

EXHIBIT 7

Report by
DONNA LOPIANO, PH.D.

TAYLOR ANDERS et al.

v.

CALIFORNIA STATE UNIVERSITY, FRESNO, et al

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I. SCOPE OF OPINIONS TO BE RENDERED

I have been asked to prepare a report giving my opinions on (a) whether the manner in which California State University, Fresno (“CSUF”) has acted to restructure its athletics program treats male and female athletes equitably, (b) whether CSUF intercollegiate athletics program provides equitable participation opportunities, scholarship and recruiting support as required by Title IX of the Education Amendments of 1972, (c) whether CSUF’s plans to count prospective participants for the 2021-22 academic year comport with proper Title IX participant counting methodology and how equity in athletics participation is assessed, and (d) the extent to which the student-athlete plaintiffs in this case would be likely to suffer irreparable harm as a result of the elimination of the varsity sport in which they participate at CSUF. My opinions are based upon my expertise in sports management and gender equity in sports, my review of a limited number of documents provided to me to date regarding the factual situation in this case, my knowledge of National Collegiate Athletic Association (“NCAA”) and other sports governance association rules related to the classification of sports, teams, events, and eligibility to participate in college sports, my knowledge of financial and other challenges faced by students who transfer from one four-year college to another, and my knowledge of how NCAA Division I higher education institutions engage in recruiting students to participate in and finance their intercollegiate athletics programs.

II. EXPERT QUALIFICATIONS

I am the president of Sports Management Resources, LLC (“SMR”), a consulting practice that focuses on helping educational institutions and sport organizations solve sports program integrity, equity, growth, and management challenges. My practice includes an emphasis on the

development and implementation of model policies governing the management of sports programs conducted by educational and open amateur sport organizations.

Before founding SMR in 2008, I was the Chief Executive Officer of the Women's Sports Foundation, a national 501(c)(3) not-for-profit education organization located in East Meadow, New York (1992-2007). I previously served as a coach, assistant professor, and athletics director at various NCAA institutions, including 18 years as Director of Women's Athletics at the University of Texas at Austin (1975-1992). I also served as president of the Association of Intercollegiate Athletics for Women, the organization that formerly regulated women's intercollegiate athletics prior to the NCAA, the National Association for Intercollegiate Athletics, and the National Junior College Athletic Association offering programs for women. I have received many national and international awards recognizing my work in gender equity and sports management.

I am considered one of the foremost national experts on gender equity in athletics. I have testified, several times, about gender equity before congressional committees and state and federal administrative commissions. At the Women's Sports Foundation, I oversaw the production of numerous research projects related to gender equity and sports participation of girls and women, including a comprehensive study of the Office of Civil Rights Title IX athletics enforcement efforts. I have also served as a gender equity consultant to state education agencies, school districts, and institutions of higher education and continue to do so as President of SMR.

I am also considered an expert in athletics administration and sports management. I have taught a wide range of graduate and undergraduate courses involving the management of non-school open amateur and Olympic club, professional, interscholastic, and intercollegiate sport. I have assisted open amateur sport organizations, colleges, and universities in dealing with

management challenges and assessing their organizational climates with regard to gender and racial diversity, and have spoken at numerous conferences on these subjects. I am currently an adjunct professor at Southern Connecticut State University, where I teach both undergraduate and graduate courses in sports management. I train future athletic directors and sports administrators. I present workshops for coaches and athletic administrators that educate them about risk management related to Title IX compliance, both with regard to athletics participation and sexual harassment. I train school and college Title IX compliance officers regarding the methodology of performing Title IX athletics assessments. With Dr. Connee Zotos, I have authored the *Athletic Director's Desk Reference*, considered by most to be the most comprehensive policy compilation focused on meeting the needs of high school and college athletic directors. I have also written *Restructuring A College Athletic Program to Protect Olympic Sports During Financial Uncertainty*, and numerous articles on gender equity in sports, sports management, intercollegiate athletics reform, and the benefits of sports participation for women and girls.

My expert qualifications are based upon my education, academic background, previous employment, experience, and other related factors. My background and qualifications, as well as a listing of my publications, to the best of my recollection, are set forth in the attached curriculum vitae as Exhibit A. My www.SportsManagementResources.com web site contains my blogs on athletics issues and other policy-related advice produced by me that are not included in my curriculum vitae.

III. OTHER CASES IN WHICH THE EXPERT HAS TESTIFIED

The cases in which I was retained to testify as an expert are included on pp. 6-8 in my curriculum vitae at Exhibit A.

IV. COMPENSATION

SMR's consulting fees and terms are attached at Exhibit B. I have agreed to charge at the following specified hourly rates for my preparation and consulting services on this case:

- \$250 per hour for report preparation
- \$200 per hour for consultation with attorneys related to preparation for expert reports or depositions
- \$500 per hour for deposition or court testimony
- \$2,500 per day for site visits
- No charge for hours spent traveling
- Actual out-of-pocket expenses.

V. DOCUMENTS, DATA, OR INFORMATION CONSIDERED IN THE FORMATION OF EXPERT OPINIONS

My opinions are based upon my expertise in sports management and gender equity in sport and my review of documents provided to me to date. The documents and sources relied upon in the formulation of my opinions for this report are listed in Exhibit C. I reserve the right to review and rely on additional relevant documents, including documents that may be requested or have been requested but not yet delivered, depositions that have yet to be taken in this case, or other

information that comes to my attention following the date of submission of this report —and to prepare an additional report(s) that reflects such new information if requested. Finally, I reserve the right to depend on information that I am able to recollect based on questions asked of me following the submission of this document and during my testimony at deposition or trial.

VI. OPINIONS

1. Rendering opinions, not legal judgments. I am not an attorney or a judge, or a member of a jury charged with the responsibility of determining whether actions taken by CSUF or its administrators constitute illegal discrimination. Rather, my expertise and opinions are advisory and based on my years of experience as an athletic director, an academic, researcher, teacher, and consultant who educates coaches and administrators on what constitutes gender equity and sport management practice. Many of the vernacular terms we use to teach sports managers, Title IX compliance coordinators, my clients and that I may use in conversing with colleagues are also legal terms (e.g., compliance) but should not be interpreted as rendering legal opinions. Thus, any opinions rendered for this report as to whether CSUF data or practices meet Title IX standards of gender equitable participation or treatment, are my expert opinions and not intended to usurp the authority of a judge or jury to render a legal judgment related to whether a fact situation complies with Title IX. It is within this context that I was asked to address the matters for this case.

2. Title IX is more than a count of participants. Title IX's gender equity in athletics mandate includes all of the following elements:

§ 106.41 Athletics.

A recipient which operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both

sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

- (1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;*
- (2) The provision of equipment and supplies;*
- (3) Scheduling of games and practice times;*
- (4) Travel and per diem allowances;*
- (5) Opportunity to receive coaching and academic tutoring;*
- (6) Assignment and compensation of coaches and tutors;*
- (7) Provision of locker rooms, practice and competitive facilities;*
- (8) Provision of medical and training facilities and services;*
- (9) Provision of housing and dining facilities and services;*
- (10) Publicity*

--- 34 C.F.R. § 106.41(c)

Items (2) through (10) are commonly referred to as the Title IX “laundry list of treatment and benefits.” Other general sections of the regulation that apply to athletics include financial aid (106.41), recruiting (106.37) and admissions (106.21). Failure to meet the gender equity requirements of any one of these elements would render the institution not in compliance with Title IX.

To date, and to my knowledge, there has been no discovery in this case. Thus, my assessment of whether CSUF provided gender equitable opportunities, benefits, and treatment to its athletes was limited to publicly available information about the athletics program and a single December 22, 2020 letter from CSUF legal counsel with an attached 2019-20 athletics participation table. Specifically, I used the following information resources (listed, among other resources, in Exhibit C of this report):

- a. U.S. Department of Education Equity in Athletics Disclosure Act database (<https://ope.ed.gov/athletics/#/>);
- b. CSUF Athletics website (<https://gobulldogs.com/>) and the GoBullDogs.com (Sport) Archives (search GoBillDogs (insert sport) archives); and

- c. U.S. Track & Field and Cross Country Coaches Association Track & Field Results Reporting System (“TFRRS”) database¹ (<https://www.tfrrs.org/>).

Using these information resources, I was able to assess and reasonably opine on whether CSUF treated its male and female athletes equitably related to the following Title IX elements:

- participation opportunities
- levels of competition
- selection of sports that meet the interests and abilities of males and females respectively
- athletics financial aid
- recruiting

Prior to rendering these opinions, it is important to understand several key principles that govern Title IX assessments. First, the assessment of athletics gender equity is “institution specific.” “Institution specific” means that comparisons are made with regard to the participation opportunities and treatment and benefits afforded to all male and female athletes within each institution, rather than compared to what any other institution is doing. In other words, no comparisons are made to the participation or treatment of males and females at other institutions.

Second, the assessment of athletics gender equity is “total program oriented,” which means that proper gender equity analysis is the treatment of all male athletes versus the treatment of all female athletes, rather than comparing one sport to another (e.g., men’s basketball compared to women’s basketball) except when the institution conducts an athletic program that places sports within different competition levels (e.g., varsity, junior varsity, novice, sub varsity). In that case, the proper gender equity analysis also includes the treatment of all male athletes versus the treatment of all female athletes within each competition level.

¹ TFRRS is a website that reports all competition results for all NCAA cross country, indoor track & field and outdoor track & field event results. www.TFRRS.org

Third, it is important to understand that a lack of financial resources is not an acceptable defense for failure to treat male and female athletes equally or provide equal participation opportunities. Think of whether it would be acceptable to say, “I’m sorry, I can’t afford to comply with federal tax law and pay my taxes.”

Fourth, the fact that a sport may generate significant revenues is not an acceptable reason for treating athletes in that sport better than athletes of the opposite sex. Title IX does not deal with revenues. Once revenues are accepted by the institution or generated by a team or athletic event (tuition, student fees, donor gifts, gate receipts, booster club contributions, media rights fees, sponsorships, etc.), the institution controls those revenues and is obligated to treat male and female students equally with regard to how it decides to spend those revenues.

Fifth, it is acceptable for the institution to treat some teams better than other teams, as long as, when the institution makes these choices of differing treatment (think of some sports competing on the varsity level while others compete at a sub varsity level or financial tiers that restrict some sports to competing locally or regionally while others engage in nationally competitive sport schedules), equal proportions of male and female athletes are in the respective group being more favorably or less favorably treated. These five general principles underlie all Title IX considerations.

It should also be noted that the affirmative, proactive aspects of Title IX compliance are so important that the federal regulations require that all schools or school districts sign a Certificate of Assurance (see Exhibit D) each time they apply for federal financial assistance, as a condition for receipt of federal funds. By signing the Certificate each year, schools, both secondary and post-secondary, are representing that they have taken affirmative efforts to comply with Title IX,

will continue to do so, and will take whatever remedial action is necessary to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination.

3. I opine that, since at least 2014-15, CSUF did not provide male and female athletes with athletics participation opportunities proportional to the percent of males and females in its undergraduate student population. In this section, I (a) explain the Title IX Prong One participation proportionality option and why CSUF cannot use Prongs Two or Three; (b) opine that CSUF has accepted its obligation to use Prong One as its option to comply with the Title IX participation requirement; (c) opine that CSUF is basing its Prong One participation calculations on its annual Equity in Athletics Disclosure Act reports, which do not follow Title IX's counting instructions, overcount female athletes, and undercount the female participation gap; (d) opine that CSUF, in addition to relying on the overcounting that is a function of the different EADA counting instructions, has inaccurately counted female participants and/or improperly inflated several women's team rosters, and (e) opine that CSUF has failed in the past and is currently failing to provide proportional participation opportunities to its male and female athletes.

(a) The Title IX Prong One participation proportionality option and why CSUF cannot use Prongs Two or Three. There are three options to meet the equal participation opportunity standard, typically referred to as Prongs One, Two, and Three:

1. *Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or*
2. *Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of that sex; or*
3. *Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion such as*

that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

-- 44 Fed. Reg. at 71418 (the "Three-Part-Test")

The first prong reflects the goal of actual equity, in which each male and female student has the same opportunity to participate in intercollegiate athletics, and I discuss it at length below. The second and third prongs reflect alternative means of compliance that explain why actual equity (male/female athletic participation proportional to percent male/female undergraduates) may not be possible at a given institution. CSUF could not use the Prong Two option because it did not demonstrate a history (beginning with 1975) and continuing practice of program expansion for the underrepresented sex (females). Institutions were given a three-year period to come into compliance with Title IX, from 1975 to 1978. By 1978, CSUF had established seven women's sports (basketball, tennis, volleyball, co-ed badminton, gymnastics, softball and swimming and diving). Thereafter, CSUF was obligated to periodically assess the interests and abilities of the underrepresented sex and to add sports for the underrepresented sex as those interests and abilities were identified.² Cross country, indoor track, and outdoor track were added in 1982, but, in that same year, women's gymnastics and co-ed badminton were eliminated. Despite the tremendous explosion of women's participation in the 1980s and early 1990s, CSUF added no new women's sports for 13 years and then added soccer in 1995 and equestrian in 1996-97. This gap would disqualify CSUF from using Prong Two. Another eight years would pass before golf was added in 2004-05, but swimming & diving was dropped in that same year and not reinstated until 2008-09. The elimination of women's swimming & diving alone is automatically disqualifying under

² See OCR's 1996 Policy Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test at page 9 and the OCR's 2010 Dear Colleague Letter re: Prong Three of the Three-Part Test for details re: methods of non-discriminatory assessment of interests and abilities to be considered by OCR.

Prong Two (if an equal or larger team is not added) and under Prong Three. While lacrosse was added in 2009-10 and water polo was added in 2017-18, an examination of the EADA data from 2003-04 through 2019-20 female participation numbers (the only EADA participation data I was able to access), simply fails to demonstrate a history and continuing practice of expanding opportunities for the underrepresented sex so as to allow CSUF to qualify under Prong Two or Prong Three. See Table 1 on the next page:

Table 1. Absence of Female Athlete Participation Growth – 2003-04 to 2019-2020*

Year	# of Female Athletes - Duplicated count	# of Female Athletes - No duplicates
2003-04	319	292
2004-05	376	264
2005-06	343	256
2006-07	323	246
2007-08	336	249
2008-09	317	238
2009-10	308	235
2010-11	309	233
2011-12	305	222
2012-13	291	226
2013-14	287	225
2014-15	296	233
2015-16	279	226
2016-17	291	239
2017-18	291	244
2018-19	323	263
2019-20	332	274

* Based on 2003-04 through 2018-19 enrollment data and participation counts retrieved from DOE's Equity in Athletics Disclosure databased located at <https://ope.ed.gov/athletics/#/> and for 2019-20 provided by CSUF via December 22, 2020 letter from Hamm to Bryant

Indeed, when one realizes that, for example, the column 2 counts reflect women's cross country, indoor track, and outdoor track athletes who are really a much smaller number of athletes counted several times as they participate in these three running programs conducted in fall, winter and spring seasons, it becomes clear that column 3 is a more accurate depiction of female participation growth or lack thereof. For example, in 2019-20, the column 2 count includes 101 females participating in these programs (15 cross country; 43 indoor and 43 outdoor) who are really 63 females counted 1, 2 or 3 times each. Thus, female participation has declined from a high of 376 in 2004-05 to 332 in 2019-20 using a duplicated count or from a high of 292 in 2003-04 to 274 in 2019-20 using an unduplicated count. Thus, whether program expansion is examined by sport or participation count, I opine that CSUF has not met the Prong Two standard.

Similarly, CSUF cannot use Prong Three because it cannot demonstrate that it has fully met the interests and abilities of the underrepresented sex, i.e., there was no other women's sport that could have been added within its competitive region. Further, if a school drops a sport for the underrepresented sex at any point in time and does not replace it in the same year with another sport accommodating an equal or greater number of participants, it is not eligible to utilize Prong Two or Three. This occurred in 2004-05 when swimming and diving was dropped and golf, a smaller squad was added. CSUF announced it intended to eliminate its women's lacrosse program effective 2021-22 and did not announce the addition of another women's sport. That action, if fulfilled, would also automatically eliminate CSUF from claiming Prong Two or Three.

I further opine that at no point in the history of CSUF could it have claimed Prong Three compliance, because there are numerous women's sports not sponsored by CSUF that could have been added, such as gymnastics, beach volleyball, rowing, sailing, triathlon, etc. Indeed, institutions may not claim Prong Three compliance without demonstrating that they have actively

encouraged development of opportunities for the underrepresented sex, such as proposing to their conference (or other opponents in its normal competitive region) to also add a women's sport in order to have adequate competition within its normal competitive region.³

To further explain gender equity under Prong One, an institution achieves actual equity when the percentage of female athletes is substantially proportionate to the percentage of full-time female students enrolled at the institution. If 50% of an institution's full-time students are female, then 50% of the institution's athletes should be female. In other words, if an institution has 1000 students (500 males and 500 females) but only enough resources to offer 500 athletic participation opportunities, then to achieve actual equity, it must offer 250 of those opportunities to males and 250 of those opportunities to females. Each male and each female will then have an equal 1 in 2 chance of playing sports. If the school instead created 300 slots for males and only 200 slots for females, then each male student would have a 3 in 5 chance of playing sports while each female would only have a 2 in 5 chance of playing sports.

An institution's permissible deviation from actual proportionality is also fact specific. The allowable variance is not a percentage, but is instead the number of participation opportunities or participants represented by that percentage that is less than the size of a team for the underrepresented sex that could be added. The U.S. Department of Education Office of Civil Rights explained that in its 1996 Clarification of the Three-Part Test (at pp. 9-10) in its Institution B case example below:

OCR would also consider opportunities to be substantially proportionate when the number of opportunities that would be required to achieve proportionality would not be sufficient to sustain a viable team, i.e., a team for which there is a sufficient number of interested and able students and enough available competition to sustain an intercollegiate team. As

³ See 1979 Title IX Athletics Policy Interpretation (p. 71418 Federal Register/Vol. 44, No. 239, Sec. 5 c)

a frame of reference in assessing this situation, OCR may consider the average size of teams offered for the underrepresented sex, a number which would vary by institution.

For instance, Institution A is a university with a total of 600 athletes. While women make up 52 percent of the university's enrollment, they only represent 47 percent of its athletes. If the university provided women with 52 percent of athletic opportunities, approximately 62 additional women would be able to participate. Because this is a significant number of unaccommodated women, it is likely that a viable sport could be added. If so, Institution A has not met part one.

As another example, at Institution B women also make up 52 percent of the university's enrollment and represent 47 percent of the Institution B's athletes. Institution B's athletic program consists of only 60 participants. If the University provided women with 52 percent of athletic opportunities, approximately 6 additional women would be able to participate. Since 6 participants are unlikely to support a viable team, Institution B would meet part one.

*The OCR may consider reference to average team size, but that does not take precedence. The court in *Biediger v. Quinnipiac*, a case in which I served as an expert, addressed this issue specifically, determining how to address a female participation gap of 38. The court held that, although the median size of Quinnipiac's women's teams was 24, the women's volleyball team, which had been eliminated, required only 14 players, and the presence of a viable team was the appropriate standard. In other words, if the school has a large number of athletes, the allowable percent variance will be smaller than a school with a small number of athletes. That is why a school needs to compute what the percentage represents in actual participation opportunities, typically referred to as the "female participation gap."*

While the above language indicates that "OCR may consider the average size of teams offered for the underrepresented sex," the *1996 Clarification's* actual examples indicate that the standard is a "viable team" that could be added. In my experience, common practice is to examine the average team size in the school's competitive division (NCAA Division I, in this case) by referring to the *NCAA Sports Sponsorship and Participation Report*, which contains all such information.

With regard to the mathematical computation of the female participation gap, here is a practical example and step-by-step breakdown of that computation process. For example, a large institution with 5,500 female students (55%) and 4,500 male students (45%) should ideally offer 550 out of its 1,000 athletic participation opportunities (55%) to females and 450 out of its 1,000 opportunities (45%) to men. If the school offered only 520 of its 1000 opportunities (52%) to females and 480 to men (48%), the school could take 30 opportunities away from male athletes and add a team of 30 (like women's soccer or lacrosse) to reach proportionality. But most schools wish to remedy the underrepresentation of females without reducing or cutting men's participation. So, the school begins by computing the number of females that would have to be added (the female participation gap) if the current 480 male participants remained constant and comprised 45% of all athletes and the number of females comprised 55% of all athletes. An easy mathematical way to compute the female participation gap in this fact situation is as follows:

- Divide the number of male athletes (overrepresented sex) by their percent of the undergraduate student body (480 divided by .45) – to get the total number of athletes if male athletes were 45% of all athletes--in this example = 1067 total athletes
- Then subtract the actual number of male athletes (480) and the actual number of female athletes (520) to find the number of new female participation opportunities that must be added for females to be 55% of all athletes – in this example, 1,067 minus the 1,000 current male and female athletes = 67
- Now check your math:
 - Current females are 520 plus new females will be 67 = 587 total female athletes.
587 is 55% of 1067.
 - Current males are 480. 480 is 45% of 1,067.

Now the school considers multiple options to achieve proportionality. It can choose to add two new women's teams, maybe soccer and lacrosse, to solve the 67 females participation gap. Or, if it wishes to keep all of its men's sports programs, which is usually the case, it might choose to slightly reduce some of its larger men's teams, like football and track and field, or reduce the larger men's teams by 3 or 4 and the smaller men's teams by 1 or 2 (termed "roster management") and add just one women's team.

To summarize, the school knows it doesn't have to achieve exact proportionality – just be close enough to "0", exact proportionality, so the female participation gap is less than the size of any women's team that could be added to reach proportionality.

The application of Prong One was reaffirmed in the OCR's *1996 Clarification of the Three-Part Test* and has been included in the NCAA's gender equity materials for many years. When the Department of Education's 2002-2003 Commission on Opportunity in Athletics (the "Title IX Commission") recommended a more lenient standard, the OCR rejected it. Thus, this application is commonly understood by all schools.

The athletic participation opportunities counted by schools are a core element of Title IX compliance. Prior to the 1990s, schools universally failed to offer equitable participation opportunities for women. In the early to mid-1990s, two major events happened to force schools to pay attention to their participation numbers. First, courts began to hear and rule on Title IX cases. In *Franklin v. Gwinnett County Schools*, 503 U.S. 66 (1992), the Supreme Court held that institutions can be sued in court for money damages. In cases against Brown University and Colorado State University, schools that could not comply with Prongs Two and Three, and were not in compliance with Prong One proportionality, were prevented by the courts from eliminating women's teams as a mechanism to reach proportionality. Second, Congress passed the Equity in

Athletics Disclosure Act in 1994 (“EADA”). 20 U.S.C. 1092(g). The EADA required schools to start reporting information such as student enrollment and student athletic participation starting with the 1995-1996 academic year. The EADA information can be used to reasonably estimate whether an institution meets the substantial proportionality participation requirement of Prong One. However, EADA reports are not Title IX compliance reports. Rather, these reports are conditions of receiving funding under the Higher Education Act (20 U.S.C. 1092(g)) that were designed to make prospective students aware of an institution of higher education’s commitment to providing equitable athletic opportunities.

(b) CSUF acknowledged its obligation to meet Title IX’s Prong One participation requirement. It appears that CSUF recognizes its Prong One proportionality obligation as indicated by a December 22, 2020 letter from CSUF Legal Counsel Hamm to Plaintiffs’ counsel Bryant that states at page 1 with my bold emphasis:

*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.*

(c) I opine that CSUF is basing its Prong One participation calculations on its annual Equity in Athletics Disclosure Act reports, which do not follow Title IX’s counting instructions, thereby overcounting female athletes and undercounting the female

participation gap. Title IX's counting requirements (*1996 Clarification* at p. 3) define participants as those athletes:

1. Who are receiving the institutionally-sponsored support normally provided to athletes competing at the institution involved (e.g., coaching, equipment, medical and training room services) on a regular basis during a sport's season; and
2. Who are participating in organized practice sessions and other team meetings and activities on a regular basis during a sport's season; and
3. Who are listed on the eligibility or squad lists maintained for each sport; or
4. Who, because of injury, cannot meet a, b, or c above but continue to receive financial aid on the basis of athletic ability.

Title IX counting is therefore based on three primary sources: (1) official athletics eligibility list (the NCAA Squad List⁴ in the case of CSUF), which contains financial aid, years of athletic eligibility, enrollment, medical status and any change of status such as withdrawal, quitting a team, etc.; (2) CSUF's NCAA Hour Limitation Record⁵ which is used to determine whether an athlete has attended team practices and meetings, and (3) the institution's report of all competition results (except that the TFRRS online database is the official source for all NCAA cross country, indoor track and field and outdoor track and field event results); which is used to determine years of eligibility (participation in one competition usually results in the use of one year of NCAA

⁴ National Collegiate Athletic Association. NCAA Division I Squad Lists and Instructions - Form 20-2. Retrieved from: https://ncaaorg.s3.amazonaws.com/compliance/d1/2020-21D1Comp_Form20-2-SquadLists.pdf

⁵ Note that participation in a competition is not required in order to count as a participant: An athlete who participates in the majority of teams practices and never gets into a game does count. The *NCAA 2020-21 Division I Manual* at pg. 259, describes the record: **17.1.7.3.4 Hour-Limitation Record**. Countable hours must be recorded on a daily basis for each student-athlete regardless of whether the student athlete is participating in an individual or team sport. Any countable individual or group athletically related activity must count against the time limitation for each student athlete who participates in the activity but does not count against time limitations for other team members who do not participate in the activity.

eligibility). I would like to see all of these data sources but, to date, only the TFRRS online database was available to me.

When primary sources are unavailable, use of multiple secondary sources like the institution's EADA reports and athletic-department-generated team rosters as displayed on the athletic department's official internet site, archives, and other print or electronic publications (e.g., media guides) are acceptable alternatives for rendering a reasonable opinion on whether an institution is providing proportional participation opportunities to males and females because they are generated from primary sources. When using secondary sources, multiple secondary sources should be examined over a sufficient historical time period in order to be sure data from more current years aren't outliers and to detect consistent counting or participation patterns.

Both the EADA reports and the rosters that schools list on their athletics website ("web rosters") are dependable secondary sources because they originate with the NCAA squad list. An athlete cannot try out or practice unless eligibility is determined and his/her name is added to the squad list. Eligible athletes from that list comprise the team roster, which is provided to the coach, athletic trainers, communications staff and others by the compliance officer or other designated staff member within the athletic department. For this section of my report, I examine all of these secondary sources in detail.

EADA Report participant counts do not follow Title IX counting instructions. I have been comparing EADA report participation counts to NCAA Squad List Counts and web site team rosters counts for the past twenty-five years. EADA reports overcount female participation compared to Title IX participation counts because they use different metrics. Instructions for

completing the annual EADA report (2019 Instruction Manual at pg. 31) require schools to report participants under four metrics that differ from Title IX counting requirements:

1. “Male practice players...should be counted as participants on the women’s team.” Title IX only counts females as participants on women’s teams.
2. “Participants are students who...receive athletically related student aid.” Athletic aid is a standalone metric under Title IX only if the person is medically unable to participate but otherwise eligible to participate.
3. “Do not include: Fifth-year team members who have already received a bachelor’s degree.” Title IX counts such team members if they meet the otherwise applicable criteria.
4. “Do not include: Individuals who joined the team after the day of the first scheduled contest.” Title IX counts such team members if they meet the otherwise applicable criteria.

Counting or not counting 5th year team members who have already received a bachelor’s degree and those that might be injured but otherwise eligible to play both have a de minimis impact on male or female counts. In contrast, there are no female practice players on men’s teams. Thus, counting male athletes as female athletes results in an overcount of female athletes and has the effect of producing an undercount of the female participation gap. Adjusting counts up or down after the first day of competition normally produces lower Title IX male and female participation counts because EADA allows no subtractions and most adjustments are subtractions -- athletes leaving the program. In the December 22, 2020 letter from CSUF Legal Counsel Hamm to Bryant mentioned above, it appears that the participation numbers he used to determine CSUF’s 2021-22 projection were based on EADA counting.

Table 2 that follows shows CSUF's Prong One female participation gaps for the last 17 years using the EADA data.

TABLE 2. Prong One Proportionality Analysis Based on Annual EADA Reports
CSUF Athletic Participation 2003-04 to 2019-20
and Female Participation Gaps

Survey Year	Male Under Grad	Percent Male Under Grad	Female Under Grad	Percent Female Under Grad	Total Under grads	Male Athletes	Percent Male Athletes	Female Athletes	Percent Female Athletes	Total Athletes	Female Particip. Gap - # of Athletes to be added*	Percent Shortfall Female Opport.
2003-04	5886	40.8%	8528	59.2%	14414	249	43.8%	319	56.2%	568	42	3.0%
2004-05	5859	41.1%	8402	58.9%	14261	258	40.7%	376	59.3%	634	-6	-0.4%
2005-06	6136	41.3%	8721	58.7%	14857	240	41.2%	343	58.8%	583	-2	-0.1%
2006-07	6330	41.7%	8848	58.3%	15178	221	40.6%	323	59.4%	544	-14	-1.1%
2007-08	6478	41.6%	9103	58.4%	15581	218	39.4%	336	60.6%	554	-30	-2.2%
2008-09	6715	42.7%	9002	57.3%	15717	238	42.9%	317	57.1%	555	2	0.2%
2009-10	6561	42.4%	8902	57.6%	15463	222	41.9%	308	58.1%	530	-7	-0.5%
2010-11	6631	42.7%	8907	57.3%	15538	225	42.1%	309	57.9%	534	-7	-0.5%
2011-12	7086	42.9%	9434	57.1%	16520	220	41.9%	305	58.1%	525	-12	-1.0%
2012-13	7310	42.6%	9830	57.4%	17140	208	41.7%	291	58.3%	499	-11	-1.0%
2013-14	7461	42.5%	10089	57.5%	17550	217	43.1%	287	56.9%	504	6	0.5%
2014-15	7401	41.8%	10317	58.2%	17718	223	43.0%	296	57.0%	519	15	1.2%
2015-16	7768	41.7%	10875	58.3%	18643	219	44.0%	279	56.0%	498	28	2.3%
2016-17	7865	41.8%	10963	58.2%	18828	224	43.5%	291	56.5%	515	21	1.7%
2017-18	8030	41.4%	11382	58.6%	19412	237	44.9%	291	55.1%	528	45	3.5%
2018-19	7828	40.5%	11518	59.5%	19346	256	44.2%	323	55.8%	579	54	3.8%
2019-20**	7627	40.4%	11251	59.6%	18878	251	43.1%	332	56.9%	583	38	2.7%

* The female participation gap represents the number of female participation opportunities that would need to be added if male participation remained constant AND was equal to the percent males in the undergraduate student body.

**Enrollment data and participation counts were provided by CSUF via December 22, 2020 letter from Hamm to Bryant

Inexplicably, starting in 2013, it appears that CSUF ignored the clear enrollment trend (see yellow highlighted cells in Table 2) – steadily increasing female enrollment as a proportion of total full-time undergraduates. In 2016-17, faced with a female athlete participation gap of 21 (1.7% short of Title IX proportionality), it approved the addition of women's water polo *and* men's wrestling, an action which, coupled with no roster management controls, resulted in a doubling of the female participation gap to 45 (3.5% short of Title IX proportionality). Simply adding

women's water polo to address female underrepresentation would most likely have closed the participation gap.

I also opine that the Table 2 use of EADA participant counting instructions produces overcounts of female participation and results in undercounting female participation gap numbers in each and every year, i.e., the real gap is much larger than CSUF says it is. CSUF's EADA participant counts should not be used for a Title IX gender equity determination for the reasons set forth below.

(1) CSUF is counting male practice players as female athletes. There are only two original sources of data for male practice players. In the institution's compliance office, the NCAA requires male practice players' eligibility to be determined (see NCAA Division I Manual, 12.7.5, p. 81). I did not have access to these eligibility determination documents. Such numbers are also displayed in the "caveat" field of *only* the most current year posted on the EADA online database. The caveat field currently posted for 2018-19 indicates that women's basketball used two male practice players. The December 22, 2020 Hamm letter to Bryant indicates that in 2019-20 women's volleyball used one male practice player. I did not have access to caveat field data prior to 2018-19.

In my experience, the women's sports most likely to use male practice players are basketball and volleyball. Typical secondary indicators of such male practice player use are often revealed by comparing Web roster counts with EADA roster counts in these sports, because male practice players never appear on athletic department women's team Web rosters. See Table 3 below for these comparisons.

TABLE 3. CSUF - Comparison of EADA and Web Participation Counts in Women’s Basketball and Volleyball during Sixteen Years of Available EADA and Web Rosters

Year	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19*	19-20**	Avg. D-I roster 18-19
Women's Sports																	
Basketball-WEB	14	16	13	15	13	13	16	15	12	16	14	14	15	13	13	13	14.4
Basketball-EADA*	19	16	19	19	18	15	17	16	13	17	15	16	16	19	16	18	
Difference	5	0	6	4	5	2	1	1	1	1	1	2	1	6	3	5	
Volleyball-WEB	13	14	15	13	13	14	14	14	13	13	14	15	14	15	14	15	16.6
Volleyball-EADA**	17	18	20	20	14	15	15	16	13	14	16	16	16	15	17	20	
Difference	4	4	5	7	1	1	1	2	0	1	2	1	2	0	3	5	
*2018-19 EADA "Caveat" field reports two male practice players in women's basketball																	
**December 22, 2020 letter from Hamm to Bryant reports one male practice player in women's volleyball in 2019-20																	

Minor differences of one or two players between the EADA and Web rosters in the sports of basketball and volleyball may reflect normal roster decreases after the first day of competition, while larger numbers (i.e., 3 or more) indicate a need to further investigate the EADA count for the use of male practice players. This is particularly true if the Web roster counts are consistently lower than the average NCAA Division I roster size in that sport – which is the case in both of these CSUF sports. When a sport uses male practice players, larger numbers of female players are not necessary. This is a common criticism of male practice player usage – that it takes opportunities away from females. Thus, I opine that the difference between the women’s basketball EADA and Web roster numbers most likely reveals the counting of male practice players as female players during the years yellow highlighted in Table 3, likely contributing to the EADA overcounting of female participation and the undercalculation of the female participation gap. Because the NCAA requires CSUF to determine the eligibility of male practice players, a request for that data

during discovery in this case will be required to accurately determine the exact numerical impact of this counting practice.

(2) EADA counts are always higher than web roster counts because of the EADA

first-day-of-competition counting mandate. I opine that the Web roster almost always more closely approximates the Title IX participant count, not only because it does not include male practice players, but because players are removed from the Web roster when they quit or become ineligible for other reasons, just as they would be required to be removed under Title IX counting instructions. This removal is not reflected in EADA counts. Table 4 on the next page is a comparison of total male and female EADA roster counts compared to Web total male and female roster counts (with no adjustment to remove the EADA male practice players).

TABLE 4. CSUF Comparison of EADA and Web Roster Total Male and Female Participant Counts 2006-07 to 2019-2020 (except for 2007-08⁶) Demonstrating Overcount Characteristics of the EADA Metric and the Probability of Female Participant Overcounting Occurring Beyond Use of the EADA Metric

Year	06-07	08-09	09-10	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20
EADA Men	221	238	222	225	220	208	217	223	219	224	237	256	251
WEB Men	199	197	205	211	204	196	206	201	196	201	224	235	238
EADA Overcount - Men's Sports	22	41	17	14	16	12	11	22	23	23	13	21	13
EADA Women	323	317	308	309	305	291	287	296	279	291	291	323	332
WEB Women	266	266	269	293	286	270	264	248	244	272	261	285	305
EADA Overcount - Women's Sports	57	51	39	16	19	21	23	48	35	19	30	38	27
Actual percent difference between EADA men's and women's participant numbers*	31.6%	24.9%	27.9%	27.2%	27.9%	28.5%	24.4%	24.7%	21.5%	23.0%	18.6%	20.7%	24.4%
Predicted EADA Overcount-Women's Sports based on above percentage difference **	39	38	28	12	14	15	17	36	27	15	24	30	20
EADA Overcount - Women's Sports that is NOT a function of larger number of female athletes OR use of the EADA metric***	18	13	11	4	5	6	6	12	8	4	6	8	7
*Calculation: (EADA Women Count minus EADA Men count) divided by EADA Women Count													
** Calculation: Actual EADA Overcount-Women's Sports multiplied by (100% minus larger women's sports function % adjustment shown immediately above)													
***Calculation: EADA Overcount - Women's Sports minus what overcount should have been (cell immediately above)													

I opine that these consistent EADA male and female overcounts compared to male and female Web rosters more accurately reflect the differences between EADA and Title IX counts. However, Table 4 also shows that the EADA Women’s overcount is higher than what I would expect if the difference was simply based on there being more female than male athletes in the CSUF athlete population.

⁶ The table includes only those years in which both EADA and Web rosters were available for all sports. No data was available on the CSUF athletics website for 2007-08 men’s or women’s indoor or outdoor track and field roster. Therefore, no overall web computations were made or considered for that year.

The third to the last row of Table 4 shows the expected higher percentage of EADA overcounting in women's sports because of the larger size of women's rosters. The second to the last row of Table 4 shows what the overcount for women's sports should have been when adjusted for the larger number of CSUF female athletes. The last row indicates the extent to which the female participant overcount exceeds what would be expected, based on the larger size of the women's rosters compared to men's projection. Thus, I opine that the last row reflects overcounting in women's sports beyond the effect of use of the EADA metric. In the next section, I identify those women's sports where I opine these overcounts are occurring.

(d) I opine that CSUF, in addition to relying on the overcounting that is a function of the different EADA counting instructions, has inaccurately counted female participants and/or improperly inflated several women's team rosters. I explain the reasons I opine that these additional inaccuracies exist in sections (1) through (6) which follow.

(1) Inflated women's equestrian rosters. The highlighted cells in Table 5 below reveal that, in the past two years for which data is available, CSUF has increased the size of the equestrian team significantly, from 29 to 30 riders in the previous 5 years to 38 in 2018-19 and 2019-20. The addition of 9 to 10 more riders in each of the past two years, when the official conference travel size is just 32 riders and the NCAA average team size is 35, make Table 2 EADA female participation gaps highly suspect as underestimated.

TABLE 5. Comparison of CSUF EADA and Web Roster Participant Counts and Comparison to NCAA Division I Average Team Size for Women's Equestrian - 2003-04 to 2020-21

Year	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19*	19-20	20-21	Range	Avg. D-I roster 18-19
Equestrian-WEB	No data	No data	87	86	67	37	35	39	40	30	29	27	30	29	29	34	35	33	27-87	35.3
Equestrian-EADA	104	93	83	84	70	44	43	42	42	36	30	30	30	29	29	38	38	No data	29-104	35.3
EADA difference from NCAA Avg.	69	58	48	49	35	9	8	7	7	1	-5	-5	-5	-6	-6	3	3	No data		
WEB difference from NCAA Avg.	No data	No data	52	51	32	2	0	4	5	-5	-6	-8	-5	-6	-6	-1	0	-2		

Equestrian is a sport typically selected to add to women's college athletic programs because it is easy to inflate the number of participants by allowing all-comers to participate, which is what schools prefer to do rather than adding another new women's sport. Inflating a roster refers to carrying a larger number of participants than a normal team size. The average size of a Division I women's equestrian team in 2018-19 was 35.3.⁷ In an equestrian competition, six to eight riders compete in Western events and another six to eight riders compete in English events. I was only able to access actual competition participation statistics for one year – 2019-20 – which revealed a team of 35 riders on the Web roster, 38 listed on the EADA report, of which only 25 actually participated in a competition. Ten participants did not participate in any events. This raises questions about participant counts in all years as to whether CSUF is providing genuine Division I participation opportunities to female equestrian riders.

Division I athletes do not participate just for the purpose of working out and Division I programs typically do not sponsor developmental or sub varsity programs (i.e.,

⁷ National Collegiate Athletics Association. (2019) Student-Athlete Participation 1981-82 – 2018-19 NCAA Sports Sponsorship and Participation Rates Report. Retrieved from: https://ncaaorg.s3.amazonaws.com/research/sportpart/2018-19RES_SportsSponsorshipParticipationRatesReport.pdf

junior varsity). If they do, they must offer such developmental programs to both male and female athletes. CSUF does not list any JV teams. Inflating rosters creates a different experience for all members of the team. Because there is a limit to the number of coaches permitted (3 in equestrian), players on larger teams get less instructional attention than players on smaller teams (typically termed coach/athlete instructional ratios).

In some sports, the number of athletes permitted to travel with a team are limited by institutional or conference policy (Big 12 travel squad limit for equestrian is 32 – CSUF appears to be an affiliate member participating in the Big 12 Equestrian Championship). Scholarships in all sports are limited in number, which reduces the opportunity for players on overly large teams to benefit from such financial aid. The NCAA Division I equestrian scholarship limit is 15 full scholarships, which may be split up among any number of athletes on the team.

CSUF's EADA numbers for the last two years for which data was available shows that CSUF has significantly increased the size of the equestrian team from previous years. In these most recent years, in contrast to the past five years, it had EADA numbers of 3 more riders than the NCAA average team size, and 6 more riders than are permitted to travel. And at least one year of actual CSUF competition data shows that only 25 riders competed in events. Thus, I opine that an inflated equestrian roster has contributed to CSUF EADA overcounts in the past and should be carefully monitored in the future. Specifically, I opine that any actual Title IX participant count over 32 or an excessive number of riders (i.e., five or more) who never participate in a competition should be viewed as suspect.

(2) Overcounting female cross country runners. Another idiosyncrasy of the EADA report is the fact that the EADA report does not separate the reporting of cross country from outdoor track and indoor track; rather the school reports “All Track Combined,” which includes all three of these sport rosters. The CSUF web site reports cross country separate from track and field but does not report indoor track and field separate from outdoor track and field. Participant counting under Title IX requires separate counts for each of these three programs. Those counts cannot be derived from examining EADA participation data. These three sports are those in which schools typically artificially inflate women’s rosters by encouraging women on campus or recruited athletes in other sports to come tryout for the team and keep them on the team through the first day of competition, which is the day of the official EADA participant count, and then, following the first day of competition, they do not continue to participate. At that point, they either attend practices or not and either participate in no competitions or are purposely entered in one home competition in order to defend counting them as team members, even if they are not distance runners.

For example, the 2019 CSUF women’s cross country web roster listed 15 participants on the CSUF Web roster: 6 of the 15 participated in multiple cross country meets and were obviously legitimate cross country runners; one participated in only one meet; and 8 did not participate in any cross country events.⁸ This was not an isolated occurrence, but a pattern. See Table 6 below, which shows this pattern for women’s cross country and compares it to the men’s cross country pattern.

⁸ The TFRRS online database was used to retrieve the actual competition and performance records of each member of the 2019 CSUF women’s cross country team. U.S. Track & Field and Cross Country Coaches Association. TFRRS database. Retrieve from: <https://www.tfrrs.org/> Note that EADA data only lists participant numbers and no names so EADA cannot be used to track actual participation in events.

TABLE 6. CSUF Women's and Men's Cross Country Runners Participating in Two or More Meets, One Meet or No Meets – 2012 to 2019 Seasons

WOMEN	Web Roster	Participated in 2 or more events	Participated in 1 event	Participated in 0 events
2012 Women's Cross Country	23	8	2	13
2013 Women's Cross Country	18	11	3	4
2014 Women's Cross Country	18	9	3	6
2015 Women's Cross Country	13	5	5	3
2016 Women's Cross Country	18	8	0	10
2017 Women's Cross Country	16	6	0	10
2018 Women's Cross Country	9	8	0	0
2019 Women's Cross Country	15	6	1	8
MEN	Web Roster	Participated in 2 or more events	Participated in 1 event	Participated in 0 events
2012 Men's Cross Country	10	7	0	3
2013 Men's Cross Country	11	8	0	3
2014 Men's Cross Country	11	8	1	2
2015 Men's Cross Country	10	8	0	2
2016 Men's Cross Country	9	7	0	2
2017 Men's Cross Country	7	6	0	1
2018 Men's Cross Country	10	9	0	1
2019 Men's Cross Country	8	7	0	1

In cross country, there are no limits to competition entries. A school may enter one or two teams of seven runners, with the five fastest times counting as the team scores for each. There is no limit on the number of additional individual runners who can run the event as “unattached.” In Division I, it is not plausible to maintain that participants just want to practice and never compete. Thus, any cross country runner who is never entered into an event is suspected to be a “ghost” participant – someone who wasn’t really a legitimate member of the team.

It could be that several of these cross country runners on the teams I examined were injured and not able to compete. However, that there would have been eight such injured

female athletes in 2019, 10 in 2016, and 10 in 2017 who could not compete would have been very unusual based on my experience as an athletic director and denying common sense when the men's team has only 1 or 2 athletes who were never given the opportunity to compete. Again, without looking at the NCAA Squad List and the institution's NCAA Hour Limitation Record,⁹ I cannot make an accurate participant count. However, just looking at the Table 6 women's and men's cross country team roster fact situation, based on my experience with institutions cheating on participant counts, I suspect that this participant count reflects purposefully inflating the women's cross country team by the mechanism I described above. During discovery, I would consider the cross country counts to be suspect, reserving the right to carefully examine these numbers.

(3) Overcounting due to dropping men's indoor track. I opine that the reconfiguration of the CSUF men's athletic program to drop the men's indoor track schedule in 2003 had a sex-based motivation to eliminate the need to add at least one, if not two new women's sports. Title IX counts indoor and outdoor track separately even though the same male and female athletes compete in each season. Instead of the 2003-04 men's track squad counting twice, once for indoor and once for outdoor, it only counted once. Table 7 shows the available EADA and Web data that enables an assessment of the effect of dropping men's indoor track on participation in the cross country, indoor track, and outdoor track programs.

⁹ See FN 3.

TABLE 7. CSUF Men's and Women's Cross Country, Indoor, Outdoor and Combined Track Roster Numbers – 2003-04 to 2019-20

Sport	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19*	19-20*
Men's Sports																
Cross Country-WEB	No data	6	6	10	9	9	10	9	10	11	11	10	9	7	10	8
Outdoor T&F-WEB	37	39	37	No data	33	34	37	34	29	32	27	26	25	24	25	22
Combined Track-WEB	n/a	45	43	No data	42	43	47	43	39	43	38	36	34	31	35	30
Combined Track-EADA	45	49	49	48	54	50	51	49	43	45	39	36	37	32	39	31
Women's Sports																
Cross Country-WEB	15	27	27	20	23	30	31	31	23	18	18	13	18	16	9	15
Indoor T&F-WEB (dup of outdoor)	40	41	37	No data	43	41	47	46	42	38	38	36	36	32	40	42
Outdoor T&F-WEB	40	41	37	No data	43	41	47	46	42	38	38	36	36	32	40	42
Combined Track-WEB	95	109	101	n/a	109	112	125	123	107	94	94	85	90	80	89	99
Combined Track-EADA	177	154	122	148	129	125	126	128	111	106	108	90	92	81	101	101

Since the men's outdoor track number (see yellow highlighted row in Table 7 above) is really outdoor track only (because the indoor program was dropped), it is comparable to the women's outdoor track number (or indoor track number because they are the same) and represents the count of male participants that was eliminated and that CSUF did not need to match re: proportional opportunities for females.¹⁰

¹⁰ Remember that EADA data is available only as a combined number of cross country, indoor and outdoor track. Also remember that many cross country runners, at least the top 7 to 15, are also distance runners on the indoor and outdoor track teams. As a practical matter, such triple counting results in very high EADA combined track numbers. The only quasi-separate look we have of indoor track is assuming the full Web track roster (there is only one track roster – no separate listing of indoor and outdoor) competes in both indoor and outdoor track. So the Web roster for indoor (only available for women because men's indoor was dropped) is simply a duplicate of the single track roster, which is also used for the outdoor track participant number. In a later section I show how to separate examine indoor and outdoor track participation).

(4) Overcounting female indoor track participants. Because 2019-20 was the last year for which I also could access both a Web roster (EADA does not provide a separate indoor track count) and a record of each athlete’s actual participation in indoor competition, I used TFRRS¹¹ to examine the integrity of the women’s indoor track and field count to see whether all those reported on the women’s Web roster actually participated in the indoor season in the years 2009-10 through 2019-20. Table 8 below reveals the same pattern as my Table 6 cross country analysis with an extraordinary number of participants who participated in 1 or 0 meets.

TABLE 8. Numbers of CSUF Women’s Indoor Track and Field Athletes Participating in Two or More Meets, One Meet or No Meets – 2009-10 to 2019-20 Seasons

	Web Roster	Participated in 2 or more events	Participated in 1 event	Participated in 0 events
2009-10 Indoor	41	16	2	23
2010-11 Indoor	47	22	1	24
2011-12 Indoor	46	20	9	17
2012-13 Indoor	42	21	5	15
2013-14 Indoor	38	14	3	21
2014-15 Indoor	38	22	2	14
2015-16 Indoor	36	16	1	19
2016-17 Indoor	36	20	2	14
2017-18 Indoor	32	25	0	7
2018-19 Indoor	40	26	0	14
2019-20 Indoor	42	22	3	17

A track meet runs a sufficient number of heats to accommodate all entries (no limits). Thus, unless an athlete is injured and unable to run or being held out purposefully as a redshirt, it is not plausible to maintain that Division I athletes just want to practice and never compete (see Quinnipiac case). Thus, any participant who is never entered into an

¹¹ Id., The TFRRS online database. Note that TFRRS data starts in 2010.

event is suspected to be a “ghost” participant – someone who was not really a legitimate member of the team. Based on my experience as an athletic director, I opine that the numbers of participants not participating in any indoor meets are simply too large to represent a typical number of injured or redshirt athletes. Again, without being able to examine the NCAA Squad List and the institution’s NCAA Hour Limitation Record,¹² I cannot make an accurate participant count, but I can reasonably opine that female participants are being overcounted and inaccurately counted.

(5) Overcounting female outdoor track participants. Because 2019-20 was the last year for which I also could access both a men’s and women’s Web outdoor roster and TFRRS participation in outdoor events, I used TFRRS¹³ to compare men’s and women’s outdoor track and field to see whether all those reported on the men’s and women’s Web rosters actually participated in the years 2010-11¹⁴ through 2018-19 outdoor track seasons (the 2020 outdoor season was cancelled due to Covid). Table 9 on the next page reveals the same pattern as the Table 6 cross country and Table 8 indoor track analysis: an extraordinary number of female participants who participated in 1 or 0 meets compared to the same data for male participants. Again, like indoor track, an outdoor track meet runs a sufficient number of heats to accommodate all entries. Thus, unless an athlete is injured and unable to run or being held out purposefully as a redshirt, it is not plausible to maintain that Division I athletes just want to practice and never compete. So again, any participant

¹² NCAA Division I Manual, p. 259

¹³ Id., The TFRRS online database. Note that TFRRS data starts in 2010.

¹⁴ Although men’s outdoor competition records for 2009-10 were available in TFRRS, I did not include this data because the TFRRS roster did not match up to the CSUF Web roster.

who is never entered into an event should be suspected to be a “ghost” participant – someone who was not really a legitimate member of the team.

TABLE 9. Numbers of CSUF Men’s and Women’s Outdoor Track and Field Athletes Participating in Two or More Meets, One Meet or No Meets – 2010-11 to 2019-20 Seasons

	Web Roster	Participated in 2 or more events	Participated in 1 event	Participated in 0 events
2009-10 Indoor	41	16	2	23
2010-11 Indoor	47	22	1	24
2011-12 Indoor	46	20	9	17
2012-13 Indoor	42	21	5	15
2013-14 Indoor	38	14	3	21
2014-15 Indoor	38	22	2	14
2015-16 Indoor	36	16	1	19
2016-17 Indoor	36	20	2	14
2017-18 Indoor	32	25	0	7
2018-19 Indoor	40	26	0	14
2019-20 Indoor	42	22	3	17
	Web Roster	Participated in 2 or more events	Participated in 1 event	Participated in 0 events
2010 Outdoor	41	23	1	17
2011 Outdoor	47	41	1	5
2012 Outdoor	46	34	2	10
2013 Outdoor	42	32	2	8
2014 Outdoor	38	11	1	26
2015 Outdoor	38	29	1	8
2016 Outdoor	36	29	0	7
2017 Outdoor	36	22	2	12
2018 Outdoor	32	28	0	4
2019 Outdoor	40	32	1	7

Based on my experience as an athletic director, I opine that the numbers of female participants not participating in any meets are simply too large to represent a typical number of injured or redshirt athletes. Again, without access to the NCAA Squad List and

the institution’s NCAA Hour Limitation Record,¹⁵ I cannot make an accurate participant count, but I can reasonably opine that female participants are being overcounted and inaccurately counted. From the chart is clear that men are also being overcounted but to a much lesser degree.

(6) The EADA “Combined Cross Country, Indoor Track and Outdoor Track” women’s rosters reported are highly suspect with regard to accuracy. Comparing men’s and women’s EADA Combined Track data doesn’t make sense because men’s indoor track was dropped. Thus, Table 10 only compares the female participant counts reported on the annual EADA report, the CSUF web roster counts, and the TFRRS combined count which consists of all cross country, indoor and outdoor participants who participated in at least one meet during the seven years in which I had complete information for all three metrics. The seven-year range limit was necessary because TFRRS cross country data starts in 2012-13.

TABLE 10. Comparison of CSUF EADA, Web Roster and TFRRS Combined Women’s Cross Country, Indoor Track and Outdoor Track Participant Data – 2012-13 to 2018-19

Cross Country, Indoor and Outdoor Track Combined	EADA Combined	WEB Rosters Combined	TFRRS Combined (participated in 1 or more meets)	Range of Difference from TFRRS Combined
2012-13 Combined	111	107	70	37-41
2013-14 Combined	106	94	43	51-63
2014-15 Combined	108	94	66	28-41
2015-16 Combined	90	85	56	29-34
2016-17 Combined	92	90	54	36-38
2017-18 Combined	81	80	59	21-22
2018-19 Combined	101	89	67	22-34

¹⁵ NCAA Division I Manual, p. 259

The last Table 10 column represents the possible extent of EADA data overcounting due to inflated women's cross country, indoor and outdoor track rosters combined, supporting my opinion that the Table 2 (p.21) CSUF portrayal of Prong One compliance is inaccurate.

4. I opine that CSUF, both in regard to its current and proposed athletic program restructure, does not appear to have assessed the interests and abilities of male and female athletes in order to provide them with equal levels of competition or sports based on their interests and abilities, as required by Title IX. Title IX states:

§ 106.41 Athletics.

A recipient which operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes...

-- 34 C.F.R. 106.41(c) [bold emphasis added]

Simply explained, rather than requiring that the same sports be provided for males and females, Title IX requires that the sports offered meet the respective interests and abilities of each sex recognizing that their interests and abilities differ.

In determining “whether the selection of sports and levels of competition effectively accommodates the interests and abilities of members of both sexes,” I relied upon the 1979 Policy Interpretation, which I helped write. This government guidance explains the Title IX effective accommodation regulation, (34 CFR 106.41(c)(1)), the policy behind it, and the factors that must go into assessing whether a school complies with it. (44 Fed. Reg. at 71417-71418) Its policy section states that OCR will assess compliance with the effective accommodation regulation by examining:

- a. The determination of athletic interests and abilities of students; and*
- b. The selection of sports offered; and*
- c. The levels of competition available, including the opportunity for team competition.*

-- 44 Fed. Reg. at 71417

Note that these policy factors do not even mention numbers. The 1979 Policy Interpretation explains in subpart “a” how institutions are required to determine athletics interests and ability. In subpart “b,” it addresses issues that schools should consider when selecting the sports they should offer. Subpart “c” has two parts, the “three-part test” that does focus on numbers of participation opportunities (already discussed in Section 3 above) and the “competition test” that requires institutions to provide proportionally similar quality competition opportunities. Thus, it should be emphasized that numbers of participation opportunities and the often referenced “three-part test” are merely one of four subsets of the effective accommodation requirement and a small part of the overall policy with which CSUF must comply. With regard to its current athletic program and, certainly, if CSUF decided to engage in a major restructure of its athletics program, it had an obligation to ensure that its restructured program complied with all four of these Title IX requirements.

The 1979 Policy Interpretation provides great detail about each of these three factors (“a” determination of interest and abilities, “b” selection of sports offered, and “c” levels of competition) and how they should be applied.

(a) I opine that CSUF has not complied with its obligation to assess the interests and abilities of male and female athletes with regard to its current program or the development of the proposed restructured program. The 1979 Policy Interpretation specifies:

(a) How schools must assess the interests and abilities of their students.

[3] Application of the Policy - Determination of Athletic Interests and Abilities
Institutions may determine the athletic interests and abilities of students by

nondiscriminatory methods of their choosing provided:

- a. The processes take into account the nationally increasing levels of women's interests and abilities;
- b. The methods of determining interest and ability do not disadvantage the members of the under-represented sex;
- c. The methods of determining ability take into account team performance records; and
- d. The methods are responsive to the expressed interests of students capable of intercollegiate competition who are members of the under-represented sex.

-- 44 Fed. Reg. at 71417

When CSUF added its equestrian team in 1996-97, equestrian was not (and still is not) an NCAA championship sport and there were many more popular high school sports and sports which were played among colleges (i.e., golf, field hockey, water polo, rowing, etc.). At the time, CSUF was not in compliance with Prong One, Two or Three. It should have periodically conducted assessments and, as soon as unmet women's interests and abilities were identified, added sports to meet one of these participation standards. (see FN 2) I have not been provided with any evidence that these assessments occurred in the past. When CSUF dropped women's swimming and diving in 2004-05 for which there was no dearth of interest, and replaced it with golf, a sport in which women were also interested, the apparent motive was to save money by replacing a more expensive sport with a less expensive sport with far fewer participants. That decision disqualified CSUF from using Title IX's Prong Two or Three option to comply with its participation requirements. When CSUF dropped men's indoor track in 2003-04, I opine that the primary motive was to reduce its obligation to add female sports opportunities.

With regard to the 2021-22 plan to restructure the program, similarly, I am not aware of any evidence of an assessment of interests and abilities of male or female athletes that was conducted to determine which men's or women's programs were to be eliminated. Women's lacrosse was selected for elimination, a sport in which there are 116 Division I programs. Not

selected were existing sports in which there appears to be less interest, such as equestrian (20 Division I programs) or water polo (33 Division I programs). In my experience, I have found that decisions related to keeping or adding women's sports are sex-based rather than interest and ability based. The primary purpose of such decisions is to manipulate women's sports participation numbers while saving money. Institutions pick the women's sports with the highest participation numbers, lowest per capita operating cost, and lowest staffing costs to retain or to add to their programs in order to comply with Title IX.

(b) I opine that CSUF has not complied with its Title IX obligation to ensure that the selection of sports offered in the current program and proposed for the 2021-22 restructured program equally meets the interests and abilities of men and women. The second element of the "effective accommodation" regulation cited above is "selection of sports offered". The 1979 Policy Interpretation discusses the issues that schools should consider when selecting the sports they should offer, including whether the same sports must be offered for men and women, whether the excluded sex must be permitted to try out for a team for the opposite sex, how schools should treat sports categorized as contact or noncontact sports, and whether teams are chosen by athletic skill. See 44 Fed. Reg. at 71417-71418, Part [C][4]. Sports selected for men and women do not have to be identical. Respectively, they should meet the interests and abilities of males and females. Certainly, they should not be selected for the purpose of treating female athletes in a lesser and discriminatory manner. As previously mentioned, there was no indication that the decision to drop sports in 2021-22 was prefaced by any Title IX assessment of interest and ability. (see FN 2)

During discovery, I also intend to examine whether male and female participants are treated equally with regard to the opportunity to be selected for teams – whether there is a policy and practice to require all teams to conduct tryouts. At many institutions, sports such as wrestling, equestrian, football, and track and field do not conduct tryouts and accept all-comers or do not apply roster limits to teams, practices which affect player/coach instructional ratios, opportunities to receive athletics financial assistance, and whether operating budgets can provide equal treatment to athletes.

(c) To date, I have not been asked to opine whether CSUF has complied with its Title IX obligation to ensure that women are provided with the same levels of competition as men’s teams either in the current program or the 2021-22 restructured program. For “(c) Levels of Competition Offered,” the third effective accommodation factor, the 1979 Policy Interpretation sets out two separate tests regarding levels of competition: (1) participation, which has already been examined in Section 3 of this report, and (2) competitive team schedules, *both* of which schools must satisfy in order to comply with the effective accommodation regulation. In particular,

[5] Application of the Policy - Levels of Competition.

In effectively accommodating the interests and abilities of male and female athletes, institutions must provide **both** the opportunity for members of each sex to **participate** in intercollegiate competition **and** for athletes of each sex **to have competitive team schedules which equally reflect their abilities** .

-- 44 Fed. Reg. at 71418 [bold emphasis added].

If asked to examine this Title IX element, I will do so in a supplemental report.

5. I opine that CSUF female athletes have been significantly shortchanged over the 2003-04 to 2018-19 period (16 years) with regard to the provision of athletics financial aid.

In addition to the Title IX 106.41 athletics provision, the financial aid section of the regulation has a direct reference to its application to athletics:

§ 106.37 Financial assistance.

(c) Athletic scholarships. (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and §106.41.

In this area, scholarship equity is tied to the percentage of male and female student athletes, rather than the percentage of males and females in the general student body. Specifically, Title IX requires that total dollars awarded to male and female student athletes be proportional to their athletics program participation percentages. A disparity of less than one percentage point is permissible. This specification of distribution based on percentage of athletes, rather than percentage of males and females in the student body, is because an institution may be in compliance with Title IX participation requirements by using the Prong Two or Three options, which do not require male/female athletics participation equal to the percentage of males and females in the undergraduate student body.

Whether scholarship entitlements are computed on the basis of proportional to actual athletics program participation of males and females (to be used in the case of Prong Two or Three compliance) or the amount female athletes should have received if their athletic participation percent was equal to the proportion of females in the undergraduate population (their Prong One entitlement), CSUF female athletes were significantly shortchanged. See Table 11.

TABLE 11. CSUF Athletics Financial Aid - Computation of Female Athlete Entitlement Based on Actual Percent of Female Athletes in Each Year vs. Prong One Female Athlete Participation Equal to Percent Females Full-time Undergraduates – 2003-04 to 2018-19

Year	Calculation of Financial Aid Entitlement Based on Actual Percentage of Male and Female Athletes										Based on Prong One Female Athlete Entitlement (Percent equal to % Female Undergrads)			
	Men's Teams Athletics Financial Aid Actually Awarded	Percent Financial Aid to Male Athletes	Actual Percent of Male Athletes	Difference Between Aid Received & Aid Entitled	Overpayment Above Amt. Equal to Percent of Male Athletes	Women's Teams Athletics Financial Aid Actually Awarded	Percent Financial Aid to Female Athletes	Actual Percent of Female Athletes	Difference Between Aid Received & Aid Entitled	Shortfall Below Amt. Equal to Percent of Female Athletes	Percent Female Undergrads	Entitlement if % Female athletes = % Female undergrads	Difference Between Aid Received & Aid Entitled	Female Athletes Prong One Shortfall
2003-04	\$1,680,948	55.0%	43.8%	11.1%	\$340,402	\$1,377,004	45.0%	56.2%	-11.1%	-\$340,402	59.2%	\$1,809,228	-14.1%	-\$432,224
2004-05	\$1,630,317	53.4%	40.7%	12.7%	\$387,032	\$1,424,888	46.6%	59.3%	-12.7%	-\$387,032	58.9%	\$1,800,002	-12.3%	-\$375,114
2005-06	\$1,689,595	54.3%	41.2%	13.2%	\$409,668	\$1,419,560	45.7%	58.8%	-13.2%	-\$409,668	58.7%	\$1,825,062	-13.0%	-\$405,502
2006-07	\$1,734,229	54.7%	40.6%	14.1%	\$445,892	\$1,437,061	45.3%	59.4%	-14.1%	-\$445,892	58.3%	\$1,848,700	-13.0%	-\$411,639
2007-08	\$1,822,942	53.8%	39.4%	14.4%	\$489,237	\$1,566,382	46.2%	60.6%	-14.4%	-\$489,237	58.4%	\$1,980,169	-12.2%	-\$413,787
2008-09	\$1,975,453	53.7%	42.9%	10.9%	\$399,360	\$1,699,889	46.3%	57.1%	-10.9%	-\$399,360	57.3%	\$2,105,073	-11.0%	-\$405,184
2009-10	\$2,095,018	49.2%	41.9%	7.3%	\$312,573	\$2,160,369	50.8%	58.1%	-7.3%	-\$312,573	57.6%	\$2,449,813	-6.8%	-\$289,444
2010-11	\$2,300,598	48.8%	42.1%	6.7%	\$313,965	\$2,414,345	51.2%	57.9%	-6.7%	-\$313,965	57.3%	\$2,702,793	-6.1%	-\$288,448
2011-12	\$2,295,255	47.3%	41.9%	5.4%	\$261,759	\$2,557,406	52.7%	58.1%	-5.4%	-\$261,759	57.1%	\$2,771,187	-4.4%	-\$213,781
2012-13	\$2,289,997	47.4%	41.7%	5.7%	\$275,788	\$2,542,167	52.6%	58.3%	-5.7%	-\$275,788	57.4%	\$2,771,305	-4.7%	-\$229,138
2013-14	\$2,404,162	47.2%	43.1%	4.1%	\$209,666	\$2,692,731	52.8%	56.9%	-4.1%	-\$209,666	57.5%	\$2,930,060	-4.7%	-\$237,329
2014-15	\$2,697,380	50.3%	43.0%	7.3%	\$391,320	\$2,669,639	49.7%	57.0%	-7.3%	-\$391,320	58.2%	\$3,125,157	-8.5%	-\$455,518
2015-16	\$3,121,849	47.8%	44.0%	3.8%	\$249,246	\$3,410,371	52.2%	56.0%	-3.8%	-\$249,246	58.3%	\$3,810,432	-6.1%	-\$400,061
2016-17	\$3,364,167	48.1%	43.5%	4.6%	\$322,103	\$3,629,865	51.9%	56.5%	-4.6%	-\$322,103	58.2%	\$4,072,423	-6.3%	-\$442,558
2017-18	\$3,734,168	48.1%	44.9%	3.2%	\$245,942	\$4,037,070	51.9%	55.1%	-3.2%	-\$245,942	58.6%	\$4,556,575	-6.7%	-\$519,505
2018-19	\$3,871,409	47.7%	44.2%	3.5%	\$285,503	\$4,238,901	52.3%	55.8%	-3.5%	-\$285,503	59.5%	\$4,828,624	-7.3%	-\$589,723
					\$5,339,457					-\$5,339,457				-\$6,108,955

*Based on Equity in Athletics Disclosure Act Data at <https://ope.ed.gov/athletics/#/>

On the basis of proportional to athletic participation, over the 16-year period covered, male athletes received \$5.3 million *more* than they were entitled to receive under Title IX, while female athletes received \$5.3 million *less* than their entitlement. Computed on the basis of their Prong One entitlement, the only participation Prong CSUF was eligible to use, the female athlete shortfall over this same period of time was more than \$6.1 million in athletics financial aid.

While I did not have access to NCAA squad lists in order to examine how scholarships were packaged, care must also be taken to determine that the institution does not engage in discriminatory packaging of athletics aid because §106.37 also says a school cannot:

(1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate;

I intend to look at this issue if discovery permits.

6. I opine that there are significant inequities in per capita recruiting expenses between male and female participants. In addition to the Title 106.41 athletics participation and laundry list provisions and the 106.37 financial aid sections of the regulation that have direct references to how requirements are applied to athletics, recruiting is a non-athletics-specific provision which must be assessed:

*106.23 Recruitment....a recipient shall not:
(1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate;*

Coaches must be provided with substantially equal opportunities and financial and other resources to recruit. Prospective male and female student athletes must be provided with the same benefits, treatment, and opportunities, such as paid trips to campus, equal expenditures for on- or off-campus entertainment during campus visits, etc. Specifically, the presence of any restrictions on recruiting (such as coaches being limited to geographical areas such as state, regional, national or international, limits on the number of paid trips that a sport can provide to visiting prospects, limits on per athlete or athlete hosts entertainment expenses when prospective recruits visit campus, etc.) are examined. If there are no policy restrictions and the allocation of recruiting budgets is the sole limiter of recruiting support, a comparison of per capita recruiting expense is the most reasonable metric that should be examined to ensure equal treatment of male and female athletes.

Utilizing CSUF EADA reports that include annual recruiting expenditures for men's and women's sports from 2003-04 to 2018-19, I created the following Table 12 which shows the percentage of total recruiting expenditures provided to the men's and women's program and

computes a per capita expenditure as well as the difference between per capita expenditures spent on recruiting male versus female athletes. For ease of understanding, the last column of Table 12 shows how much more CSUF spent to recruit a male athlete than a female athlete as a percent of recruiting expense.

TABLE 12. Comparison of CSUF Per Capita Recruiting Expenditures on Male and Female Athletes – 2003-04 to 2018-19 EADA Data

Year	Men's Team Recruiting Expenses	Percent Male Athletes	% Male Recruiting Expenditures	Women's Team Recruiting Expenses	Percent Female Athletes	% Female Recruiting Expenditures	Number of Male Athletes	Number of Female Athletes	Per Capita Male Athlete Recruiting	Per Capita Female Athlete Recruiting	Per Capita Difference	CSUF spent X percent more to recruit a male athlete
2003-04	\$258,475	43.8%	61.1%	\$164,243	56.2%	38.9%	249	319	\$1,038	\$515	\$523	50%
2004-05	\$231,215	40.7%	63.9%	\$130,469	59.3%	36.1%	258	376	\$896	\$347	\$549	61%
2005-06	\$262,746	41.2%	70.0%	\$112,782	58.8%	30.0%	240	343	\$1,095	\$329	\$766	70%
2006-07	\$260,833	40.6%	64.8%	\$141,868	59.4%	35.2%	221	323	\$1,180	\$439	\$741	63%
2007-08	\$276,281	39.4%	67.6%	\$132,271	60.6%	32.4%	218	336	\$1,267	\$394	\$874	69%
2008-09	\$212,662	42.9%	59.7%	\$143,523	57.1%	40.3%	238	317	\$894	\$453	\$441	49%
2009-10	\$172,290	41.9%	60.6%	\$111,810	58.1%	39.4%	222	308	\$776	\$363	\$413	53%
2010-11	\$183,423	42.1%	64.1%	\$102,951	57.9%	35.9%	225	309	\$815	\$333	\$482	59%
2011-12	\$229,108	41.9%	68.7%	\$104,595	58.1%	31.3%	220	305	\$1,041	\$343	\$698	67%
2012-13	\$257,998	41.7%	63.2%	\$150,092	58.3%	36.8%	208	291	\$1,240	\$516	\$725	58%
2013-14	\$310,758	43.1%	64.2%	\$173,444	56.9%	35.8%	217	287	\$1,432	\$604	\$828	58%
2014-15	\$379,363	43.0%	66.8%	\$188,900	57.0%	33.2%	223	296	\$1,701	\$638	\$1,063	62%
2015-16	\$424,205	44.0%	68.1%	\$198,350	56.0%	31.9%	219	279	\$1,937	\$711	\$1,226	63%
2016-17	\$454,509	43.5%	67.2%	\$222,189	56.5%	32.8%	224	291	\$2,029	\$764	\$1,266	62%
2017-18	\$400,117	44.9%	61.8%	\$247,422	55.1%	38.2%	237	291	\$1,688	\$850	\$838	50%
2018-19	\$430,030	44.2%	64.5%	\$236,879	55.8%	35.5%	256	323	\$1,680	\$733	\$946	56%

*Based on Equity in Athletics Disclosure Act Data at <https://ope.ed.gov>

Note that the above calculations are understated, because I have opined that the CSUF EADA participation numbers reflect overcounting of female athletes, resulting in lower per capita computations. These per capita recruiting expense differences are so substantial and the pattern in favor of male athletes so consistent that there is good reason to believe that there are gender inequities in this area.

7. I opine that CSUF is able to comply with the proportionality provision of Title IX without dropping any men's or women's teams. Prior to evaluating the CSUF proposal to restructure its athletic program effective 2021-22, it is important to understand that there is no Title IX regulation that would compel CSUF to restructure its program in a manner which requires the dropping of any men's or women's sport program. It is inaccurate in most instances for an athletics administrator to maintain that financial exigencies *require* the athletic program to eliminate sports teams. It appears that CSUF is claiming that this is the case:

"Today's decision is difficult for everyone and yet it is a necessary step to ensure the financial viability of our Athletics Department," said President Joseph I. Castro. "We appreciate those who have supported these Bulldogs programs over the years, including coaches, current and former student-athletes, and their families."

The expected operating deficit for Fresno State Athletics this fiscal year is approximately \$6.6 million due to the COVID-19 pandemic and its impact on the sports teams' competitive seasons and the related result of not being able to have fans in its venues. (For context, the department's average annual operating deficit is approximately \$2.2 million.)

-- University Communications¹⁶

In my textbook, *Athletic Director's Desk Reference*, chapter four explains how to restructure an athletic program to significantly reduce expenses and keep all sports programs. In short, instead of the current CSUF program structure, this chapter describes how sports can be distributed among two or three different funding tiers—with each tier serving an equal proportion of male and female athletes, and male and female athletes within their respective tiers fully meeting Title IX gender equity obligations of equal athletics financial aid, recruiting support, and treatment and benefits. This approach would allow CSUF to keep several priority sports like football and

¹⁶ CSUF Communications. Fresno State Athletics Announces Program Changes. Retrieved from: <https://gobulldogs.com/news/2020/10/16/general-fresno-state-athletics-announces-program-changes.aspx>

basketball for males and whatever number of women's sports is required to have an equal proportion of all female athletes in this tier at high funding levels, while other sports are distributed among significantly lower funding tiers (equal proportions of male and female athletes in each tier). This system is a common sports management approach to meeting financial exigency.

8. I opine that CSUF should not be allowed to proceed with reducing female participation opportunities based on an assertion of current or future Title IX compliance after programs are eliminated. What the CSUF restructure plan reveals is a common pattern among institutions that have not met the Prong One proportionality requirement for years — the hope that they will be permitted:

- (a) to pursue a configuration of an athletic program in which a smaller number of sports are treated more lavishly, using the funds saved through the elimination of sports to support remaining priority sports and their excessively paid coaches and administrators which the institution would like to retain;
- (b) ignore years of treating female athletes inequitably to allow the program to “reset” with no consequences for probable past discrimination on the basis of sex;
- (c) allow the proposed program reconfiguration to include one final insult to female participants – doing further harm to the underrepresented and less favorably treated female class – in this case, those female lacrosse athletes whose sport would be terminated;
- (d) allow CSUF to continue to misrepresent the actual number of participation opportunities afforded female athletes or treat female athletes less favorably than male athletes; and

- (e) allow this “paper” plan to proceed without CSUF actually demonstrating for a specified period of time that it is capable of actually conducting an athletic program that provides female athletes an equal opportunity to participate and equal treatment as the law requires.

It is within this context that, in later sections of this report which follow, I opine on the gender equity issues created by the proposed plan to drop men’s tennis and wrestling and women’s lacrosse.

9. I opine that CSUF’s counting and plans to count prospective participants for the 2021-22 academic year do not comport with proper Title IX participant counting methodology and equity in athletics participation assessment, because the participant counts are projected, proposed, or promised rather than being actual. Further, CSUF is without any plan to remedy other significant gender equity issues (i.e., major scholarship and recruiting inequities). Gender equity is more than counting participants.

(a) Counting prospective participants, rather than actual participants, is incorrect under Title IX counting regulations. The assessment of athletics gender equity is institution specific. Comparisons are made with regard to the actual participation opportunities and actual treatment and benefits afforded to male and female athletes within each institution rather than any future promise of such treatment. No comparisons are made to the treatment of males and females at other institutions. Participant counting in any year cannot be validated until a sport season is completed. I opine that, given the high probability of CSUF’s past EADA participation counts not meeting Title IX counting requirements, any CSUF representation that they will meet these

requirements in the future should be treated as suspect until they do so for a reasonable period of time.

Title IX participant counts in each sport are normally based upon an examination of three athletic department documents: NCAA Squad Lists, NCAA Hour-Limitation records, and competition results. The NCAA “Squad Lists” are official records of recruiting, eligibility, and participation status on the first day of competition, whether financial assistance received by the student is countable athletics financial assistance subject to Title IX distribution requirements, and whether the athlete quit the sport or otherwise changed his/her status after the first day of competition:

15.5.11 Squad List.

15.5.11.1 Eligibility Requirement. To be eligible to represent an institution in intercollegiate athletics competition, a student-athlete shall be included on the institution’s squad-list form. **[D]**

15.5.11.2 Squad-List Form. The institution shall compile a list of the squad members in each sport on the first day of competition and shall indicate thereon the status of each member in the categories listed

15.5.11.2.1 Procedures. The following procedures shall be used for the squad list:

- (a) The form shall be available for examination upon request by an authorized representative of another member institution, the NCAA, and, if the institution is a member of a conference, an authorized representative of the conference;
- (b) A supplementary form may be filed to add names of persons not initially on the squad or to indicate a change of status;
- (c) A student-athlete’s name must be on the official institutional form to qualify to represent the institution in intercollegiate athletics; and
- (d) The athletics director (or his or her designee, who may not be a coaching staff member) shall sign the form for each sport. The head coach in each sport shall sign the form for the applicable sport.

-- 2020-21 Division I NCAA Manual, pp. 230-31

The record of receipt of countable athletics financial aid is important because a scholarship recipient counts even if the athlete has no eligibility remaining, is injured, is academically

ineligible, or does not continue to practice with the team, as long as that athlete is still receiving other benefits of being an athlete such as tutoring, academic advising, access to athletics program services, etc. Because the athlete is receiving a significant athletic benefit (financial aid) as well as other services, the athlete is counted as a participant.

However, Title IX does not require an athlete to participate in a competition in order to count, only to have regularly participated in practices and team meetings and received the treatment and benefits normally provided to athletes competing. Thus, the NCAA Hour-Limitation Record is used to determine whether an athlete who never actually participated in a competition should count because he/she participated in practices and received the benefits of coaching and training throughout the year:

17.1.7.3.4 Hour-Limitation Record. Countable hours must be recorded on a daily basis for each student-athlete regardless of whether the student-athlete is participating in an individual or team sport. Any countable individual or group athletically related activity must count against the time limitation for each student-athlete who participates in the activity but does not count against time limitations for other team members who do not participate in the activity.

Event results and statistics are usually maintained by the Sports Information Director in the athletics department and posted on the institution's web site. If the athlete participates in one or more competitions, the athlete is counted as a participant.

Thus, while participants are generally counted as participants on the first day of competition in that sport, counting on the first day is a matter of convenience. An athlete recorded on the Squad List as present on the team on the first day of competition would not necessarily count as a participant if the athlete was not entered to participate in at least one competition in sports in which competition entries are unlimited.¹⁷ Neither would an athlete who never

¹⁷ See *Biediger et al. v. Quinnipiac University*, U.S. Dist. Court (Conn.) Case No. 3:09-CV-6211

participated in a competition and failed to regularly attend team practices and meetings throughout the year be counted as a participant. It is therefore impossible to verify participation numbers until the end of the season and is possible only if all of these documents are available. Further, as previously noted, careful examination of these documents is essential because CSUF participation counting is highly suspect in multiple sports.

(b) The CSUF 2021-22 proposed participation numbers are simply a promise or prediction of compliance without even a hypothetical construction tied to any reality with regard to actual past participation of male and female athletes. A Prong One plan to comply with Title IX must be more than a promise. As I explain to my clients, at the very least, there should be a projection of undergraduate enrollment and a projected sport-by-sport roster management cap (the maximum number of athletes to be selected for each team) that is tied to reasonable team size and that produces the goal of a variance from proportionality of “0.” A “0” variance is necessary to accommodate one or more coaches not achieving their roster management caps (optimum team size). It doesn’t make sense to start any year with a goal of non-compliance with proportionality. Yet, even if one accepts the EADA numbers CSUF advances as accurate, this is exactly what CSUF proposes – a female participation shortfall of eight, exactly the size of a new women’s team that could be added to achieve proportionality (triathlon or bowling). In Mr. Hamm’s December 22, 2020 letter to Mr. Bryant, Mr. Hamm explains:

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.

TABLE 13. CSUF December 22, 2020 Prong One Athletics Numbers

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 practi

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	
		8	

The prediction is based on the CSUF soon-to-be-submitted EADA report for 2019-20, which Mr. Hamm represented would be the projected 2021-22 athletic program restructure minus the 2019-20 participation counts of the three sports to be dropped: women’s lacrosse and men’s tennis and wrestling— resulting in a female participation gap of eight according to Mr. Hamm and nine based on my calculations. See Table 14 below.

TABLE 14. Calculation of Female Participation Gap Under the 2021-22 CSUF Athletic Program Configuration Proposed on December 22, 2020

2021-22 CSUF NUMBERS PROPOSED BY MR. HAMM		
A. Actual 2019-20 EADA Participation/2019-20 Actual Enrollment		
	Male	Female
Total -Athletes- EADA count	210	301
% - Athletes	41.10%	58.90%
Total- Undergrad Students (19-20)	7627	11251
% - Undergrad Students	40.40%	59.60%
Percentage Difference	0.69%	-0.69%
Female Participation Gap		9

If this is truly the gap, CSUF is obligated to address this participation inequity either by adding a sport for the underrepresented sex that is equal to or smaller than this variance (for example triathlon or bowling) or it may reduce men’s participation through roster management by placing caps on the size of men’s teams. Certainly, it cannot intend to create an underrepresentation of one sex that is not permitted. Yet, that is exactly what CSUF is doing. And, far more important, the true female participation gap that will exist at CSUF in 2021-22 is *much* larger than 9 participants.

CSUF’s proposed 2021-22 participation numbers do not take into account any of the EADA counting deficiencies or team inflation concerns I have previously identified in detail. I therefore opine that Mr. Hamm’s EADA-based proposal is seriously flawed and will conservatively require at least four revisions to more accurately count and correct female

underrepresentation. First, Table 15 below proposes the use of my actual 2019-20 men’s and women’s team Web roster counts by sport (see Exhibits G and H of this report) to approximate and remove male practice players and EADA male and female counting deficiencies created by the differences between EADA and Title IX counting rules. I opine that use of Web roster counts more closely approximates Title IX counting rules and acknowledge that any accurate Title IX counting should be based on actual CSUF squad lists and other records detailed above.

TABLE 15. How Use of Actual 2019-20 WEB Roster Counts and 2019-20 Actual Enrollment to Remove Male Practice Player and EADA Male and Female Counting Deficiencies Created by Different EADA Counting Rules May Affect Calculation of the CSUF Prong One Female Athlete Participation Gap

	Male	Female
Total -Athletes - Web count	200	274
% - Athletes	42.19%	57.81%
Total- Undergrad Students (19-20)	7627	11251
% - Undergrad Students	40.40%	59.60%
Percentage Difference	1.79%	-1.79%
Female Participation Gap		21

Second, Table 16 below, adds to Table 15, adjusting the numbers to account for my opinion that the CSUF equestrian team has an inflated roster.

TABLE 16. How (a) Use of Actual 2019-20 WEB Roster Counts and 2019-20 Actual Enrollment to Remove Male Practice Player and EADA Male and Female Counting Deficiencies Created by Different EADA Counting Rules and (b) Remediating Possible Inflation of the Women’s Equestrian Roster by Decreasing the Projected 2021-22 Equestrian Roster from 38 to 32 Participants May Affect Calculation of the CSUF Prong One Female Athlete Participation Gap

	Male	Female
Total -Athletes	200	268
% - Athletes	42.74%	57.26%
Total- Undergrad Students (19-20)	7627	11251
% - Undergrad Students	40.40%	59.60%
Percentage Difference	2.33%	-2.33%
Female Participation Gap		27

In my previous discussion (see pp. 27-29 and Table 5 of this report) of the equestrian roster I explained how allowing all-comers to participate, but not providing them with genuine participation opportunities, created inequitable athletic participation opportunities. I also noted that, in 2019-20, the one year in which I could fully identify actual participation of riders, only 25 members of the 35-rider roster were provided with at least one competitive experience. Conservatively, changing the CSUF proposed squad size from 38 to 32 would remedy this inflation concern. Note that CSUF is an affiliated member of the Big Twelve Conference in equestrian which has a travel squad limit of 32. Again, I acknowledge that any accurate Title IX counting should be based on actual CSUF squad lists and other records detailed above.

Third, Table 17 on the next page adds to Table 16 a third adjustment to account for my opinion that the women's cross country, indoor track and outdoor track are seriously inflated with regard to numbers of participants. See pp. 30 to 37 for a full discussion of this opinion and Tables 6 through 10 within those pages for my estimated quantification of such practices. I propose a remedy to reduce inflation of women's cross country, indoor track and outdoor track combined rosters by decreasing the projected CSUF combined roster of 101 participants to 67 participants, which reflects the number of 2018-19 participants on each roster who competed in 1 or more competitions in each of the three sport seasons. The same gender equity standard should apply to the men's combined cross country/outdoor track program, which would decrease the projected CSUF combined men's cross country/outdoor track roster from 31 to 25 (-1 in cross country and -5 in outdoor track & field). Table 17 below shows how this remedy, combined with the previous two proposed revisions, would impact the CSUF 2021-22 calculation of its Prong One female athlete participation gap.

TABLE 17. How (a) Use of Actual 2019-20 WEB Roster Counts and 2019-20 Actual Enrollment to Remove Male Practice Player and EADA Male and Female Counting Deficiencies Created by Different EADA Counting Rules, (b) Remediating Possible Inflation of the Women’s Equestrian Roster by Decreasing the Projected 2021-22 Equestrian Roster from 38 to 32 Participants and (c) reducing CSUF Combined Women’s Cross Country/Indoor/Outdoor Track Roster from 101 to 67 and the Men’s Combined Cross Country/Outdoor Track Roster from 31 to 25 to Reflect the number of 2018-19 Participants on each Roster who competed in 1 or more competitions in each of these Sport Seasons May Affect Calculation of the CSUF Prong One Female Athlete Participation Gap

	Male	Female
Total -Athletes	194	246
% - Athletes	44.09%	55.91%
Total- Undergrad Students (19-20)	7627	11251
% - Undergrad Students	40.40%	59.60%
Percentage Difference	3.69%	-3.69%
Female Participation Gap		40

Again, I acknowledge that any accurate Title IX counting should be based on actual CSUF squad lists and other records previously detailed.

If CSUF were my client, given my previously expressed concerns regarding the inaccuracy of participant counting, the inflation of women’s rosters and the inability of CSUF to produce a Prong One compliant athletic program since at least 2014-15, I would advise my client to start from scratch and conduct a comprehensive Title IX assessment. Participation is just one aspect of the gender equity issue. There is a need to meet with coaches to ensure the development of a roster management plan in which the size of each team is optimum for each sport. If financial stability is a concern, the prioritization and financial tiering of all sports in a gender equitable manner should be an essential first step. Other gender equity elements requiring CSUF’s immediate attention are scholarships and recruiting. I opine that, based upon my examination to date, CSUF does not appear to fully understand its Title IX obligations or how to construct a fully Title IX-compliant program.

10. I opine that the student-athlete plaintiffs in this case have already suffered considerable harm and would be likely to suffer considerable harm in the future as a result of the elimination of the CSUF lacrosse program effective 2021-22 and the removal of CSUF's current obligation to expand rather than diminish participation opportunities for female athletes. I have not yet reviewed plaintiffs' declarations or interviewed them or their coaches. However, on the basis of 18 years as a director of a Division I women's athletics program and my experience with similarly situated clients, in the following paragraphs I offer the reasons for this opinion.

(a) I opine that, commencing with the announcement of the 2021-22 elimination of the CSUF lacrosse program on October 16, 2020, it will be incredibly difficult to restart this program if it is not immediately reinstated.

If the decision to drop the lacrosse team effective during the 2021-22 season is not stayed, it will be extremely difficult to field a full team of reasonably skilled athletes before 2024-25 at the earliest. My reasons for this opinion are:

- (i) Head and assistant coaches will seek employment at institutions other than CSUF as soon as possible. Prospective head coach applicants will not consider coaching CSUF without an assurance that the team will be restored to its previous varsity sport status in the athletic program. Thus, absent a stay of the proposed program cuts, recruiting a permanent replacement would have to wait until any court case and appeal was completed and resulted in a judgment in favor of the plaintiffs' eliminated team, easily a one to two-year process. Even then, prospective coaches would have to be assured of the long-term stability of the program in some way. Thus, it is unlikely that a favorable court judgment could occur

prior to mid-2022-23, which means a new coach would likely not be hired until the end of the 2022-23 academic year. This would be well after 2023-24 freshman recruiting class members committed to their institutions – which would not include CSUF as a choice.

- (ii) Realistically, recruiting varsity quality athletes to reconstitute the team would have to wait for the hiring of a new coach. Assuming a coach could be hired for the 2023-24 season at the earliest, the first recruiting class of athletes would not arrive on campus until the 2024-25 season, and it is doubtful that sufficient numbers or a balanced roster of freshmen, sophomores, juniors and seniors could be assembled for that season.
- (iii) 2021-22 and 2022-23 team schedules do not exist and rescheduling could occur for the 2023-24 seasons only if all judicial processes were completed, a judgment was rendered in favor of the plaintiffs and there was a sufficient number of current athletes who had not yet graduated or transferred who, combined with transfers and less than high quality athletes could be assembled to participate in a 2023-24 season.
- (iv) Current CSUF freshmen and sophomore players will most likely seek to transfer to other institutions for the fall 2022 semester, because of the academic and financial reasons cited below. It would be almost impossible to transfer for the spring 2021 semester at this late date, except to institutions on a quarterly calendar. Thus, the viability of the team with regard to sufficient numbers of skilled players is likely to be quickly depleted.
- (v) It would take two to four years beginning in 2024-25 for CSUF to rebuild its reputation and gain the confidence of the most highly sought-after prospective student-athletes, who will look at CSUF's decision to drop their sport as a lack of commitment. Only a very high-quality coach hire would minimize this liability.

(b) I opine that there will be a high likelihood of academic harm to individual student athletes who transfer for the purpose of being able to continue their collegiate sports participation. It would be impractical and very unusual for sophomore, junior, and senior transfers to other institutions not to be adversely affected academically. Institutions of higher education seldom accept 100 percent of all courses previously taken by transfer students because they are not exact matches to the courses offered at the new institution. In addition, almost every institution of higher education has minimum residency or credits-earned requirements in order to earn the baccalaureate degree from that institution. Depending on the number of credits accepted upon transfer, the student may be forced to extend her time in college or may have to take heavier academic loads to meet minimum credit or actual residency requirements. Also, it is usually more difficult for transfers to be accepted into more highly desired academic majors, due to prerequisite academic courses that may only be available at the new institution. It is unlikely that there will be a successful transfer to another Division I institution with an exceptional lacrosse program unless the athlete is an exceptional student or proficient enough to qualify for an athletic scholarship or be the beneficiary of special admissions privileges associated with that status. Thus, the transfer student-athlete may be forced to attend an academically less-selective institution and/or one without a comparable quality lacrosse program.

(c) I opine that there will be a high likelihood of financial harm to transferring student athletes. Because lacrosse is an NCAA equivalency sport, athletes are more likely to receive partial athletic scholarships rather than full scholarships unless the athlete is nationally ranked and highly desired. Recruited student athletes usually receive preferred packaging of need-based and merit financial aid, meaning that a larger portion of their financial aid package will be

non-repayable grants rather than loans. Thus, it is more likely that the lacrosse transfer player will attend a lesser resourced Division I institution with a comparable quality athletic program that may or may not have athletic aid available and may or may not have the financial resources available to offer an attractive financial aid package that includes a significant percentage of non-repayable aid.

There are two other factors that will minimize the availability of athletic aid for transfer students: (a) the Covid-19 economic crisis has caused reductions in athletics budgets nationwide and (b) the unplanned extension of the eligibility of college athlete seniors who would have completed their athletic eligibility in the spring of 2020, but, because of Covid-19, did not use their last year of eligibility and plan to return to their original institutions for a “do over.” This may well occur with spring sports athletes in the midst of the 2020-21 2nd wave of the pandemic. The NCAA is permitting member institutions to exceed normal NCAA scholarship limits in 2020-21 in order to accommodate these athletes, but it is unclear what will happen with similarly situated 2020-21 athletes needing to extend their eligibility into 2021-22. In any event, unanticipated athletic scholarship costs ranging from \$250,000 to \$600,000 per institution (depending on number of athletes and differences in cost of tuition) to support athletes whose eligibility has been extended makes it more unlikely that athletic aid and non-athletics non-repayable financial aid will be widely available to new transfer student athletes. Thus, the combination of lack of availability of athletics aid and more loans than non-repayable grants in the packaging of other non-athletics aid increases the likelihood of significant additional financial costs to complete the transferring student-athlete’s education.

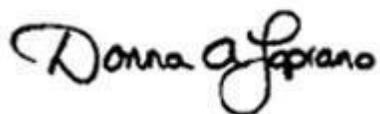
(d) I opine that there will be a high likelihood of harm to individual athletes who remain at CSUF with regard to physical health and well-being and loss of the opportunity to achieve athletic performance outcomes. Because lacrosse is a spring semester sport, we don't know what will happen if the 2020-21 season is cut short or eliminated. However, what happened to 2020 spring sport athletes who lost their spring eligibility because of Covid-19, but graduated, provides historical precedent. Most would probably end their athletic careers, rather than seek another institution to complete their eligibility. Those athletes who must remain at CSUF because of the previously mentioned factors face additional, different types of harm. The Division I athlete's decision to attend a college or university because of the coach and participation in athletics is equally as important, and in some cases, even more important, than the academic opportunities offered. Daily physical conditioning, being pushed by the coach to achieve growth in the acquisition of skills, a commitment to devote 30 to 50 hours per week within a narrow window of time during which an athlete is physically capable of achieving high levels of performance, is a way of life for the athlete. Division I lacrosse is not a recreational sport activity common to most club sports or programs and the experience offered by lower NCAA competitive divisions is not comparable. Division I college sport has become the primary training ground for aspiring USA national team members and Olympians. When coaches are no longer available because they have departed and access to athletics facilities and services is limited because the athlete is no longer a member of the varsity athletic teams, this is a huge culture change that affects the mental health and well-being of athletes that should not be underestimated.

Coaches are the people who help balance the athlete's life, especially when that need is created by the pressures of classes, training, competition, dealing with injuries, etc. They guide the development of team chemistry and instill the player's trust in teammates – relationships that

last for a lifetime. Breaking up the team construct of highly valued intrapersonal relationships is a significant harm – losing your best friend times ten.

(e) I opine that all of the plaintiffs have experienced—and will continue to experience—moral injury because of the fact that their institution failed to fulfill the promises made when they were recruited and the realization that the institution has ignored its obligation to treat male and female athletes equally. CSUF’s lack of notice to athletes regarding the intent to eliminate programs represents a “moral injury” in that athletes trusted that the higher education institution they chose to attend would fulfill its recruiting commitment -- four years of an outstanding education and athletic program benefits. They expected the institution to provide the same certainty with this promise as the availability of academic classes and outstanding faculty. When the proverbial “rug is pulled out from under” student athletes with no notice and no justification, the student athletes are harmed. The female student athletes were also injured by the inequitable ways in which their varsity athletic team was not equally supported prior to the termination decision, then injured again with a terminated decision. They have received a clear message that CSUF does not value their participation or equal treatment obligations under Title IX.

Respectfully submitted,

A handwritten signature in black ink that reads "Donna A. Lopiano". The signature is written in a cursive, flowing style.

Donna A. Lopiano, Ph.D.

Date: February 9, 2021

DONNA A. LOPIANO, B.S., M.A., Ph.D

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Revised as of 2-9-2021

EDUCATION

Doctor of Philosophy in Physical Education	University of Southern California January 11, 1974
Master of Arts in Physical Education	University of Southern California August 20, 1969
Bachelor of Science in Health and Physical Education	Southern Connecticut State College June 8, 1968
Institute for Non-Profit Consulting Certificate of Completion	CompassPoint Nonprofit Services December 7, 2007

PREVIOUS EMPLOYMENT

2012-present Adjunct Professor, Sports Management, Southern Connecticut State University

2008-present President and Founder, Sports Management Resources

- o a consulting firm specializing in educational sport
- o helping sports organizations solve integrity, growth and development challenges
- o www.SportsManagementResources.com

1992-2007 Chief Executive Officer, Women's Sports Foundation
Built an internationally respected education, research and public policy organization:

- o Secured funds that enabled the Women's Sports Foundation to award more than \$50 million in cash grants and educational materials
- o Expanded the Women's Sports Foundation endowment from \$1 million to \$4 million; grew annual revenues from \$1 million to \$10 million and built staff from eight to sixty-five
- o Driving force behind the development of the award-winning GoGirlGo! educational curriculum that since 2001 has reached more than 625,000 girls; significantly changing their attitudes about healthy lifestyle choices
- o Served as a leading expert and national spokesperson on gender equity issues, including Title IX and the Amateur Sports Act, providing expert testimony for numerous court cases on coaches' compensation, athletes' rights, and equitable treatment
- o Repeatedly led national efforts to strengthen Title IX legislation and its enforcement, successfully educating elected officials and policy makers on the importance of upholding the law
- o Recognized as one of the "100 Most Influential Sports Educators in America" by the Institute for International Sport, "100 Most Influential People in Sports" by *The Sporting News* and "The 50 Most Influential People in College Sports" by *College Sports*

1975-1992 Director of Intercollegiate Athletics for Women and lecturer, Kinesiology and Health Education Department, The University of Texas at Austin
Constructed what many believed to be the premiere women's athletics program during this period; twice earning designation of top program in the nation:

- o All eight sports consistently national ranked in the top ten in Division I

PREVIOUS EMPLOYMENT (continued)

- Grew budget from \$57,000 in 1975 to over \$4 million with 34 endowed academic scholarships for student-athletes in 1992
- Eighteen national championships in six different sports, 51 individual sport national champion athletes, 57 Southwest Conference championships and 395 All-American athletes, dozens among them Olympians and world champions
- Ninety percent of women athletes who exhausted their athletic eligibility at the University of Texas received a baccalaureate degree
- Served as Lecturer, Kinesiology and Health Education Department, teaching sports ethics and athletic management

1971-75 Assistant Professor of Physical Education, Assistant Director of Athletics and Head Coach of men's and women's varsity teams at Brooklyn College of The City University of New York

- Led development of new undergraduate curriculum for physical education majors
- Taught undergraduate courses: Philosophical Perspectives of Physical Education, Women in Sport, Behavioral Perspectives of Physical Education, Coaching Techniques, and Psycho-Social Aspects of Women in Sport as well as skills and methods courses in volleyball, basketball, softball and officiating
- Taught graduate courses in Sociology of Sport, Administration of Athletics, Women in Sport
- Initiated women's intercollegiate volleyball and grew it into a nationally ranked program
- Head Coach of women's basketball, women's softball, women's volleyball and men's volleyball

1969-70 Graduate Teaching Assistant, Women's Intramural Director, Women's Intercollegiate Volleyball Coach at The University of Southern California

While a graduate assistant and doctoral student:

- Served as head administrator of the University's women's intramural program
- Served as head varsity volleyball coach
- Taught a variety of sports classes for undergraduate students

Visiting Professor/Adjunct Professor/Executive in Residence - Courses Taught at Other Universities

- Spring 2015-20 Global Issues in Sport and Entertainment Management, Southern Connecticut State University
- Fall 2014-20 Governance and Administration of Sport Organizations, Southern Connecticut State University
- Fall 2012-20 Current Issues in Sport Management, Southern Connecticut State University
- Spring 2014-17 Sport Ethics, Southern Connecticut State University
- 2013-2014 Executive-in-Residence, University of New Haven College of Business
- Fall, 2011 Amateur Sports Governance, New York University
- Spring, 2011 Amateur Sports Governance, New York University
- Fall, 2011 Seminar in Sports Business, Columbia University
- Spring, 2009 Community, Educational and Open Amateur Sports Organization and Governance, University of Massachusetts at Amherst
- Summer, 1981 Sports Programs for Girls and Women, University of Illinois @ Chicago Circle
- Summer, 1980 Coaching Softball, University of Iowa
- Summer, 1979 Athletic Administration, University of Iowa
- Summer, 1976 Administration of Girls' and Women's Athletics, University of Denver
- Summer, 1975 Psycho-Social Aspects of Women in Sport, University of Washington

TEACHING, COACHING AND ADMINISTRATIVE RESPONSIBILITIES

Administrative Experience:

Assistant Director of Athletics, Brooklyn College of The City University of New York
 Director of Intercollegiate Athletics for Women, The University of Texas at Austin
 Chief Executive Officer, Women's Sports Foundation
 President, Sports Management Resources

TEACHING, COACHING AND ADMINISTRATIVE RESPONSIBILITIES

Courses Taught:

	<u>Undergraduate</u>
Contemporary Issues in Sport Management	Philosophical Perspectives of Physical Education
Behavioral Perspective of Physical Education	Coaching for Women
Psycho-Social Aspects of Women in Sport	Intermediate and Advanced Volleyball
Intermediate and Advanced Basketball	Beginning and Intermediate Softball
Methods in Team Sports	Officiating Team Sports
Women in Sport	Coaching Techniques in Volleyball
Ethics in Sport	Contemporary Issues in Sport and Entertainment Management
	<u>Graduate</u>
Sociology of Sport	Administration of Athletics
Women in Sport	Sport Ethics
Community, Educational and Open Amateur Sport	Amateur Sports Governance
Seminar in Sports Business	Governance and Administration of Sport
Governance and Administration of Sport Organizations	Global Issues in Sport Management
	Current Issues in Sport Management

Coaching Experience:

Head Coach of Women's Intercollegiate Volleyball, Basketball and Softball
Head Coach of Men's Intercollegiate Volleyball
Head Coach, Italian National Softball Team
Pitching Coach, Professional Women's Softball

PROFESSIONAL ORGANIZATIONAL AFFILIATIONS

American Alliance for Health, Physical Education, Recreation and Dance
National Association of Collegiate Women Athletics Administrators
Women's Sports International
The Drake Group

HONORARY DEGREES

Honorary Doctorate, Monmouth University, West Branch, New Jersey, May 20, 1998
Honorary Doctorate, Ripon College, Ripon, Wisconsin, May 16, 1998
Honorary Doctorate, St. Joseph's College, Hartford, Ct., September 14, 1994
Honorary Doctorate, United States Sports Academy, July 8, 1994
Honorary Doctorate as Outstanding Alumnus, Southern Connecticut State University, May 28, 1993
Ethics Fellow, Institute for International Sport, 1990

HALL OF FAME AWARDS

Texas Sports Hall of Fame, 2011
Fairfield County (CT) Sports Hall of Fame, 2007
Public Schools Athletic League Hall of Fame Award, Brooklyn, NY, November 22, 2003
Verizon Academic All-American Hall of Fame, Cleveland, OH, June 28, 2003
Connecticut Women's Basketball Hall of Fame 16th Anniversary Induction, New Haven, CT, April 10, 2003
Connecticut High School Coaches Association Hall of Fame, Southington, CT, November 14, 2002
National Italian American Sports Hall of Fame, Inc., Chicago, IL, 2001
International Scholar-Athlete Hall of Fame, Institute for International Sport, Kingston, Rhode Island, June 27, 1999
Connecticut Women's Hall of Fame, 1995
Texas Women's Hall of Fame, 1987, by the Governor's Commission for Women
CommuniPlex National Women's Sports Hall of Fame, 1987, Cincinnati, Ohio
Southern Connecticut State University Alumni Sports Hall of Fame, 1986, SCSU Alumni Association
National Sport Hall of Fame, 1985, by the National Association for Sport and Physical Education
National Softball Hall of Fame, 1983, American Softball Association

OTHER AWARDS AND HONORS

Lalia Rach Profile in Excellence Award, NYU Preston Robert Tisch Center for Hospitality, Tourism, and Sports Management Sports Business and Graduate Sports Business Societies, April, 2014

NCAA Gerald R. Ford Award, 2013, honors an individual who has provided significant leadership as an advocate for intercollegiate athletics over the course of his or her career

100 Most Influential Sports Educators in America, 2013

American Civil Liberties Union, Nine of the Most Influential Actors in Title IX's History, April, 2012

Elm City Legend, Connecticut March of Dimes, New Haven, CT, November, 2011

"The Champions: Pioneers and Innovators in Sports Business" Award, Sports Business Journal/Sports Business Daily, March, 2010

Cal Ramsey Distinguished Lecturer in Sports Management, New York University, 2009

Sports Lawyers Association, 2008 Award of Excellence

Women in Sports Business Symposium 2008 Woman of the Year Award, University of Oregon Warsaw Center for Sports Marketing

Institute for International Sport, 100 Most Influential Sports Educators in America, 2007

Adelphi University Sports Leadership Institute, Community Leadership Award, 2007

New York Institute of Technology William T. "Buck" Lai Wonderful Life Achievement Award, June 21, 2007

Ithaca College Department of Sport Management and Media, Distinguished Sports Industry Leader Award, 2007

The Sporting News, "The 100 Most Influential People in Sport," 1997 (#67), 1996 (#46), 1995 (#41), 1994 (#43), 1993 (#62), 1992 (#72)

College Sports, "The 50 Most Influential People in College Sports," 1996-97 (#22) 1995-96 (#10), 1994-95 (#31)

International Olympic Committee Women and Sport Trophy, 2005

Miami-Dade Community College Honor Award, Champion of Equal Opportunity for Women in Sports and Education, 2005

Columbia-Barnard Athletic Consortium Award for Exemplary Contributions to the Advancement of Athletic Opportunities for Girls and Women, Feb. 6, 2004

Patsy Mink Memorial Title IX at 30 Award, National Association for Girls and Women in Sports, 2003

Women in Leadership Award, The Center for Women of NY, Elmhurst, NY, June 19, 2003

Jacobs Institute for Women's Health, Excellence in Women's Health Award, Washington, D.C., May 16, 2002

National Association of Collegiate Directors of Athletics (NACDA) 30th Anniversary of Title IX Award, 2002

United States Sports Academy Distinguished Service Award, 2001

International Olympic Committee, Women and Sport Achievement Award, 2000

San Antonio Sports Foundation Appreciation Award, 2000

The Feminist Majority Foundation Contribution Award "for unique contribution to the historic struggle for women's equality and human rights", 2000

Town of North Hempstead Recognition Award for Support of the Education and Assistance Corporation, 1999

Nassau County, State of New York, Special Commendation for Outstanding Service to Local Citizenry, 1999

National Association of Collegiate Women Athletic Administrators Honor Award for Outstanding Support of Women Athletes and their Sports, 1998

National Association of Sports Commissions Recognition Award, 1998

Sporting Goods Business Woman of the Year (Non-Profit Organization), 1998

Stamford Old Timers Athletic Association National Honoree, 1998

Women's Sports and Fitness Magazine, The 20 Most Influential Women in Sports, 1997

NCSC Lifetime Achievement Award, 1997

Girl Scouts of Nassau County Juliette Low Award of Distinction, 1996

New York State Public High School Association, Inspiration Award, Young Women in Sport Forum, April, 1995

Tennessee Lawyers Association for Women Recognition Award, 1995

NAFFY Award (National Association for Female Executives), 1995

King County and NYSAC Award for Contributions in Sports., 1994

National Collegiate Athletic Association Silver Anniversary Award, 1993

Dallas All Sports Association Distinguished Service Award, 1992

OTHER AWARDS AND HONORS (cont.)

National Association for Girls and Women in Sports Guiding Woman in Sport Award, 1992

National Association of Collegiate Women Athletic Administrators, District 7 NACWAA

Administrator of the Year, 1992 and 1991

National Association for Girls and Women in Sport Guiding Woman in Sport Award, 1992

Recipient of the 1987 Flo Hyman Memorial Gazelle Award "to honor a person who exemplifies feminist values in athletics and scholarship." Presented by the Project on Equal Education Rights of the NOW Legal Defense and Education Fund, 1987.

Margaret C. Berry Award for Outstanding Contribution to Student Life, 1985, by the Eyes of Texas

LEADERSHIP EXPERIENCE

Current:

Member, President, Board of Directors, The Drake Group (2015 to present)

Member, Advisory Board, Fishlinger Center for Public Policy Research, College of Mount St. Vincent (2015 to present)

Member, Advisory Board, The Drake Group, (2010 to present)

Member, Advisory Board, Champion Women (2015-present)

Chair, Drake Working Group on Collegiate Athletics Reform (2013 –present)

Member, Advisory Board, Sports Law Institute, Vermont Law School (2013 to present)

Member, Advisory Board, Friends of the Tisch Center – Sports (2011 to present)

Member, Advisory Board, Center for Research on Sport & Physical Activity, D'Youville College (2010 to present)

Member, Foundation for Global Sports Development (formerly Justice for Athletes), Advisory Board (2005 to present)

Member, Advisory Board PowerPlay NYC, (2001 to present)

Member, Advisory Board of the MBA in Sport Management, Florida Atlantic University (2000 to present)

Member, Committee of Advisors, Positive Coaching Alliance (1999 to present)

Member, Editorial Advisory Board of *Athletic Business* (1997 to present)

Past:

Member, National Honors Committee of The National Women's Hall of Fame (1994 to 2015)

Chair, International Baseball Federation (IBAF) Women's Baseball Committee (2009)

Member, Advisory Board, 2003 World Congress of Sports

Member, The ESPY Academy, (2002 to 2004)

Member, United States Olympic Committee Board of Directors, Public Sector member (2000 to 2004)

National Gambling Task Force, National Association of Student Personnel Administrators (1999)

Member, Major League Golf Advisory Board (1999)

Member, 1999 FIFA Women's World Cup Advisory Board (1997)

Member, Advisory Board of SportsBridge (1997)

Member, Nassau County (NY) Sports Commission (1995 to 2007)

Member, Sara Lee Frontrunners Award Selection Committee, (1995-2000)

Member, National Advisory Board to the National Consortium for Academics and Sports (1993 to 2004)

Editorial Board, *Training Table* magazine, United States Sports Academy (1993)

Advisory Board, *Fitness* magazine (1993-2000)

ESPN American Sports Awards, Select Nominating Committee (1992-2000)

SMART Eureka Advisory Board (1992-1998)

NCAA Gender Equity Task Force (1992 to 1993)

NACDA Foundation Blue Ribbon Review Committee, (1992)

Ethics Fellow, Institute for International Sport (1990 to 1998)

Member, Southern Association of Colleges and Schools Commission on Colleges Committee on Intercollegiate Athletics (1990-91)

Babe Zaharias Award Selection Committee (1990)

Chair, Education Division of Capital Area United Way (1990)

Member, National Advisory Board of the Center for the Study of Sport in Society (1989 to 2008)

Member, Advisory Board, Center for Athletes' Rights and Education (1989 to 2003)

Chair, NCAA Legislative Review Committee (1989-1992)

Member, NCAA Cost Reduction Committee (1989-90)

LEADERSHIP EXPERIENCE (cont.)

Past (cont.)

Chair, National Association of Collegiate Women Athletic Administrators Television Committee (1988 to 1992)
Member, Executive Committee, Project Fair Play of Texas (1988-92)
Member, Future Directions Committee, University of Texas Ex-Students' Association (1988-90)
Member, Sports Foundation Feasibility Committee of the Austin Chamber of Commerce (1988-89)
Member, Community Advisory Board for Austin's Ronald McDonald House (1987-1992)
Trustee, Women's Sports Foundation (1987-1991)
Member, Council of Collegiate Women Athletic Administrators Legislation Committee (1986 to 1992)
Member, Board of Directors of the Women's Advocacy Project (1986-1992)
Member, NCAA Manual Revision and Deregulation Committee (1986-89)
Member, Executive Committee of the Texas University Interscholastic League (1986-88)
Member, City of Austin Parks and Recreation Board (1986)
Member, Board of Governors of the Texas Foundation for Intercollegiate Athletics for Women (1984-92)
Member, United States Olympic Development Committee (1984-88)
President, Association for Intercollegiate Athletics for Women (AIAW) (1981)
President-Elect, Association for Intercollegiate Athletics for Women (1980)
Past-President, Association for Intercollegiate Athletics for Women (1982)
President, Southwest Association for Intercollegiate Athletics for Women (1980)
President-Elect, Southwest Association for Intercollegiate Athletics for Women (1979)
Consultant to Office of Civil Rights, U.S. Department of Education on Title IX Investigations of Athletic Programs (1979)
Investigator, American Council on Education Study of the Financial Problems of Intercollegiate Athletics (1978-79)
Member, AIAW Ethics and Eligibility and Eligibility Committee (1978)
Chair, AIAW Television Committee (1976-77)
Chair, AIAW President's Summit Conference on Intercollegiate Athletics (1976)
Member, NAGWS Development Committee (1975-76)
Member, AIAW Restructure Committee (1975)
Chair, AAHPERD/DGWS Softball Guide Committee (1974-76)
Member, Eastern Association of Intercollegiate Athletics for Women Volleyball Committee (1974-76)
Member, AAHPERD Secondary Physical Education Commission Ad Hoc Committee for the Development of a Secondary Physical Education Program Assessment Instrument (1974-75)
Chair, United States Collegiate Sports Council Volleyball Committee (1973-75)
Director, National Softball Program, Italian Olympic Committee (1973-75)
Chair, AAHPERD/DGWS Softball Examinations and Rating Committee (1973-75)
Chair, New York State Association for Intercollegiate Athletics for Women's Volleyball Sport Committee (1972-74)

EXPERT WITNESS/CONSULTANT – LAWSUITS

Association of Intercollegiate Athletics for Women v. the National Collegiate Athletic Association (Washington, DC - antitrust)
Pam Bowers v. Baylor University (Texas – employment discrimination/Title IX)
Pam Pederson, Lisa Oller and Semantha Clark v. Louisiana State University (Louisiana – Title IX)
Ann A. Pitts v. State of Oklahoma (Oklahoma State University – employment discrimination)
Marianne Stanley v. University of Southern California (California – employment discrimination)
Jennifer Roberts et al v. Colorado State University (Colorado – Title IX)
Rachel Sanders et al v. University of Texas at Austin (Texas – Title IX)
Cohen et al v. Brown University (Rhode Island – Title IX)
Roth v. School Board (sexual harassment/Title IX)
Sonya Tyler v. Howard University (Washington, D.C.- employment/Title IX)
Weaver v. Ohio State University (Ohio – employment discrimination/Title IX)
Haffer et al v. Temple University (Pennsylvania – Title IX)
Blair et al v. Washington State University (Washington – Title IX)
Hession et al v. Rollins College (Florida – sexual harassment of students/Title IX)
Joanne A. Fortunato v. Keene State College, et al (New Hampshire – employment discrimination)
Tannisha Stevens v. Univ. of Michigan (Michigan - injury)

EXPERT WITNESS/CONSULTANT – LAWSUITS (cont.)

Molly Perdue v. City University of New York et. al. (New York – employment discrimination/Title IX)
Vicki Dugan v. Oregon State University (Oregon – employment discrimination/Title IX)
Norman Law, et al. v. National Collegiate Athletic Association (Kansas – employment discrimination)
Jan Lowrey v. Texas A&M University System, et al. (Tarleton U./Texas – employment discrimination/Title IX)
Grandson v. University of Minnesota-Duluth, et al (Minnesota-Title IX athletics)
Thompson, Lindahl, Jeffries v. University of Minnesota-Duluth, et al. (Minnesota – Title IX athletics)
Julian v. Southwest Baptist University (Missouri – Title IX retaliation against coach)
Kevin Alston and Sandra Alston, et. al., v. Virginia High School League, Inc., et al. (Virginia – girls playing in non traditional seasons)
Daniel Daniels, as next friend of Jessica Daniels and Jennifer Daniels, as representatives of a class of similarly situated persons v. School Board of Brevard County California (Florida – Title IX facilities, benefits)
Kaitlin Baca, et al v. City of Los Angeles, et al (U.S. District Court-Central District of California – city recreational facilities)
Communities for Equity vs. Michigan High School Athletic Association (US District Court-Western District Court of Michigan-non-traditional seasons)
Mason et al v. Minnesota State High School League (U.S. District Court-Minnesota-Title IX facilities)
Ries v. Montana High School Association (Montana Human Rights Act/State Equal Protection – non-traditional seasons)
Ashley Bellum, et all v. City of Grants Pass (Oregon gender inequality in assignment of softball facilities by parks and recreation)
Humphreys, Karen Moe v. Regents of the University of California, University of California, Berkeley (employment sex discrimination)
Burch v. Regents of the University of California, et. al (Title IX retaliation against coach)
Mansourian et al. v. Regents of the University of California, et al. (Title IX retaliation against coach)
Ollier et al v. Sweetwater Union High School District, et al (Title IX)
Young v. Indiana High School Athletic Association and Monroe County Community School Corporation (Title IX denial of baseball participation opportunity)
Biediger et al. v. Quinnipiac University (Title IX athletics participation)
Surina Dixon v. Texas Southern University (Title IX retaliation against coach)
Kathleen Bull v. Ball State University (Title IX retaliation against coach)
Bigge v. Citrus County School Board (Title IX retaliation against parents)

POST 2012

Brenny v. Board of Regents of the University of Minnesota and John Harris (employment-gender and sexual orientation discrimination)
Burns v. Board of Trustees California State University, San Diego State University (employment-Title IX retaliation)
Miller, Banford and Miles v. Board of Regents v. University of Minnesota, University of Minnesota-Duluth (employment-gender and sexual orientation discrimination, Title IX retaliation)
Jane Doe No. 1 (a pseudonym) v. Bikram Choudhury, Bikram Yoga College of India (gender discrimination, sexual assault)
Jane Doe No. 3 (a pseudonym) v. Bikram Choudhury, Bikram Yoga College of India (gender discrimination, sexual assault)
Alexie Portz, et al on behalf of all those similarly situated vs.St. Cloud State University and Minnesota State Colleges and Universities (Title IX athletics participation)
Jane Meyer vs. The University of Iowa, Board of Regents, State of Iowa, and the State of Iowa (employment-gender and sexual orientation discrimination, Title IX retaliation)
Tracey Griesbaum vs. The University of Iowa, Board of Regents and the State of Iowa (employment-gender and sexual orientation discrimination, Title IX retaliation)
Lauren Working, et al v. Lake Oswego School District (Oregon) (Title IX athletics)
B.W. v. Black Hills Football Club (Title IX sexual harassment)
Struthers and Brandt v. Red Bluff Joint Union High School District (California) (Title IX athletics)
Videckis and White v. Pepperdine University (Title IX sexual harassment/sexual orientation)
Robb et al. v. Lock Haven University of Pennsylvania (Title IX athletics)
Christine A. Cochran v. Bethune-Cookman University (employment-gender, Title IX retaliation)

EXPERT WITNESS/CONSULTANT – LAWSUITS (cont.)

Sheila Hudson v. California State University (employment-gender, Title IX retaliation)
C.B. v. Black Hills Football Club (Title IX sexual harassment)
K.H. v. Black Hills Football Club (Title IX sexual harassment)
Noriana Radwan v. University of Connecticut (Title IX – athlete treatment)
Jamie Howard v. William Jessup University (Title VI and IX employment)
A.B., by her parents and next friends, C.B. and D.B., and T.T., by her parents and next friends, K.T. and S.T. v. Hawaii State Department of Education and Oahu Interscholastic Association
Bonnie J. Kenny, Cindy Gregory v. University of Delaware, et al.
A.C. v. United States Bowling Congress, Greater Seattle USBC, Northwest Challenge League f/k/a Puget Sound Travel League, Washington State Young American Bowling Alliance, Lee Treddenbarger
J.L. v. United States Bowling Congress, Greater Seattle USBC, Northwest Challenge League f/k/a Puget Sound Travel League, Washington State Young American Bowling Alliance, Lee Treddenbarger
T.M. v. United States Bowling Congress, Greater Seattle USBC, Northwest Challenge League f/k/a Puget Sound Travel League, Washington State Young American Bowling Alliance, Lee Treddenbarger
S.G., by and through her general guardian, BRENT GORDON; et al v. Jordan School District, et al U.S. District Court - Utah
Amy Cohen, et al v. Brown University, Christina Paxson (2020)
Sage Ohlensehlen, et al v. The University of Iowa, Bruce Harreld, Gary Barta (2020)
Sophia Balow, et al v. Michigan State University, et al (2021)

PUBLICATIONS

Books, Books Chapters, Handbooks and Research Reports

- Lopiano, D. and C. Zotos (2013) *Restructuring A College Athletic Program to Protect Olympic Sports During Financial Uncertainty*. Champaign, IL: Human Kinetics.
- Gurney, G., Lopiano, D. and Zimbalist, A. (2017) *Unwinding Madness: What Went Wrong with College Sports and How to Fix It*. The Brookings Institution: Washington, DC.
- Lopiano, D. (2015) The roots of corruption in US collegiate sport. Global Corruption Report: Sport. Transparency International. Routledge: London/New York
- Lopiano, D. and C. Zotos (2015) "Athlete welfare and protection policy development in the USA" in *Safeguarding, Child Protection and Abuse in Sport: International perspectives in research, policy and practice* edited by Melanie Lang and Mike Hartill, London and New York: Routledge, pp. 97-106.
- Lopiano, D. and C. Zotos (2013) *Athletic Director's Desk Reference*. Champaign, IL: Human Kinetics.
- Lopiano, D., Fortunato, J, Hogshead-Makar, N. and Starr, K. (2012) *Safe4Athletes Handbook: Local Sport Club Policies and Procedures to Provide Athletes with a Safe and Positive Environment Free of Sexual Abuse, Bullying and Harassment*. Safe4Athletes.org See: <http://safe4athletes.org/4-clubs/model-policy>
- Lopiano, D., M. Snyder and L. Zurn. (2007). The Women's Sports Foundation Report: The Status of Female Youth Health and Physical Activity in the Boston Metropolitan Area. East Meadow, NY: Women's Sports Foundation.
- Lopiano, D. (2006) "Gender and Sport" in *New Game Plan for College Sport* edited by Richard E. Lapchick, American Council on Education and Praeger Publishing, pp. 127-155.
- Lopiano, D., and Lakowski, T. (2006). *Increasing Youth Sports & Physical Activity Participation: A Women's Sports Foundation Public Policy Guide*. East Meadow, NY: Women's Sports Foundation.
- Lopiano, D. (2002) *Advocating for Gender Equality in Sport: The Experience of the Women's Sports Foundation in the United States. A Guide and Education Kit*. Women's Sports Foundation, East Meadow, NY.
- Lopiano, D. and C. Zotos. (2001) *Women's Sports Foundation Education Guide: Special Issues for Coaches of Women's Sports*. East Meadow, NY: Women's Sports Foundation.

PUBLICATIONS

Books, Books Chapters, Handbooks and Research Reports

"Women's Sports: Coming of Age in the Third Millennium", in *The Olympics at the Millennium: power, politics, and the games*, edited by Kay Schaffer and Sidonie Smith, Rutgers University Press, pp. 117-127, 2000.

"Gender Equity in Sports" in *Medical and Orthopedic Issues of Active and Athletic Women*, edited by Rosemary Agostini, M.D., Hanilye & Belfus, Inc., Philadelphia, PA, pp. 13-22, 1994.

"Modern Athletics: The Pressure to Perform," with Connee Zotos in *Eating, Body Weight, and Performance in Athletes: Disorders of Modern Society*, 1991.

"Equity Issues and Policy Problems in Women's Intercollegiate Athletics" with Connee Zotos in *The Rules of the Game: Ethics in College Sport*, edited by Richard Lapchick and John Slaughter, McMillan, 1989.

"A Political Analysis of the Possibility of Impact Alternatives for the Accomplishment of Feminist Objectives Within American Intercollegiate Sport," *Fractured Focus: Sport as a Reflection of Society*, Richard E. Lapchick, editor. Lexington, MA: Lexington Books, 1986.

The Baseball-Softball Playbook with Ron Polk, Ron Polk, Mississippi State University, 1980.

The Money Game: Financing Collegiate Athletics with Robert H. Atwell and Bruce Grimes, American Council on Education, Washington, D.C., 1980.

Coaching Clinic with David Pierce, Canadian Amateur Softball Association, Ottawa, Ontario, 1974.

Journal Articles

"Re-Affirming the Value of the Sports Exception to Title IX's General Non-Discrimination Rule" with Doriane Lambelet Coleman and Michael J. Joyner. *Duke Journal of Gender Law & Policy*, March, 2020

"Fixing enforcement and due process will not fix what is wrong with the NCAA." *Roger Williams University Law Review*, 20:2, Spring, 2015, pp. 250-291.

"It's Time for the NCAA and Other Educational Sport Governance Organizations to Get Serious about Gender Equity". *Journal of Physical Education, Recreation and Dance*, Vol. 85, No. 2, February, 2014.

"Time for a Sport Sex-Discrimination Uprising of a Different Sort". *Journal of Physical Education, Recreation and Dance*, Vol. 84, No. 1, January, 2013.

"Women's Impact on Sport", in *Perspectives, 2001, The Multidisciplinary Series of Physical Education and Sport Science, Volume 3, The Business of Sport*, edited by Darlene Kluka and Guido Schilling, Oxford: Meyer & Meyer Sport (UK) Ltd., 2001, pp. 131-142.

"Equity in Women's Sports: A Health and Fairness Perspective", *Clinics in Sports Medicine: The Athletic Woman*, Vol. 13, No. 2, April, 1994, pp. 281-296.

"Colleges Can Achieve Equity in College Sports," *Texas Entertainment and Sports Law Journal*, Volume 3, No. 1, Spring, 1993, pp. 6-8.

"Recruiting, Retention and Advancement of Women in Athletics, Coaching and Administration" in *Perspectives: Journal of the Western Society for Physical Education of College Women*, Volume 12, 1992, pp. 5-11.

"Perceived Problems and Sources of Dissatisfaction for Coaches of Women Sports, with Dorothy J. Lovett and Carla Lowry in" *The Applied Research in Coaching and Athletics Annual 1991*, March 1991, pp. 207-241.

"The Good News/Bad News About Women's Athletics," *Southern Feminist*, Vol. 4, No. 2, Spring, 1987.

Congressional Testimony

"Statement of Donna A. Lopiano Before Subcommittee on Commerce, Consumer Protection, and Competitiveness, U.S. House of Representatives, February 17, 1993".

Congressional Testimony

"Statement of Donna A. Lopiano Before Subcommittee on Post Secondary Education of the Committee on Education and Labor, U.S. House of Representatives, *Hearings on the Roles of Athletics in College Life*, May 18, 1989.

"Statement of Donna A. Lopiano, Women's Athletic Director of the University of Texas at Austin," *Prohibition of Sex Discrimination: Hearings on S.2106* Before the Subcommittee on Education of the Senate Committee on Labor and Public Welfare, 94th Congress, First Session (1975), (Washington, D.C.- U.S. Government Printing Office), pp. 105-113, 115-136.

PUBLICATIONS

Editorials, Opinion, Business Magazine and .com Articles

Donna Lopiano and Andrew Zimbalist. (December 20, 2020) The NCAA Sports Model is Broken and It's Time for Congress to Step In. *Forbes.com*. Retrieve at: <https://www.forbes.com/sites/andrewzimbalist/2019/12/20/the-ncaa-sports-model-is-broken-and-its-time-for-congress-to-step-in/?sh=734bf23d09c>

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Fast Pitch Softball: Defensive Strategies (Part II), Truckee River Studios, Inc. (Verdi, Nevada), 1985.

ATHLETIC PARTICIPATION

Participated in 26 National Championship tournaments in four different sports

Softball:

- National Hall of Fame, American Softball Association
- Participated in Ten National ASA Softball Championship tournaments (as member of six national championship and four national championship runner-up teams)
- Nine-Time Softball All-American at four different positions (pitcher, shortstop, first base and second base)
- 3-time National Tournament Most Valuable Player and 1-time Batting Champ (.429)
- U.S. National Team Player at 1967 Pan American Games and 1966 first World Softball Championships
- Amateur softball career marks as a pitcher:

183-18 won/lost record	15-2 in National Championship play
.910 winning percentage	1,633 strikeouts in 817 innings
ERA .25 (51 earned runs in 10 years)	
- Played professional softball for three years-in two national championship finals (both times runner-up)

Volleyball:

- Participant in Five National USVBA Volleyball Championship Tournaments

Basketball:

- Participant in Five National AAU Basketball Championship Tournaments

Field Hockey:

- Participant in Three National Field Hockey Championship Tournaments



Donna A. Lopiano, Ph.D.

Fees for Expert Consultation and Services Related to Pending or Probable Litigation

Expense Type	Fee Basis
Consultation with attorneys related to preparation for depositions, trial testimony, expert reports, compliance plans or legal theories	\$200/hour
Preparation of written reports including review of case materials, research/data collection related to preparation of such reports	\$250/hour
Deposition or court testimony	\$500/hour
Hours traveling Exception: consultant travels for court testimony and such appearance does not occur for any reason - \$2,000/day flat rate. Exception: assumes a video capability for deposition; consultant shall not be required to travel a distance greater than 50 miles from Shelton CT	No charge
Site Visits for assessment, presentations, or other purposes requested by client	\$2,500/day flat rate
"Out-of-pocket" expenses for site visits including:	Actual
<ul style="list-style-type: none"> • postage, mailing or overnight shipping costs or reproduction of materials detailed above upon which analysis will be based • actual cost of coach class travel (except for for airline trips in excess of 1,000 miles, "extra space" seating if available in coach class and for international travel, business class airfare) • actual cost of transfers to and from Shelton, Connecticut and LaGuardia or JFK airports for departure and return travel and, at the destination, transfers from and to the airport and hotels and/or the site to be visited • actual cost of accommodations, including internet service • provision of meals or reimbursement for actual cost not to exceed \$75.00 per diem 	

Invoicing and Payment Terms

"Out-of-pocket" expenses - Receipts shall be submitted for all out-of-pocket expenses with payment due within 30 days of receipt of invoice.

Fees – Written invoice with work record of billable hours shall be submitted for all fees upon completion of reports, site visits, and deposition and/or trial testimony with payment due within 30 days of receipt of invoice.

Interim Reports

Interim report(s) of hours spent or fees/expenses-to-date shall be submitted upon the request of client at any time.

APPENDIX C

DOCUMENTS, DATA OR INFORMATION CONSIDERED IN THE FORMATION OF EXPERT OPINIONS

The following documents and sources were relied upon in the formulation of opinions contained in this initial report.

Bryant, Arthur. Letter to Joseph I. Castro, President, California State University, Fresno dated December 3, 2020.

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United States Department of Education Office for Civil Rights Recent Resolution Search. <https://ocras.ed.gov/ocr-search>

United States Department of Education Equity in Athletics Disclosure Act Database. Retrieved at: <http://ope.ed.gov/athletics/#/>

United States Department of Education Office of Postsecondary Education (OPE). (2016) Equity in Athletics Disclosure Act (EADA) Data Analysis Cutting Tool User Guide: June, 2016. Retrieved from: <https://ope.ed.gov/athletics/public/html/help/2016%20EADA%20Data%20Analysis%20Cutting%20Tool%20User%20Guide.pdf>

United States Department of Education Office of Postsecondary Education (OPE). (2009) User's Guide for the Equity in Athletics Act Web-Based Data Collection.

United States Government Title IX Resources:

- 20 U.S.C. '1681 et seq. ("Title IX")
- 24 CFR Part 106 (the "Title IX regulations")
- OCR's 1979 Policy Interpretation on Title IX and Intercollegiate Athletics
- OCR's 1996 Policy Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test
- OCR's 2003 Further Policy Clarification on the Three-Part Test
- OCR's 2010 Dear Colleague Letter re: Prong Three of the Three-Part Test
- OCR's 1990 Title IX Athletics Investigator's Manual

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ASSURANCE OF COMPLIANCE – CIVIL RIGHTS CERTIFICATE

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, TITLE IX OF THE EDUCATION AMENDMENTS OF 1972, SECTION 504 OF THE REHABILITATION ACT OF 1973, THE AGE DISCRIMINATION ACT OF 1975, AND THE BOY SCOUTS OF AMERICA EQUAL ACCESS ACT OF 2001

The applicant provides this assurance for the purpose of obtaining Federal grants, loans, contracts (except contracts of insurance or guaranty), property, discounts, funds made available through the U.S. Department of Education, or other Federal financial assistance from the Department. This assurance applies to all Federal financial assistance from or funds made available through the Department, including any that the applicant may seek in the future.

The applicant assures that it will comply with:

1. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.*, which prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance.
2. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 *et seq.*, which prohibits discrimination on the basis of sex in any education program or activity receiving Federal financial assistance.
3. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability in any program or activity receiving Federal financial assistance.
4. The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*, which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance.
5. If applicable, the Boy Scouts of America Equal Access Act of 2001, 20 U.S.C. 7905, which requires equal access for the Boy Scouts of America and other designated youth groups to meet at public schools. This law applies to any public elementary school, public secondary school, local educational agency, or State educational agency that has a designated open forum or limited public forum and that receives funds made available through the Department.
6. All regulations, guidelines, and standards issued by the Department under any of these statutes.

The applicant understands that it must comply with items 1-6 in order to continue receiving Federal financial assistance from the Department. The applicant also understands that this Assurance is binding on the applicant, its successors, transferees, and assignees at any time during which federal financial assistance is provided. The applicant will ensure that all contractors, subcontractors, subgrantees, or others with whom it arranges to provide services or benefits are not discriminating in violation of items 1-6. Otherwise, the financial assistance can be terminated and the applicant can be declared ineligible to receive further assistance. The applicant also understands that the Department may seek a court order requiring compliance with items 1-6 or seek other appropriate judicial relief.

By signing this form, the applicant is agreeing to the above provisions.

Signature of Authorized Official	Title
Print Name	Name of Institution or Agency
Date	Street
PLEASE RETURN TO:	City, State, Zip Code
U.S. Department of Education Office for Civil Rights 400 Maryland Avenue, SW Washington, DC 20202-1100	Office Email Address

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According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain or retain benefit (42 U.S.C. 2000d *et seq.*; 20 U.S.C. 1681 *et seq.*; 29 U.S.C. 794; 42 U.S.C. 6101 *et seq.*; 20 U.S.C. 7905). Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, 400 Maryland Ave., SW, Washington, DC 20202-4536 or email ICDocketMgr@ed.gov and reference the OMB Control Number 1870-0503. Note: Please do not return the completed Assurance of Compliance – Civil Rights Certificate to this address.

EXHIBIT E

<https://www.tfrrs.org/>
WOMEN

TFRRS Database

Select Team - Fresno State Women or Fresno State Men

	Web Roster	1st Comp.	Champ.	# 2+ comp.	# 1 only.	# 0 comp.	Last Names - 1 competition	Last Names - 0 competitions
2012 Cross Country	23	Aug. 31	Oct. 26	8	2	13	Etherton, Schwanz.	Allen, Baran, Boone, Duffy, Heyano, Kubasch, Rosa, Taylor, Toree, Unadia, Washington, Wells, Acosta.
2013 Cross Country	18	Sept.14	Nov. 23	11	3	4	Baran, Heyano, Taylor,	Carbajal, Mendoza, Rosa, Washington.
2014 Cross Country	18	Sept. 5	Nov. 22	9	3	6	Unadia, Acosta, Weaver.	Baran, Bell, Braucher, Craver, Padilla, Viramontes.
2015 Cross Country	13	Sept. 11	Nov. 13	5	5	3	Acosta, Craver, Padilla, Samson, Weaver.	Baran, Schwanz, Una'Dia.
2016 Cross Country	18	Sept. 2	Nov. 19	8	0	10	N/A	Begin, Berry, Craver, Efonye, Fellows, Hairston, Mattson, Padilla, Pogorevc, Rivera.
2017 Cross Country	16	Sept 2	Nov. 18	6	0	10	N/A	Begin, Craver, Efonye, Hairston, Harris-Murille, Mattson, Normal, Omawahleh, Pogorevc, Sumler.
2018 Cross Country	9	Sept. 1	Nov. 9	8	0	0	N/A	0
2019 Cross Country	15	Sept. 14	Nov. 15	6	1	8	Stevens	Antic, Bins, Fox, Frometa, Madarieta, Miezava, Roshofa, Wheaton
2020 Cross Country	9							
	Web Roster	1st Comp.	Champ.	# 2+ comp.	# 1 only.	# 0 comp.	Last Names - 1 competition	Last Names - 0 competitions
2009-10 Indoor	41	Feb. 5	Feb. 27	16	2	23	Rogers, Mizel.	Cabias, Diaz-Gonzales, Dominguez, Erickson, McPhail, Montes, Morris, Oviedo, Paredes, Sellick, Smith, Souder, Torre, Votaw, Warmerdam, Campbell, Embry, Marsh, Mizel, Moncur-Blue, D. Rudolph, J. Rudolph, Vazquez.
2010-11 Indoor	47	Jan. 28	Mar. 12	22	1	24	Cruz.	Allen, Binns, Bledsoe, Boone, Brumwell, Cabias, Gambala, Greenman, Heyano, Mendoza, Menefield, Murillo, Parker, Ribeiro, Rogers, Smith, Torre, Votaw, Warmerdam, Washington, Wells, Crouse, Folau, Vazquez.
2011-12 Indoor	46	Jan. 20	Mar. 10	20	9	17	Duffy, Heyano, Jackson, Menefield, Murillo, Ribeiro, Turner, Washington, Wells	Allen, Arrendondo, Boyd, Braucher, Brumwell, Cabias, Ewo, Gambala, Garcia, Gonzales, McNutt, Rose, Rose, Sheanh, Sultan, Taylor, Una'Dia
2012-13 Indoor	42	Dec. 7	Feb. 23	21	5	15	Carbajal, Heyano, Ribeiro, Washington, Louis.	Baran, Braucher, Duffy, Etherton, Gray, Jacques, Rose, Taylor, Torre, Turner, Una'Dia, Acosta, DeLaRosa, Farley, Peyton, Uikilifi.
2013-14 Indoor	38	Jan. 23	Mar. 1	14	3	21	Barsarian, Craver, Laygo.	Braucher, Etherton, Jacques, Adams, Coleman, Efonye, Gilmore, Grewal, Harris-Murillo, Hopkins, Landa, McBath, Miller, Nunez, Padilla, Paracholski, Parisis, Samson, Stoll, Torres, Viramontes.
2014-15 Indoor	38	Dec. 12	Feb. 28	22	2	14	Stoll, Weaver.	Barsarian, Braucher, Etherton, Adams, Byrd, Craver, Grewal, Laygo, Padilla, Parisis, Samson, Schwanz, Torres, Viramontes

2015-16 Indoor	36	Jan. 8	Feb. 27	16	1	19	Sumler	Acosta, Baran, Begin, Fellows, Gibson, Hines, Landa, Laygo, Miller, Nunez, Omawahleh, Padilla, Rivera, Samson, Sears, Spaic, Tuiasosopo, Viramontes, Weaver	
2016-17 Indoor	36	Jan. 8	Feb. 27	20	2	14	Parisis, Spaic.	Bairos, Begin, Budwig, Efonye, Hall, Laygo, Miguel, Nunez, Padilla, Rivera, Samson, Viramontes, Walker, Wong	
2017-18 Indoor	32	Dec. 8	Mar. 9	25	0	7	N/A	Alcantar, Bairos, Dunne, Scott, Spaic, Thurston, Walker	
2018-19 Indoor	40	Dec. 7	Mar. 8	26	0	14	N/A	Alcantar, Covington, Fernandez, Fouts, Gottschammer, Haberman, Jasso, Miezeva, Robles, Saunders, Shields, Spaic, Vaughan, Wilson	
2019-20 Indoor	42	Jan. 18	Mar. 14	22	3	17	Bowen, Fernandez, Hall	Antic, Barham, Chasteler, Fox, Haberman, Jasso, Johnson, Jones, Miezeva, Price, Robles, Roshofa, Saunders, Spaic, Vaughan, Williams	
	Web Roster	1st Comp.	Champ.	# 2+ comp.	# 1 only.	# 0 comp.	Last Names - 1 competition	Last Names - 0 competitions	
2010 Outdoor	41	Mar. 6	June 12	23	1	17	Mizel	Diaz-Gonzales, Dominguez, Erickson, McPhail, Montes, Morris, Oviedo, Paredes, Rogers, Sellick, Smith, Souder, Campbell, Embry, Marsh, Rudolph, Rudolph.	
2011 Outdoor	47	Mar. 5	June 11	41	1	5	NOTE: Cal Quad is an OUTDOOR TRACK MEET - Yarbrough.	Allen, Binns, Smith, Votaw, Warmerdam.	
2012 Outdoor	46	Mar. 3	June 9	34	2	10	de la Torre, Heyano	Boone, Castaneda, Duffy, Ewo, Gambala, Garcia, McNutt, Sheanh, Sultan, Taylor	
2013 Outdoor	42	Mar. 2	May 25	32	2	8	Jacques, Taylor.	Baran, Etherton, Gray, Molenhuis, Torre, Turner, UnaDia, Byrd.	
2014 Outdoor	38	Mar. 8	June 11	11	1	26	Parisis.	Barserian, Etherton, Mendoza, Adams, Coleman, Efonye, Gilmore, Grewal, Harris-Murrillo, Hatcher, Hopkins, D. Johnson, K. Johnson, Landa, Lewis, McBath, Miller, Nunez, Padilla, Paracholski, Schwanz, Sears, Stoll, Torres, Viramontes, Weaver.	
2015 Outdoor	38	Mar. 24	June 11	29	1	8	Padilla.	Etherton, Adams, Coleman, Craver, Hatcher, Nunez, Sears, Stoll.	
2016 Outdoor	36	Mar. 22	June 11	29	0	7		Baran, Gilmore, Landa, Laygo, Miller, Omawahleh, Tuasosopo	
2017 Outdoor	36	Mar. 25	June 11	22	2	12	Gilmore, Hall.	Bairos, Budwig, Efonye, Hairston, Laygo, Miguel, Omawahleh, Padilla, Parisis, Viramontes, Walker, Wong.	
2018 Outdoor	32	Mar. 30	June 9	28	0	4	N/A	Bairos, Chappell, Dunne, Thurston.	
2019 Outdoor	40	Mar. 15	June 8	32	1	7	Fox.	Fouts, Hall, Miezeva, Spaic, Torres, Vaughan, Wilson.	
2020 Outdoor	42	Feb. 22	Mar. 17	CANCELLED REST OF SEASON					

EXHIBIT F

https://www.tfrrs.org/
MEN

TFRRS Database

Select Team - Fresno State Women or Fresno State Men

	Web Roster	1st Comp.	Champ.	# 2+ comp.	# 1 only.	# 0 comp.	Last Names - 1 competition	Last Names - 0 competitions	
2012 Cross Country	10	Aug. 31	Oct. 26	7	0	3	N/A	Guzman, Payton, Esparza.	
2013 Cross Country	11	Sept.14	Nov. 23	8	0	3	N/A	Bernard, Esparza, Vega.	
2014 Cross Country	11	Sept. 5	Nov. 22	8	1	2	Marquez.	Bernard, Kuzminsky.	
2015 Cross Country	10	Sept. 11	Nov. 13	8	0	2	N/A	Kuzminsky, Vega.	
2016 Cross Country	9	Sept. 2	Nov. 19	7	0	2	N/A	Celum, Gill.	
2017 Cross Country	7	Sept 2	Nov. 18	6	0	1	N/A	Gonzalez.	
2018 Cross Country	10	Sept. 1	Nov. 9	9	0	1	N/A	Cisneros-Rodriguez.	
2019 Cross Country	8	Sept. 14	Nov. 15	7	0	1	N/A	Henschen.	
2020 Cross Country	9								
	Web Roster	1st Comp.	Champ.	# 2+ comp.	# 1 only.	# 0 comp.	Last Names - 1 competition	Last Names - 0 competitions	
2010 Outdoor	34	Mar. 6	June 12	18	0	16	NOTE: This roster is suspect - does not line up with the TFRRS Eligible Athlete Roster xxxxxxxxxxxxxx N/A	Hernandez, Jamieson, Keller, Sanders, Bowser, Crow, Val-Pierre, Greene, McCullouch, Nichols, Pancotti, Pierro, Ramos, Smith, Tyler, Williams.	
2011 Outdoor	37	Mar. 5	June 11	35	0	2	NOTE: Cal Quad is an OUTDOOR TRACK MEET - N/A	Cutler, Collin.	
2012 Outdoor	34	Mar. 3	June 9	30	1	3	Fernandez	Dewall, Olivas, Saunders (competed unattached in 1 indoor meet?)	
2013 Outdoor	29	Mar. 2	May 25	26	0	3	N/A	Dash, Bernard, Nottenkamper.	
2014 Outdoor	32	Mar. 8	June 11	24	2	6	Aguilar, Breceda.	Fernandez, Gill, Grimble, Lovingood, Munoz, Nottenkamper.	
2015 Outdoor	27	Mar. 24	June 11	23	0	4	N/A	Kuzminsky, Kwiatkowski, Marquez, Reyes.	
2016 Outdoor	26	Mar. 22	June 11	22	2	2	Leija, Torrez	Aquilar, Walls	
2017 Outdoor	25	Mar. 25	June 11	22	1	2	Aispuro.	Atkinson, Leija.	
2018 Outdoor	24	Mar. 30	June 9	22	0	2	N/A	Shumaker, Viano.	
2019 Outdoor	25	Mar. 15	June 8	18	2	5	Adedigba, Viano.	Arruda, Gelpi, Pecchenino, Radwan, Uphoff.	
2020 Outdoor		Feb. 22	Mar. 17	CANCELLED REST OF SEASON					

EXHIBIT G

Comparison of CSUF Men's and Women's Sport Roster Sizes, EADA 14- to 17-year Ranges and 2018-19 NCAA Reported Average Division I Team Sizes

Sports	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19*	19-20*	Range	Avg. D-I roster 18-19
Men's Sports																			
Baseball	36	36	30	30	28	38	33	37	34	29	35	36	34	37	35	38	37	28-38	36.4
Basketball	10	16	13	15	16	16	13	14	13	15	15	13	17	19	16	15	17	10-19	15.7
Football	101	108	100	106	104	111	106	104	105	101	102	112	114	112	114	119	117	100-119	121.8
Golf	12	10	12	13	12	9	10	10	10	11	11	12	9	9	10	10	8	8-13	9.8
Soccer	21	Discontinued after '03-'04															21	29.5	
Tennis	9	8	8	8	10	10	10	9	9	9	9	11	9	10	10	9	10	8-11	10.1
XCTry/Outdoor T&F*	38	45	49	49	48	54	50	51	49	43	45	39	36	37	32	39	31	31-51	54.4
Wrestling	22	35	28	Discontinued after '06-'07; restored '17-'18											20	26	31	20-35	33.1
TOTAL	249	258	240	221	218	238	222	225	220	208	217	223	219	224	237	256	251		
Women's Sports																			
Basketball**	14	19	16	19	19	18	15	17	16	13	17	15	16	16	19	16	18	13-19	14.4
Equestrian	104	93	83	84	70	44	43	42	42	36	30	30	30	29	29	38	38	29-104	35.3
Golf***		12	12	15	11	9	9	10	8	8	11	9	10	10	10	9	8	8-15	8.2
Lacrosse	No program					23	24	23	18	25	27	27	30	30	32	28	31	18-32	31.6
Soccer	23	24	26	26	31	28	26	27	27	26	26	30	28	29	27	28	26	23-31	28.4
Softball	15	17	22	24	24	23	19	19	21	25	24	27	24	27	25	29	25	16-25	21.7
Swimming & Diving	No program					20	20	21	21	24	23	26	27	31	24	28	36	20-36	29.6
Tennis	16	17	12	13	13	9	12	9	8	10	9	8	8	11	8	7	7	7-17	9.1
Xctry/Indoor/Outdoor T&F	114	177	154	122	148	129	125	126	128	111	106	108	90	92	81	101	101	81-154	96.9
Volleyball****	17	17	18	20	20	14	15	15	16	13	14	16	16	16	15	17	20	13-20	16.6
Water Polo	No program														21	22	22	21-22	21.6
TOTAL	303	376	343	323	336	317	308	309	305	291	287	296	279	291	291	323	332		

*dropped men's indoor track '03-'04; **2 male practice players in 18-19; ***added in '05-'06; ****1 male practice player in 19-20

EXHIBIT H

**Comparison of CSUF Men's and Women's Web Site Reported Sport Roster Sizes, 13- to 17-year Ranges and
2018-19 NCAA Reported Average Division I Team Sizes**

Sports	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19*	19-20*	20-21*	Range	Avg. D-I roster 18-19
Men's Sports																			
Baseball	34	30	26	26	33	31	33	32	26	34	31	33	32	35	34	35	40	26-40	36.4
Basketball	15	12	14	14	12	12	14	10	15	15	13	16	17	16	15	16	14	10-17	15.7
Cross Country	No data	6	6	10	9	9	10	9	10	11	11	10	9	7	10	8	8	6-11	15.5
Football	No data	80	99	92	94	102	103	101	99	98	100	95	100	103	109	112	107	80-112	121.8
Golf	11	12	9	8	8	9	7	10	11	9	10	8	9	9	8	7	8	7-12	9.8
Tennis	7	9	8	8	8	8	7	8	6	7	9	8	9	10	9	7	11	6-11	10.1
Outdoor T&F	37	39	37	No data	33	34	37	34	29	32	27	26	25	24	25	22	22	37-58	54.4
Wrestling	33	No data	Wrestling program discontinued during this period											20	25	31	20	20-36	33.1
TOTAL		188	199		197	205	211	204	196	206	201	196	201	224	235	238	230		
Women's Sports																			
Basketball	14	16	13	15	13	13	16	15	12	16	14	14	15	13	13	13	15	12-16	14.4
Cross Country	15	27	27	20	23	30	31	31	23	18	18	13	18	16	9	15	9	9-31	17.2
Equestrian	No data	87	86	67	37	35	39	40	30	29	27	30	29	29	34	35	33	27-87	35.3
Golf	10	No data	9	9	5	7	8	8	8	9	8	9	10	8	8	8	8	5-10	8.2
Lacrosse	No program				22	22	23	18	23	23	21	19	29	31	27	30	22	18-31	31.6
Soccer	17	24	12	25	23	23	24	21	25	25	21	25	26	27	25	26	25	12-27	28.4
Softball	22	21	18	20	18	17	17	20	21	24	21	22	23	25	23	23	28	17-28	21.7
Swimming	No program				19	19	20	19	22	23	20	17	28	25	28	29	31	17-31	29.6
Tennis	11	15	12	12	7	7	7	8	9	8	8	8	8	8	8	8	9	7-9	9.1
Indoor T&F*	40	41	37	No data	43	41	47	46	42	38	38	36	36	32	40	42	42	32-47	40
Outdoor T&F*	40	41	37	No data	43	41	47	46	42	38	38	36	36	32	40	42	42	32-47	39.7
Volleyball	13	14	15	13	13	14	14	14	13	13	14	15	14	15	14	15	14	13-15	16.6
Water Polo	No program														16	19	No data	16-19	21.6
TOTAL			266		266	269	293	286	270	264	248	244	272	261	285	305			

EXHIBIT H NOTES

**Comparison of CSUF Men's and Women's Web Site Reported Sport Roster Sizes, 13- to 17-year Ranges and
2018-19 NCAA Reported Average Division I Team Sizes**

* Note that only one track roster was posted on the web. This roster number was duplicated to represent both the indoor and outdoor Web roster count because it appears from the 2019-20 EADA roster produced by Hamm on December 22, 2020 that this was the CSUF practice. If no roster was listed, other data from the T&F web archives was used: 2007-08 2011-12 Media Guide = 46; 2015-16 Performance Records - no web roster - outdoor=36 indoor=36.