

June 26, 2020

Commissioner Tom Wistrick
Big Sky Conference
286 South, 200 West
Suite 110
Farmington, UT 84025

Dear Commissioner Wistrick,

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 1 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;>

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/;](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 Sky Conference, we ask that you be a leader in ensuring 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 demonstrates 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 Sky Conference, 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 Sky Conference 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 Sky Conference member schools, in sum (refer also to table below):

- **964 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 Sky Conference member institutions fail both of them as well.
- If Big Sky Conference member institutions were to provide women with equal opportunities to participate and add these 964 female student-athletes for the 2020–2021 school year, **an additional \$12,893,337 in scholarship aid** would need to be provided for their female student-athletes in order to equal the male student-athlete scholarships.⁵
- Moreover, Big Sky Conference member institutions would need to **spend an additional \$1,514,467 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 Sky Conference member institutions provided just 3.0% of its students with a varsity sports experience in 2018–2019 school year.
- When aggregated nationally, the discrimination we have demonstrated by the Big Sky Conference adds up to tragically large losses for women, losses that will never be remedied.

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>.

⁵ Letter from Dr. Mary Frances O'Shea, National Coordinator for Title IX Athletics, Office for Civil Rights, Department of Education, to Nancy S. Footer, General Counsel, Bowling Green State Univ. (July 23, 1998), available at: <https://www2.ed.gov/about/offices/list/ocr/docs/bowlgrm.html>

- Last year alone, NCAA schools provided women with 63,149 fewer sports opportunities than these schools provided men, as a raw number. However, women enroll in postsecondary education at higher rates than men, so simply subtracting the opportunities provided to women from the opportunities provided to men does not capture the true discrimination gap.
- Last year alone, NCAA colleges and universities provided women with 148,030 fewer sports opportunities than provided to men, if women and men had equal opportunities. In other words, if they both had an almost 4:100 chance of getting to play collegiate sports, women would have had an additional 148,030 sports opportunities. (Men currently enjoy a 3.93% sports participation rate, while women are provided with just a 2.36% participation rate.)
- Last year alone, women lost \$1 billion dollars in collegiate athletic scholarship aid, because they are women.

As you will see on the table below, we have assigned a pass/fail “grade” to indicate whether each school is providing equal participation opportunities, scholarship dollars, and benefits (using recruiting spending as one proxy) to its male and female students. Title IX compliance requires equality overall.

Big Sky Conference Institution Name	Overall Title IX Grade	Needed Additional Scholarship Dollars for Women	Grade - Equitable Scholarships	Needed Additional Sports Opportunities for Women (based on duplicated count)	Needed Additional Sports Opportunities for Women (based on unduplicated count)	Grade - Equitable Participation	Needed Additional Recruiting Dollars for Women	Grade - Equitable Benefits	Student-athletes as percent of total student body (based on unduplicated count)
California State University-Sacramento	Fail	\$ 791,691	Fail	63	84	Fail	\$ 91,603	Fail	1.9%
Eastern Washington University	Fail	\$ 936,023	Fail	78	72	Fail	\$ 87,005	Fail	3.4%
Idaho State University	Fail	\$ 752,742	Fail	52	54	Fail	\$ 129,917	Fail	4.9%
Montana State University	Fail	\$ 658,894	Fail	19	47	Fail	\$ 116,049	Fail	2.5%
Northern Arizona University	Fail	\$ 2,188,250	Fail	190	143	Fail	\$ 360,399	Fail	1.6%
Portland State University	Fail	\$ 1,376,918	Fail	93	72	Fail	\$ 129,170	Fail	1.9%
Southern Utah University	Fail	\$ 592,725	Fail	94	71	Fail	\$ 7,542	Fail	5.5%
The University of Montana	Fail	\$ 1,220,806	Fail	103	88	Fail	\$ 189,306	Fail	4.9%
University of Idaho	Fail	\$ 564,992	Fail	16	20	Fail	\$ 88,183	Fail	4.4%
University of Northern Colorado	Fail	\$ 2,825,456	Fail	296	245	Fail	\$ 193,090	Fail	5.0%
Weber State University	Fail	\$ 984,840	Fail	80	68	Fail	\$ 122,203	Fail	3.2%
Total		\$ 12,893,337		1,084	964		\$ 1,514,467		Average: 3.0%

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.⁶ Betsey Stevenson, an economist now at the University of Michigan, found that playing sports actually *caused* more education and higher incomes.⁷ Girls who play sports make 8% higher wages compared to their non-sport playing counterparts.⁸

⁶ 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).

⁷ 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>.

⁸ *Id.* at 24.

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.⁹ Research by Ernst and Young found that 96% of C-suite women were athletes.¹⁰

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 toward a better environment for women on campus overall, including sexual assault prevention. Gender equality in athletics—one of the only sex-segregated areas of your member schools—demonstrates *substantively* that Big Sky Conference members treat men and women as equals. If the Big Sky Conference 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 clear.

The Big Sky Conference professes to be committed to equity and inclusion. In fact, the Conference signed on to the NCAA's Presidential Pledge to promote diversity and gender equality in intercollegiate athletics within the past four years.¹¹ Most of your peer NCAA institutions have also signed this pledge.

Now is the time to act and live up to this pledge. The COVID-19 crisis is causing serious disruption, as are other important considerations like the Black Lives Matter movement, demands to hire women and people of color, name/image/likeness rights to athletes, concussion monitoring, and gambling oversight, among others. Gender equity and compliance with Title IX must finally be part of these major revisions to college sport.

Your member schools are failing women by hundreds of participation opportunities and millions of dollars in athletic scholarships for women. As the legal memo shows, neither the NCAA's Certification program, nor its “Institutional Performance Program” (IPP), nor its Emerging Sports Program have been effective at closing the enormous gaps for women athletes or creating diversity for employment opportunities in university athletic departments.

⁹ Staurowsky, *supra*, note 5.

¹⁰ 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>.

¹¹ NCAA's Presidential Pledge. Available at: <http://www.ncaa.org/about/resources/inclusion/ncaa-presidential-pledge>. “The Pledge and Commitment to Promoting Diversity and Gender Equity in Intercollegiate Athletics” reads in full:

“Consistent with our mission and values, our institution, a member of the National Collegiate Athletic Association, pledges to specifically commit to establishing initiatives for achieving ethnic and racial diversity, gender equity and inclusion, with a focus and emphasis on hiring practices in intercollegiate athletics, to reflect the diversity of our membership and our nation.

“We recognize and value the experiences individuals from diverse backgrounds bring to intercollegiate athletics. To that end, we will strive to identify, recruit and interview individuals from diverse backgrounds in an effort to increase their representation and retention as commissioners, athletics directors, coaches and other leaders in athletics. As part of this commitment, we will also engage in a regular diversity, inclusion and equity review to inform campus policy and diversity initiatives.

“We understand this to be a collective responsibility we owe to student-athletes, staff, our athletics programs and the entire campus community.”

Data for the entire NCAA, NAIA, NJCAA, and USCAA paints a clear picture that intentional discrimination against women is not isolated to specific conferences, competitive levels, or geographic regions. Women cannot move to another competitive tier or region to escape the discrimination. Rather, intercollegiate athletics as a whole is complicit in systematic, intentional discrimination against women. These disparities reflect thousands of separate decisions over decades to provide women less. It will not end without hundreds, if not thousands of intentional decisions to rectify the injustice of sex discrimination in intercollegiate sports.

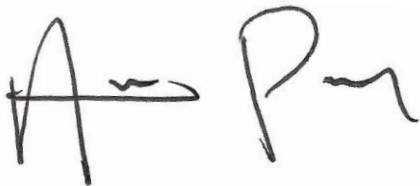
Sending out this letter, our accompanying legal memo, and our charts is part of our broader campaign to raise awareness of intentional discrimination against women in sport across the country. As we move forward with this broader campaign, we look forward to sharing the names of the conferences and schools that are taking immediate concrete steps towards their professed values of gender equality and inclusion. We are asking you to lay out the specific steps that your conference will take to end this discrimination against women, now.

We look forward to your leadership response before July 10, 2020, just weeks after the 48th anniversary of Title IX. Please respond to this correspondence by email.

Regards,



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



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
Institute for Sport and Social Justice

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: Robert S. Nelson, President, California State University, Sacramento
Dr. Mary Cullinan, President, Eastern Washington University
Kevin D. Satterlee, President, Idaho State University
Dr. Waded Cruzado, President, Montana State University-Bozeman
Dr. Rita Hartung Cheng, President, Northern Arizona University
Stephen Percy, President, Portland State University
Scott L. Wyatt, President, Southern Utah University
C. Scott Green, President, University of Idaho
Seth Bodnar, President, University of Montana
Dr. Andrew Armacost, President, University of North Dakota
Andy Feinstein, President, University of Northern Colorado
Brad L. Mortensen, President, Weber State University
Mark Orr, Athletic Director, California State University, Sacramento
Lynn Hickey, Athletic Director, Eastern Washington University
Pauline Thiros, Athletic Director, Idaho State University
Leon Costello, Athletic Director, Montana State University-Bozeman
Mike Marlow, Athletic Director, Northern Arizona University
Valerie Cleary, Athletic Director, Portland State University
Debbie Corum, Athletic Director, Southern Utah University
Kent Haslam, Athletic Director, University of Montana
Bill Chaves, Athletic Director, University of North Dakota
Tim Crompton, Athletic Director, Weber State University