

[Clemson]

April __, 2021

Mr. Arthur H. Bryant, Esq.
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Sent Via email: abryant@baileyglasser.com, lbullock@newkirklaw.com

RE: Resolution of Potential Title IX Litigation

Dear Arthur and Lori,

I am writing on behalf of my client, Clemson University (“Clemson” or “the University”), to document the understanding reached with your respective clients, who are male and female student-athletes at Clemson. On November 5, 2020, Clemson announced it was eliminating its men’s indoor track & field, outdoor track & field, and cross country teams, effective at the end of the 2020-21 academic year. That announcement led to your letters—and this agreement.

On March 12, 2021, Clemson received a letter from Arthur representing members of the men’s track & field and cross country teams asserting that the teams’ elimination would deprive male athletes and potential athletes at Clemson of equal opportunities to participate in violation of Title IX. On March 15, 2021, Clemson received a letter from Lori representing members of the women’s rowing, track & field, and cross country teams supporting that claim and asserting that Clemson was depriving female athletes and potential athletes of equal athletic financial aid, treatment, and benefits in violation of Title IX. Clemson is committed to gender equity, took your allegations seriously, and retained outside counsel to meet with you and try to resolve your clients’ claims. This letter contains the terms of the agreement we have reached to do so.

On April __, 2021, Clemson will publicly announce, in coordination with you, that it (a) is rescinding its decision to eliminate the men’s indoor track & field [and, depending on what the Title IX numbers show, ___] team(s) and will continue the team(s) going forward, (b) will conduct a gender equity review of its intercollegiate athletic program starting this year and to be completed no later than [December 31, 2021, or June 1, 2022,] to develop and adopt a Gender Equity Plan (“the Plan”) designed to ensure that all aspects of Clemson’s intercollegiate athletic program are in compliance with Title IX during the 2023-24 academic year and future years, and (c) will be implementing the Plan so all aspects of Clemson’s intercollegiate athletic program comply with Title IX in the 2023-24 academic year and future years.

The gender equity review will be conducted by and the Plan will be developed by [individual to be agreed upon by both Clemson and female student-athletes represented by Lori]. To develop the Plan, the University will solicit input from student-athletes, alumni, and supporters of each team and will expressly invite participation from the men's track & field, and cross country team members and the women's rowing, track & field, and cross country members. In developing the plan, the members of the women's teams at Clemson will have direct access to [individual to be agreed upon by both Clemson and female student athletes represented by Lori] to allow female student athletes to voice their concerns with inequities in the women's athletic program.

After the announcement is made, the men's indoor track & field [and, depending on what the Title IX numbers show, ___] team(s) will be provided with the resources required to minimize the damage caused to [it/them] by the announcement of [its/their] elimination. No men's or women's teams will be eliminated until the Plan is finalized.

Starting in the 2021-22 academic year, at least until the Plan is developed and implemented, Clemson will provide the following benefits and treatment to its female student-athletes:

- a. Equipment equivalent to the equipment provided to the male student-athletes, including training and competition shoes, NormaTec Recovery System boots for as many females as are provided for males, and women's clothing for warmups and team clothes (rather than men's clothing in small sizes);
- b. Name plates on all of the women's lockers (including name plates on incoming freshman women's lockers to help them feel more welcome as part of the Clemson team);
- c. Warm up gear and sports bras for all practices and competitions;
- d. Flights to away games for as many females as are provided to away games for males;
- e. High-quality travel uniforms and/or fitted suits for as many females as are provided to males;
- f. Lodging in hotels before home games for as many females as males;
- g. Cars and scooters similar to those provided to the football players for as many females as are provided to males (none for all is fine);
- h. Free haircuts and hair styling for as many females as are provided to males;
- i. Access to the football treatment facilities at all times, including the cool pool and hot pool and access to the Olympic size athletics pool rather than having to pay \$90 to use the Fike Recreation Center Pool on campus, which is open to all students, is difficult to access for training, and is not open for the same hours as the football training pool;
- j. Breakfast on Mondays and dinner options and more meal options for females in line with those provided to the men's football team;
- k. All female student-athletes will be allowed to keep their warmups and gear each year, instead of being required to return warmups and other gear that men's teams are permitted to keep each year;
- l. Individual lockers for as many females as are provided to males; and
- m. Repaired and working toilets in the women's locker rooms.

Starting in the 2021-22 academic year, Clemson will make available on its athletic department's website and provide to you and your clients an annual report of its undergraduate enrollment rates and numbers for males and females; its Title IX intercollegiate athletic participation numbers, total and by team, for males and females; and its Title IX athletic financial aid numbers for males and females. Clemson will also make available on its athletic department's website and provide to you and your clients an annual report of (1) any treatment or benefits given to male student-athletes and not female student-athletes and (2) any treatment or benefits given to female student-athletes and not male student-athletes.

The Plan, as adopted, will set forth terms for how Clemson's intercollegiate athletic program will comply with Title IX during the 2023-24 academic year and future years. The University will continue to monitor and manage the Plan on an on-going basis (including prior to its official adoption) to maintain and improve Clemson's Title IX compliance. The University will implement the Plan in accordance with its terms and comply with Title IX during the 2023-24 academic year and future years, while retaining discretion to adjust the details or terms of the Plan as future circumstances may dictate. The University will retain discretion as to how to achieve gender equity and Title IX compliance.

A status report on the development of the Plan will be made available on Clemson's athletic department's website and provided to you and your clients no later than _____. The final version of the Plan will be made available on Clemson's athletic department's website and provided to you and your clients no later than _____. Annual status reports on implementation of the Plan will be made publicly available on Clemson's athletic department's website and provided to you and your clients no later than _____; _____; and _____.

Your clients will have all rights afforded to them by law, should the University violate this agreement, including the right to seek specific performance, and will have the same right to recover costs and attorneys' fees they would have under Title IX.

In order to avoid the expense of litigation, and without admitting liability, the university agrees to pay \$XXX to Bailey & Glasser, LLP, and \$XXX to Newkirk Zwagerman, PLC for your clients' respective attorneys' fees and costs. These payments will be sent to your firms within thirty (30) days of the date of this agreement.

In consideration for the above, your clients will execute a release of claims in the format enclosed. Please indicate below that your clients have authorized consent to these terms.

Sincerely,

Agreed: _____
by Arthur H. Bryant on behalf of
individual male athletes at Clemson University.

Agreed: _____
by Lori Bullock on behalf of
individual female athletes at Clemson University.

RELEASE LANGUAGE:

Release of Claims by Student Athletes:

In consideration of the promises contained in the letter agreement dated April __, 2021, I hereby fully and finally covenant, on behalf of myself, my heirs, my assigns, and my future estates, not to sue and to release and forever discharge Clemson University (“the university”), a public institution of higher education; the State of South Carolina; and their agents and employees, in their official and individual capacities, from all claims, demands, damages, costs, losses, expenses, and actions arising under Title IX of the Education Amendments of 1972, 20 U.S.C.A. §1681 et seq., based on the university’s elimination of the men’s track, field, and cross country intercollegiate athletics teams announced on November 5, 2020, or the university’s treatment of my varsity intercollegiate athletic team as of April __, 2021.

This release shall not prevent any action based on a breach of the terms of the letter agreement.

Signature: _____

Name: _____

Date: _____