

June 5, 2020

Commissioner Robert Bowlsby
Big 12 Conference
400 E John Carpenter Freeway
Irving, TX 75062

Dear Commissioner Bowlsby,

We are a consortium of advocates for women and girls in sports. Access to and participation in sports improves the lives of all students, and that is particularly true for girls and women.

During this time of COVID-19, we are writing to remind you of your institutional obligation to uphold Title IX.¹ We understand that these are trying times for collegiate institutions, including athletics departments. In response to financial pressures, we have become aware that some universities are considering program cuts to their athletic programs.² As the commissioner of the

¹ 20 U.S.C. §§ 1681-1688.

² Sallee, Barrett. "Group of Five Commissioners Ask NCAA to Relax Rules That Could Allow More Sports to Be Cut." CBS Sports, April 15, 2020. Available at: <https://www.cbssports.com/college-football/news/group-of-five-commissioners-ask-ncaa-to-relax-rules-that-could-allow-more-sports-to-be-cut/>. (Five Conferences—American Athletic Conference (AAC), Conference USA, Mid-American Conference (MAC), Mountain West Conference, and the Sun Belt Conference—formally requested the NCAA to lower the minimum team requirements for Division I membership. The NCAA subsequently denied their request.)

See also:

- ♦ Hawkins, Stephen. "Slashed St. Ed's: Reeling School Cuts Teams, Breaks Hearts." ABC News. ABC News Network, May 7, 2020. Available at: <https://abcnews.go.com/Sports/wireStory/slashed-st-eds-reeling-school-cuts-teams-breaks-70563956>. (Saint Edward's University cuts six varsity teams.);
- ♦ Keith, Braden. "After Cuts, Sonoma State Says It Will Add Roster Spots to Comply with Title IX." SwimSwam, May 1, 2020. Available at: <https://swimswam.com/after-cuts-sonoma-state-says-it-will-add-roster-spots-to-comply-with-title-ix/> (After cutting two women's varsity teams, Sonoma State University adds roster-spots to women's teams in an attempt to stay compliant with Title IX.);
- ♦ Park, Rohnert. "SSU to Discontinue Men's and Women's Tennis and Water Polo Teams." SSU News. Sonoma State University, April 23, 2020. Available at: [http://news.sonoma.edu/article/ssu-discontinue-men's-and-women's-tennis-and-water-polo-teams](http://news.sonoma.edu/article/ssu-discontinue-men's-and-women's-tennis-and-water-polo-teams;);
- ♦ Rogers, Eric, and Rick Neale. "Florida Tech Cuts Football Program, Announces Layoffs Due to Coronavirus." WKMG News 6 & Click Orlando, May 12, 2020. Available at: <https://www.clickorlando.com/news/2020/05/11/florida-tech-cuts-football-program-announces-layoffs-due-to-coronavirus/>;
- ♦ Shanesy, Todd. "Cost-Cutting Changes Hit Big South Conference." Shelby Star, Gannett, May 12, 2020. Available at: <https://www.shelbystar.com/sports/20200512/cost-cutting-changes-hit-big-south-conference> (The Big South Conference limited schools to only four teams in postseason tournaments next year. Those are men's and women's soccer, women's volleyball, softball, and baseball, or three women's sports and two men's sports.)

Big 12 Conference (Big 12), we ask you be a leader in ensuring that your conference and your members do not cut any athletic programs, and specifically, that they preserve women's athletic opportunities to participate and receive equal treatment. The data we have compiled from the Equity in Athletics Database demonstrate that women are facing serious Title IX deficiencies; they lag behind men's programming in every measurable criteria.³ The attached legal memo provides a thorough analysis of the data for your conference's members under Title IX.

As the Commissioner of the Big 12, we ask for your leadership in upholding your legal and moral obligations to women in higher education by ensuring measures are taken to protect their educational opportunities. Indeed, we sincerely hope the Big 12 will be a leader in gender equality in athletics, in service of the larger goals of higher education.

In 1972, Congress passed Title IX, and President Nixon signed it into law. In 1975, schools were given three years, until 1978, to comply with the regulations applying the statute to athletics.⁴ In the 2018–2019 year alone, at Big 12 member schools, in sum (refer also to table below):

- 569 females were denied a sports opportunity, under the first test of Title IX compliance, based on unduplicated numbers.
- There are two other legal tests for whether an institution is providing enough athletic opportunities for women, and Big 12 member institutions fail both of them as well.
- If Big 12 member institutions were to provide women with equal opportunities to participate and add these 569 female student-athletes for the 2020–2021 school year, an additional \$25,780,026 in scholarship aid would need to be provided for their female student-athletes in order to equal the male student-athlete scholarships.
- Moreover, Big 12 member institutions would need to spend an additional \$11,792,389 recruiting female athletes to provide this type of benefit equally to male and female athletes, as required by Title IX.
- Title IX requires not just equal opportunities *quantitatively*, but *qualitatively* as well. We urge you to review whether women's sports receive equal treatment in aspects such as: facilities, equipment, scheduling, marketing, coaching, recruiting, academic and other support.
- As a reminder, these are rare and rationed educational experiences for both men and women. Big 12 member institutions provided just 2.4% of its students with a varsity sports experience in 2018–2019 school year.

³ Equity in Athletics Disclosure Act, available at: <http://ope.ed.gov/athletics/>. Each year, colleges and universities provide the Department of Education with data from their athletic department regarding numbers of participation opportunities provided to the students, scholarships, staffing, and revenues and expenses, that are broken down by the men's and women's teams.

⁴ 34 C.F.R. § 106, available at: <https://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr106.html#S41>.

Big 12 Conference Institution Name	Needed Additional Sports Opportunities for Women (based on duplicated count)	Needed Additional Sports Opportunities for Women (based on unduplicated count)	Needed Additional Scholarship Dollars for Women	Needed Additional Recruiting Dollars for Women	Student- athletes as percent of total student body (based on unduplicated numbers)
Baylor University	36	69	\$6,573,021	\$1,612,957	3.6%
Iowa State University	0	0	\$-	\$490,983	1.6%
Kansas State University	11	8	\$742,411	\$753,510	2.8%
Oklahoma State University-Main Campus	18	88	\$1,733,211	\$847,355	2.9%
Texas Christian University	175	163	\$8,933,430	\$1,623,056	5.4%
Texas Tech University	43	62	\$786,051	\$943,132	1.6%
The University of Texas at Austin	75	71	\$2,871,501	\$1,815,754	1.4%
University of Kansas	9	10	\$1,211,853	\$1,239,423	2.9%
University of Oklahoma-Norman Campus	38	48	\$1,925,182	\$1,695,523	3.1%
West Virginia University	2	50	\$1,003,366	\$770,696	2.6%
Totals:	407	569	\$25,780,026	\$11,792,389	Average: 2.4%

Denying women equal athletic opportunities is a significant loss. The research linking sports participation with life-long educational, economic, and health benefits is well-established. Sports provide males and females from diverse socioeconomic, racial, and ethnic backgrounds measurable positive educational impacts.⁵ Betsey Stevenson, an economist now at University of Michigan, found that playing sports actually *caused* more education and higher incomes.⁶ Girls who play sports make 8% higher wages compared to their non-sport playing counterparts.⁷ In addition, a sports experience changes a woman’s short-term and long-term health trajectory including: decreased risk of heart disease, breast cancer, osteoporosis, tobacco and drug use, unwanted teen pregnancy, sexually transmitted diseases, depression and suicide.⁸ Research by Ernst and Young found that 96% of C-suite women were athletes.⁹

Athletics is commonly referred to as the “front porch” to the university and thereby communicates an institution’s values to the entire community. As such, athletics can lead the way towards a better environment for women on campus overall, including sexual assault prevention. Gender equality in athletics—as one of the only sex-segregated areas of your member schools—demonstrates *substantively* that Big 12 members treat men and women as

⁵ Staurowsky, E. J., M. J. DeSousa, K. E. Miller, D. Sabo, S. Shakib, N. Theberge, and N. Williams. *Her Life Depends on It III: Sport, Physical Activity, and the Health and Well-Being of American Girls and Women*. East Meadow, NY; Women’s Sports Foundation. (May 2015).

⁶ Stevenson, Betsey. *Beyond the Classroom: Using Title IX to Measure the Return to High School Sports*. NBER Paper Series, Working Paper 15728. 2010. Available at: <http://www.nber.org/papers/w15728>.

⁷ *Id.* at 24.

⁸ Staurowsky, *supra*, note 5.

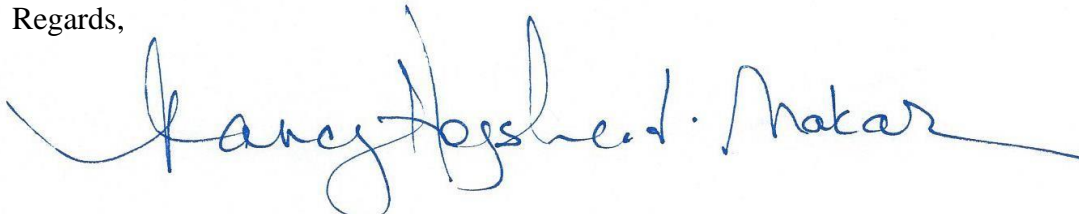
⁹ Ernst & Young, “Global Survey Reveals Critical Role Sports Play for Female Executives in Leadership Development and Teamwork in Business,” (June 18, 2013). Available at: <https://www.prweb.com/releases/2013/6/prweb10841451.htm>.

equals. If the Big 12 and its member institutions' athletics departments do not treat women as equal to men, it cannot expect its male students to do so, either now or in the future.

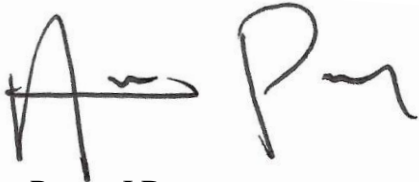
The facts and the law are both clear.

We look forward to your leadership response before June 23, 2020, the 48th anniversary of Title IX. Please respond to this correspondence by email.

Regards,

A handwritten signature in blue ink that reads "Nancy Hogshead-Makar". The signature is fluid and cursive, with a long horizontal line extending to the right.

Nancy Hogshead-Makar, J.D.
CEO, *Champion Women*

A handwritten signature in black ink that reads "Amy Poyer". The signature is stylized and cursive, with a long horizontal line extending to the left.

Amy Poyer, J.D.
Senior Staff Attorney, *California Women's Law Center*

Supporting Organizations:

Active Policy Solutions

Athletes Unlimited

Centre for Sport and Human Rights

Clearinghouse on Women's Issues

The Drake Group

Equal Rights Advocates

Fair Play for Girls in Sports, a project of Legal Aid at Work

The Fearless Coach

Feminist Majority Foundation

National Center for Lesbian Rights

National Federation of State High School Associations

Power Plays

Southwest Women's Law Center

Tucker Center for Research on Girls & Women in Sport

USA Badminton

What Equality Looks Like
Women's Law Project
Women's Rugby Coaches and Referees Association

cc: Dr. Linda A. Livingstone, President, Baylor University
Dr. Wendy Wintersteen, President, Iowa State University
Richard B. Myers, President, Kansas State University
V. Burns Hargis, President, Oklahoma State University
Dr. Victor J. Boschini Jr., Chancellor, Texas Christian University
Dr. Lawrence Schovanec, President, Texas Tech University
Douglas A. Girod, Chancellor, University of Kansas
Joseph Harroz Jr., President, University of Oklahoma
Jay Hartzell, Interim President, University of Texas at Austin
E. Gordon Gee, President, West Virginia University
Mack Rhoades, Athletic Director, Baylor University
Jamie Pollard, Athletic Director, Iowa State University
Gene Taylor, Athletic Director, Kansas State University
Mike Holder, Athletic Director, Oklahoma State University