of 1972 ("Title IX"). I hope we can resolve this dispute without the need for litigation, but, if not, we will pursue a sex discrimination class action against FSU for violating Title IX by depriving its female students and potential students of equal opportunities to participate in varsity intercollegiate athletics. Please respond to this letter as soon as possible and, in any event, no later than Wednesday, August 9, 2023.

On July 7, 2023, in accordance with FSU Intercollegiate Athletics Policies and Procedures section 510 -Adding a Varsity Sport, thirty members of the women's club lacrosse team formally presented a petition to FSU Vice President and Director of Athletics Michael Alford to have their team elevated to varsity status. Section 510 says, "Once the petition is prepared in full the Director of Athletics will review it and present it to the Athletic Board with his/her recommendation. The Board has authority to make an immediate recommendation to the University President or to submit it to the appropriate subcommittee for review and recommendation."

As far as we know, none of that happened. Instead, on July 14, 2023, Deputy AD for External Operations Janeen Lasik sent the women a brief email response saying, "At this time, we are not actively evaluating the addition of any sports programs to our current collection of teams." Copies of the petition and response are attached for your convenience.

FSU's refusal to upgrade the women's club lacrosse team to varsity status is a flagrant violation of Title IX, which prohibits sex discrimination by all educational institutions receiving federal funds, including FSU. Under Title IX, schools must add varsity women's teams for which interest, ability, and competition are available unless "intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments." 44 Fed. Reg. 71418 (Jan. 16, 1996). FSU fails that test.

According to the most recent publicly available Equity in Athletics Disclosure Act (EADA) data, which FSU submitted and verified as accurate to the U.S. Department of Education, the school had an undergraduate population in 2021-22 of 17,403 women and 12,662 men. So, undergraduate enrollment was 57.88% women. The school's intercollegiate athletic teams that academic year had 373 men and 318 women, or 46.02% women—creating a 11.86% gap between the women's undergraduate enrollment rate and their intercollegiate athletic participation rate. Given the number of men on the varsity teams, this means FSU needed to add 195 women to its athletic program to provide substantially proportional opportunities for women.

FSU was, moreover, already aware that the women's club lacrosse team wanted and was deserving of varsity status. Both facts were highlighted in an investigative report published in *USA Today* on May 26, 2022, entitled "Title IX was intended to close the gender gap in college athletics. But schools are rigging the numbers." <https://sports.yahoo.com/title-ix-intended-close-gender-090430302.html?guccounter=1> And, as the women's petition noted, in 2022-23, the club team was sixth in the nation.

When the thirty women on FSU's extremely successful club lacrosse team sought to have it upgraded to varsity status, however, their petition was quickly denied. Incredibly, according to the response they received and in apparent violation of FSU Intercollegiate Athletics Policies and Procedures, it was not even considered—because "At this time, we are not actively evaluating the addition of any sports programs."

I would like to meet with you and/or the school's lawyers and discuss the relevant facts and the law, as well as the likely outcome if a lawsuit is filed. It is my hope that, considering these factors, FSU will agree to upgrade the women's club lacrosse team to varsity status and come into compliance with Title IX to avoid the need for a lawsuit.

Unless FSU does so—or has plans for compliance with Title IX we do not know about—we will file a class action seeking to make sure that the team is given varsity status and that FSU's varsity intercollegiate athletic program complies fully with Title IX, providing equal opportunities to participate to all female athletes and potential athletes.

I look forward to hearing from you as soon as possible and, in any event, no later than Wednesday, August 9, 2023.

Sincerely,



Arthur H. Bryant

Cc Lori Bullock, lbullock@baileyglasser.com