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February 1, 2022

Re: University of Pennsylvania women's swim team

Dear Addresses:

We are writing to report a potential violation of Pennsylvania Code of Law Section 3127 and of Title IX and of the University of Pennsylvania's Sexual Harassment, Sexual Violence, Relationship Violence and Stalking Policy.

We write as representatives of our organizations and as interested members of the public, not as representatives in any capacity of any of the potentially impacted individuals. While not first-hand witnesses or members of the University of Pennsylvania community (although there is at least one alumna among us), there are news reports identifying sufficient information to initiate an investigation. It appears from news reports that many, if not most, of the female athletes on the University's swim team fear retaliation and are concerned about maintaining their scholarships and reputation in the community. For this reason, a report such as this one should be considered an adequate basis requiring law enforcement and the university to conduct an

investigation without any female members of the swim team having to make an individual direct report themselves.

In this news report [Lia Thomas' UPenn teammate says trans swimmer doesn't always cover up genitals in locker room | Daily Mail Online](#), one of several in which student athletes on the women's swim team have anonymously reported their concerns, one of the students reports that the students are "uncomfortable" and that it is "definitely awkward" because women's swim team member and student Lia Thomas "still has male body parts" and "has told her teammates that she dates women."

Further, the report notes:

"While Lia covers herself with a towel sometimes, there's a decent amount of nudity, the swimmer said. She and others have had a glimpse at her private parts."

"She stated that team members have raised their concerns with the coach, trying to get Thomas ousted from the female locker room, but got nowhere."

"Multiple swimmers have raised it, multiple different times,' the UPenn swimmer said. 'But we were basically told that we could not ostracize Lia by not having her in the locker room and that there's nothing we can do about it, that we basically have to roll over and accept it, or we cannot use our own locker room.'"

"It's really upsetting because Lia doesn't seem to care how it makes anyone else feel....The 35 of us are just supposed to accept being uncomfortable in our own space and locker room for, like, the feelings of one."

Referring to her teammates, the swimmer was reported saying "most others are scared to speak out."

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The news report describes conduct that violates both Pennsylvania criminal code and University of Pennsylvania policy.

Pennsylvania Code of Law provides:

§3127 Indecent exposure.

- (a) Offense defined. – A person commits indecent exposure if that person exposes his or her genitals in any public place or in any place where there are present other persons under circumstances in which he or she knows or should know that this conduct is likely to offend, affront or alarm.

Based on the news report, Thomas has exposed his genitals in a place where it appears Thomas knows or should know that this is likely to offend.

Further, based on this news report, a University of Pennsylvania employee, the women's swimming coach, has been explicitly informed that the women are offended, affronted or alarmed by this. Rather than taking steps to further report and address this, according to this

report, the female athletes of the University of Pennsylvania have been told that they must accept this harassment and indecent exposure.

University of Pennsylvania's Sexual Harassment, Sexual Violence, Relationship Violence and Stalking Policy provides that "sexual harassment" includes:

"any unwanted conduct that is based on an individual's sex, ... and that:

- Conditions an educational or employment benefit on participation in unwelcome sexual conduct;
- A reasonable person would determine is so severe, pervasive, and/or objectively offensive that it effectively denies a person equal access to an educational or employment program or activity."

Unwanted: According to the news report, most female athletes on the team do not want to be exposed to male genitalia in the women's locker room. Again, according to the report, University of Pennsylvania female athletes have reported this to their coach, an agent of the University.

Based on an individual's sex: Your female athletes are being subject to the exposure of male genitals because they are female. It is because they are female members of the swim team using the women's locker room that they are experiencing this unwanted conduct of being exposed to male genitalia. Male students are not being subjected to unwanted exposure to this individual's male genitalia; it is only the women and it is only because they are using the women's locker room as female students.

Conditions an educational benefit: Assuming that Thomas is being permitted to use the women's locker room, the University of Pennsylvania's female athletes are being required to subject themselves to unwanted exposure to male genitalia in order to continue full participation on the swim team. Some of your students may be on swimming scholarships and, thus, not only would their participation on the team be jeopardized by refusing to participate in this unwanted conduct, but their continuing ability to remain a student may be impacted.

Sufficiently severe, pervasive and/or objectively offensive: That the unwanted exposure of genitals is a crime meets the standard of being "objectively offensive." That any parent would be horrified by their female child, even a late-teenage/early 20's child, being unwillingly exposed to male genitalia meets the standard of "severity." That University of Pennsylvania athletes are, reportedly, unwantingly exposed to male genitalia repeatedly, presumably during practices and meets, even after reporting it to their coach, meets the standard of "pervasive."

According to page 8 of [Almanac Of Record Sexual Misconduct Policy Supplement- August 14, 2020 \(upenn.edu\)](#), the University of Pennsylvania offices to which this is being sent are either "[t]he official office for reporting, initiating a formal complaint, and investigation of violations of the Sexual Misconduct Policies, including violations of the Sexual Harassment Policy" or offices which "[i]f reports of sexual misconduct are made with or come to the attention of the following offices, they must ensure that appropriate action is taken, including notifying the University's AVP and Title IX Officer." (Emphasis added.)

Should there be any future litigation on this matter, the news reports, including the one cited here should be sufficient to have put the University of Pennsylvania on notice that there were reports of multiple female students being subject to harassment and sexual misconduct while engaged in a sanctioned student activity. According to your own policy, you are obligated to investigate this. You know the names of these female students. You know there are reports that they fear retaliation. For this reason, the initiation of any investigation and remedial action should not require a report directly to you by one of these impacted students.

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We thank you for your attention to this matter and look forward to your taking steps to ensure University of Pennsylvania's female athletes receive all the rights and protections they are entitled to under Pennsylvania's criminal code, Title IX and University policy.



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