

Via e-mail: Philip.J.Hanlon@Dartmouth.edu

December 18, 2020

Philip J. Hanlon, President
Dartmouth College
207 Parkhurst Hall
Hanover, NH 03755

RE: Elimination of Women's Golf and Swimming & Diving in Violation of Title IX

Dear President Hanlon:

I and my co-counsel have been retained by members of the women's varsity golf and swimming & diving teams to prevent their teams' elimination and, if necessary, pursue a class action lawsuit against Dartmouth College ("Dartmouth") for depriving women athletes and potential athletes of equal participation opportunities and treatment in violation of Title IX of the Education Amendments of 1972. Please respond to this letter as soon as possible and, in any event, no later than Tuesday, December 22, 2020.

On July 9, 2020, Dartmouth announced that it was eliminating the women's varsity intercollegiate golf and swimming & diving teams (along with the men's golf, lightweight rowing, and swimming & diving teams), effective immediately. The elimination of the women's teams plainly violates Title IX, which, among other things, prohibits educational institutions receiving federal funds from eliminating 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). According to the most recent publicly available information, Dartmouth fails this test.

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 Dartmouth, considering these factors, will agree to reinstate the women's golf and swimming & diving teams and come into compliance with Title IX to avoid the need for a lawsuit.

There is one special point, however, I need to raise. When Dartmouth announced the elimination of these women's (and men's) teams, it claimed, surprisingly, that, as a result of their elimination, "the percentage of women among varsity athletes will be virtually identical to the percentage of women in the undergraduate student body, ensuring compliance with Title IX." <https://dartmouthsports.com/sports/2020/7/9/athletics-announcement-faq-200709.aspx> Please provide me with the basis for that claim. If it is true, we, of course, have no basis to file suit against Dartmouth for depriving women of equal participation opportunities (although Dartmouth would still be depriving women athletes of equal treatment). But, according to the most recent publicly available information, it is not true.

According to the most recent publicly available data, Dartmouth's undergraduate population in 2019-20 was 2,159 women and 2,242 men, or 49.06% women (available at https://www.dartmouth.edu/oir/pdfs/cds_2019-2020.pdf). A full review of the publicly available rosters for 2019-2020 (available at <https://dartmouthsports.com/>) shows that, before the elimination of the five varsity teams announced on July 9, 2020, Dartmouth's athletic teams had 521 men and 424 women, or 44.87% women. So, there was a gap of 4.19% between women's undergraduate enrollment rates and their intercollegiate athletic participation rates. Dartmouth needed to add 78 women to reach gender parity. With the elimination of the five teams, the athletic participation numbers drop to 456 men and 392 women. This is still only 46.23% women, leaving a gap of 2.83%. As a result, even after the teams are eliminated, Dartmouth will need to add approximately 47 women to reach gender equity under Title IX. This is more than the size of the women's golf and swimming & diving teams combined.

Based on these facts, unless Dartmouth agrees to reinstate the women's golf and swimming & diving teams or has some plans for compliance with Title IX we do not yet know, we will seek a preliminary injunction immediately reinstating and preserving these teams. Courts throughout the country have consistently issued preliminary injunctions preserving women's varsity teams when the elimination of a women's team violates Title IX. *See, e.g., Mayerova v. E. Michigan Univ.*, 346 F. Supp. 3d 983, 997 (E.D. Mich. 2018), *appeal dismissed*, No. 18-2238, 2020 WL 1970535 (6th Cir. Apr. 20, 2020) (granting preliminary injunction to reinstate the women's varsity softball and tennis teams); *Portz v. St. Cloud State Univ.*, 196 F. Supp. 3d 963, 978 (D. Minn. 2016) (granting preliminary injunction to reinstate the women's varsity tennis team); *Biediger v. Quinnipiac Univ.*, 616 F. Supp. 2d 277 (D. Conn. 2009) (granting preliminary injunction to reinstate the women's varsity volleyball team); *Choike v. Slippery Rock Univ.*, 2006 WL 2060576 (W.D. Pa. July 21, 2006) (granting preliminary injunction to reinstate the women's varsity water polo and swimming teams); *Barrett v. West Chester Univ. of Penn.*, 2003 WL 22803477 (E.D. Pa. Nov. 12, 2003) (granting preliminary injunction to reinstate the women's varsity gymnastics team); *Favia v. Indiana Univ. of Penn.*, 812 F. Supp. 578 (1993) (granting preliminary injunction to reinstate the women's varsity gymnastics and field hockey teams); *Cohen v. Brown Univ.*, 809 F. Supp. 978 (D. R.I. 1992), *aff'd* 991 F.2d 888 (1st Cir. 1993) (granting preliminary injunction to reinstate the women's varsity gymnastics and volleyball teams).

We hope that will not be necessary in this case. I look forward to hearing from you as soon as possible and, in any event, no later than Tuesday, December 22, 2020.

Sincerely,



Arthur H. Bryant

AHB/am

cc: Leslie Nixon – Leslie Nixon Law Firm