

# **EXHIBIT E**



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December 22, 2020

By [E-mail: [abryant@bailevglasser.com](mailto:abryant@bailevglasser.com) ]

Mr. Arthur Bryant  
Bailey Glasser LLP  
1999 Harrison Street, Suite 660  
Oakland, CA 94612

Re: CSU Fresno – Title IX Athletics  
OGC File No. 17-0653

Dear Mr. Bryant:

In response to your recent correspondence, the University has had opportunity to review and confirm information related to participation in its athletic programs. I have attached relevant information for your review.

You have cited the EADA statistics which cover the 2018-2019 academic year. We are actually in the midst to compiling and finalizing our EADA numbers for 2019-2020. The attached document sets forth these updated EADA numbers. As you will note, the roster management approach that the University has taken resulted in a reduction in the participation on the men's side and a slight increase of our women's numbers from 2018-2019.

The underlying information in the 2019-2020 data was what the University relied upon when assessing what athletic programs might need to be cut to address major financial pressures brought upon the entire University by COVID 19. As you can see from the chart, we had total women participation numbers at 332 and total men's opportunities at 251. Our male undergraduate population was at 40.4% male (7,627) and 59.6% female (11,251). On the basis of these numbers we looked at a total of 210 male opportunities after accounting for the elimination of men's wrestling and men's tennis. Our total women's numbers after accounting for the elimination of women's lacrosse was at 301. In making our assessment for substantial proportionality rates based on the overall undergraduate population, we determined that we were 1.02% or just eight (8) female opportunities away from achieving strict proportionality. These numbers are far fewer than the numbers necessary to sustain a collegiate women's lacrosse team.

Based on the above analysis, the University has concluded that it meets Title IX's substantial proportionality requirements. We also believe that the structure and approach to roster

**CSU CAMPUSES**

Bakersfield  
Channel Islands  
Chico  
Dominguez Hills  
East Bay

Fresno  
Fullerton  
Humboldt  
Long Beach  
Los Angeles  
Maritime

Monterey Bay  
Northridge  
Pomona  
Sacramento  
San Bernardino  
San Diego

San Francisco  
San José  
San Luis Obispo  
San Marcos  
Sonoma  
Stanislaus



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management that we established will allow us to sustain our compliance with these obligations going forward.,

You have separately asked for our 2020-2021 numbers. We do not have these numbers yet as those statistics are still dependent on a number of variables that are in flux such as the numbers of athletes competing in a sport on the first day of competition. Given our analysis of past outcomes and our current approach to roster management, we have no reason to believe there will be any substantial change from the 2019-2020 numbers. Looking at our current position and assessment of all relevant information, our program has met its obligations with respect to Title IX's substantial proportionality standards.

You also requested to know why we focused on 2% in our last letter. We see no magic in this number or the various percentages cited in your letters to us. I simply wanted to establish the University had a good faith belief that it had reason to believe the actual proportionality number was much lower than the ratios cited in your letters. Further, the lower the numeric ratio, generally the less likely that there are 30 female opportunities available. As noted above, only 8 female opportunities are needed for strict proportionality which is far less than the 30 opportunities cited in your letter.

We see no reason at this time to consider reinstating an athletic program when the University is in compliance with Title IX and the fiscal pressures which resulted in the decision have not changed. I would think with this information that there is no reason to demand attorney fees when the University has already taken the necessary steps to comply. The public's resources are vital for sustaining our athletic programs and can ill afford to be drained by paying unnecessary attorney fees when we are already meeting our substantial proportionality obligations.

Thank you for calling attention to this issue.

Sincerely,

A handwritten signature in blue ink that reads "Darryl L. Hamm". The signature is written in a cursive style and is positioned above the printed name.

Darryl L. Hamm  
University Counsel

Enclosures

cc: Joseph Castro, President, California State University

**EADA DATA**  
**Sports Teams and Participation by Gender 2019-2020**

Sport	Men	Women	2nd team Participation		3rd team Participation	
			Men	Women	Men	Women
Baseball	37					
Basketball	17	18				
Equestrian		38				
Football	117		1 (wrestling)			
Golf	8	8				
Lacrosse		31				
Soccer		26				
Softball		25				
Swimming and Diving (combined)						
Swimming		33				
Diving		3				
Tennis	10	7				
Track and Field and Cross Country (combined)						
Track and Field (Indoor)		43		43 (outdoor)		15 (cross country)
Track and Field (Outdoor)	23	43	8 (cross country)	43 (indoor)		15 (cross country)
Cross Country	8	15	8 (outdoor)	15 (indoor)		15 (outdoor)
Volleyball		20				
Water Polo		22				
Wrestling	31		1 (football)			
Total Participants	251	332				
Unduplicated Count	242	274				
Total Opportunity Percentage	43%	57%				
Unduplicated Percentage	47%	53%				

Caveat: 1 male practice player

EADA Counting: included those on roster as of first date of competition plus EE and MM, does not include those added to roster before the last competition

**PARTICIPATION PROPORTIONALITY**

Enrollment		
Institutional Fall '19	M	40.40%
	W	59.60%

Male total	251	Female total	332
minus wrestling	-31	minus lacrosse	-31
minus men's tennis	-10		301
Male total w/o tennis and wrestling:	210		

210 divided by institutional male enrollment (.404) = 519  
 -210  
 309

309  
 -301