

EXHIBIT D



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Arthur H. Bryant
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December 11, 2020

Via e-mail: dhamm@calstate.edu

Darryl L. Hamm
The California State University
Office of the Chancellor
401 Golden Shore
Long Beach, CA 90802

RE: Elimination of Women's Lacrosse at Fresno State in Violation of Title IX

Dear Mr. Hamm:

Thank you for your letter of December 10, 2020, in response to my letters of December 3 and 8, 2020, to Fresno State President Joseph Castro. I appreciate you saying that Fresno State takes its obligation to comply with Title IX “seriously.” But, again, I fear these are empty words. There are two reasons your letter makes me think that is so.

First, your letter says that Fresno State worked diligently with the U.S. Department of Education’s Office for Civil Rights (OCR) to demonstrate compliance with Title IX and is one of the very few schools in the country that “has been found to comply completely.” That is not true. OCR’s letter of February 9, 2016, a copy of which is enclosed for your convenience, says OCR had to work with Fresno State for six-and-a-half years for the school to implement the “45 remedial actions” it agreed to take in August 2009 to comply with Title IX. The letter specifically states (emphasis added), “OCR’s action is based on the specific requirements of the 2009 agreement and *not* on an evaluation of the university’s current compliance with Title IX.” That OCR letter, moreover, was written in February 2016, nearly five years ago, and says nothing about whether Fresno State complied with Title IX in recent years – both before and after it eliminated the women’s lacrosse team.

Second, your letter makes several assertions about Fresno State’s current program, but provides no information that would allow anyone to determine whether they are true. To begin with, it says, “Fresno State has developed a roster management program that places reasonable limits on its existing Men’s Teams, and does not set squad size minimums or otherwise impose roster size targets that exceed coach ideals or other reasonable measures for its Women’s Teams.” But it provides no details about the program, the size of the teams’ rosters, the resulting men’s and women’s participation rates in intercollegiate athletics, or the men’s and women’s undergraduate enrollment rates at ECU – all of which would go to whether Fresno State is complying with Title IX.

Similarly, your letter offers no support for your claim that the elimination of the women’s lacrosse team complies with Title IX. As my original December 3 letter to President Castro

Darryl Hamm, December 11, 2020

Page 2

explained, “With the elimination of the teams announced on October 16, 2020, the school’s athletic participation numbers drop to approximately 221 men and 295 women, or 57.17% women—which still leaves a 2.37% gap. Therefore, even with the announced team eliminations, Fresno State would still need to add approximately 30 women to reach gender equity under Title IX. This is almost exactly the number of women on the lacrosse team that the school is eliminating.”

In response, your letter says, “the University projects” that, with the women’s lacrosse, men’s tennis, and men’s wrestling teams eliminated, “the overall proportion of men-to-women in the University’s athletic program” will be “less than two percent higher than the overall ratio of men to women in the University’s general student population” and that there will be “no 30 student-athlete gap.” But it does not explain how either of these claims is true – and it is hard to understand how they could be. My letter was based on participation numbers Fresno State submitted and verified as accurate to the U.S. Department of Education. They do not support what you are claiming. Moreover, it is not clear why you think that, under Title IX, whether there is a “two percent” difference between the men’s and women’s athletic participation and undergraduate enrollment rates matter.

Please provide me with the details of the “roster management program” you say Fresno State has “developed,” the roster sizes for the men’s and women’s athletic teams that program resulted in last year (2019-20) and this year (2020-21), and the men’s and women’s undergraduate numbers and enrollment rates for those two years. In addition, please provide me with the basis for your statements that, with the women’s lacrosse, men’s tennis, and men’s wrestling teams eliminated, “the overall proportion of men-to-women in the University’s athletic program” will be “less than two percent higher than the overall ratio of men to women in the University’s general student population” and that there will be “no 30 student-athlete gap.” Finally, please explain why you think whether there is a “two percent” difference between the men’s and women’s athletic participation and undergraduate enrollment rates matters under Title IX.

Since your letter directly refers to this information and you should have it readily accessible, please provide it to us no later than Tuesday, December 15, 2020.

We will not file suit if Fresno State is complying with Title IX. But, if Fresno State is violating Title IX and will not agree to reinstate the women’s lacrosse team and provide gender equity, we will file suit quickly.

Sincerely,



Arthur H. Bryant

AHB/am

Attachment

cc: Mike Caddell, Cynthia Chapman



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

915 2ND AVE., SUITE 3310
SEATTLE, WA 98174-1099

February 9, 2016

REGION X
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Dr. Joseph I. Castro
President
California State University-Fresno
5241 North Maple
Fresno, California 93740-0048

Re: California State University-Fresno
OCR Reference No. 09042077

Dear Dr. Castro:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its review of the information provided by California State University-Fresno (university) in the university's monitoring reports submitted pursuant to the Voluntary Resolution Agreement (agreement) which was entered into between the university and OCR in August 2009.

OCR and the university entered into the agreement in order to resolve multiple Title IX athletics complaints that had been filed against the university. The agreement covered athletic financial aid (AFA), interests and abilities, and equal benefits and opportunities. The agreement required the university to conduct a self-assessment under Title IX and to develop and implement a remedial plan designed to address any Title IX concerns identified in the university's self-assessment. The monitoring provisions of the agreement required the university to provide reports to OCR demonstrating its progress on and completion of the self-assessment, the plan, and the specific remedial action steps contained in its plan. The agreement limited the information required in the monitoring reports to the 2008-2009 academic year, however, in limited instances the university provided information from subsequent years to demonstrate completion of certain remedial action steps.

Pursuant to the terms of the agreement, the university provided OCR with the required monitoring reports. Those reports demonstrated that the Title IX self-assessment was completed, a plan was developed with 45 specific remedial action steps, and that as of the fall of 2010, most of the specific remedial action steps were complete. From fall 2010 onward, the university provided supplemental data to OCR related to the completion of the remaining action steps in the plan. On May 10, 2012, OCR found that the university had demonstrated compliance with the terms of the agreement with regard to the sections addressing AFA and interests and abilities. OCR officially closed its monitoring of those sections.

Page 2 - OCR Reference No. 09042077

OCR continued monitoring the sections of the agreement related to equal benefits and opportunities, specifically in the areas of equipment and supplies, scheduling of games and practice time, travel and per diem allowances, coaching, academic tutoring, locker rooms and practice and competitive facilities, medical and training services, housing and dining services, publicity, recruitment, and support services. The university continued to provide data to OCR in order to demonstrate completion of all the remaining action steps in its plan.

Based on the information contained in the university's most recent monitoring reports of December 3, 2014, and January 16, 2015, in conjunction with previous reports submitted by the university, OCR has determined that the university has fully implemented all of the specific steps required by the agreement. Therefore, OCR is concluding its monitoring of the agreement and is closing this case. OCR's action is based on the specific requirements of the 2009 agreement and not on an evaluation of the university's current compliance with Title IX.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

I appreciate the cooperation extended by you and your staff to OCR staff in the resolution of this case. If you have any questions regarding this letter, please contact Amy Klosterman, attorney, at (206) 607-1622, or by e-mail at amy.klosterman@ed.gov; or Timothy Sell, senior attorney, at (206) 607-1639, or by e-mail at timothy.sell@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Linda E. Mangel', with a long horizontal flourish extending to the right.

Linda E. Mangel
Director
Seattle Office

cc: Janet Judge
Sports Law Associates LLC