

1 Arthur H. Bryant (SBN 208365)
2 **ARTHUR BRYANT LAW, P.C.**
3 1999 Harrison Street, 18th Floor
4 Oakland, California 94612
5 Telephone: (510) 391-5454
6 arthur@arthurbryantlaw.com

Eric A. Grover (SBN 136080)
Robert W. Spencer (SBN 238491)
KELLER GROVER LLP
1965 Market Street
San Francisco, California 94103
Telephone: (415) 543-1305
Facsimile: (415) 543-7861
eagrover@kellergrover.com
rspencer@kellergrover.com

7
8 Attorneys for Plaintiffs
9 *Additional Attorneys on Signature Page*

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

12 ALEXANDRA GRANT, MIKAYLA
13 BARRE, JESSICA BEAR, KIERA
14 GUTIERREZ, BRYN JOHNSON,
15 ALEXANDRA LELAND, RUBY
16 MCCULLOUGH, ALIYAH
17 TREADWELL, and CARISSA
WARD, individually and on behalf of
all others similarly situated,

18 Plaintiffs,

19 v.

20
21 CONCORDIA UNIVERSITY
22 IRVINE,

23 Defendant.
24
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26
27
28

Case No. 8:25-CV-01793

CLASS ACTION

**EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING
ORDER**

1 TO THE COURT, DEFENDANT, AND COUNSEL OF RECORD:

2 NOTICE IS HEREBY GIVEN that Plaintiffs ALEXANDRA GRANT,
3 MIKAYLA BARRE, JESSICA BEAR, KIERA GUTIERREZ, BRYN
4 JOHNSON, ALEXANDRA LELAND, RUBY MCCULLOUGH, ALIYAH
5 TREADWELL, and CARISSA WARD (collectively, "Plaintiffs"), individually
6 and on behalf of all others similarly situated, by and through their undersigned
7 counsel, hereby move this Court for entry of a temporary restraining order,
8 pursuant to Fed. R. Civ. P. 65 and Local Rule 65-1, against Concordia University
9 Irvine ("CUI") to preserve and continue CUI's women's swimming & diving team,
10 women's tennis team, and all other women's varsity teams at CUI until such time
11 that an Order to Show Cause why a Preliminary Injunction should not be issued is
12 heard and decided.

13 Notice of this *Ex Parte* Application was provided to all parties as described
14 in the declaration of Arthur H. Bryant, filed herewith. For the reasons set forth in
15 this application, the memorandum of points and authorities, and the attached
16 declarations, good cause exists to grant Plaintiffs' *Ex Parte* Application for a
17 Temporary Restraining Order.

18
19 DATED: August 13, 2025

Respectfully submitted,



Arthur H. Bryant (SBN 208365)
ARTHUR BRYANT LAW, P.C.
1999 Harrison Street, 18th Floor
Oakland, California 94612
Telephone: (510)-391-5454
Email: arthur@arthurbryantlaw.com

26 [Additional Counsel on Following Page]

1 John Clune (Pro Hac Vice Pending)
2 Ashlyn Hare (Pro Hac Vice Pending)
3 **HUTCHINSON, BLACK, AND**
4 **COOK, LLC**
5 921 Walnut Street Ste 200
6 Boulder, Colorado 80302
7 Telephone: (303) 442-5614
8 Fax: (303) 442-6593
9 john.clune@hbcboulder.com
10 ashlyn.hare@hbcboulder.com

11 Anne Andrews (SBN 103280)
12 Robert Siko (SBN 312856)
13 **ANDREWS & THORNTON** 4701
14 Von Karman Ave. Suite 300
15 Newport Beach, California 92660
16 Telephone: (949) 748-1000
17 Facsimile: (949) 315-3540
18 aa@andrewsthornton.com
19 rsiko@andrewsthornton.com

20 Eric A. Grover (SBN 136080)
21 Robert W. Spencer (SBN 238491)
22 **KELLER GROVER LLP**
23 1965 Market Street
24 San Francisco, California 94103
25 Telephone: (415) 543-1305
26 Facsimile: (415) 543-7861
27 egrover@kellergrover.com
28 rspencer@kellergrover.com

ATTORNEYS FOR PLAINTIFFS

1 Arthur H. Bryant (SBN 208365)
2 **ARTHUR BRYANT LAW, P.C.**
3 1999 Harrison Street, 18th Floor
4 Oakland, California 94612
5 Telephone: (510) 391-5454
6 arthur@arthurbryantlaw.com

Eric A. Grover (SBN 136080)
Robert W. Spencer (SBN 238491)
KELLER GROVER LLP
1965 Market Street
San Francisco, California 94103
Telephone: (415) 543-1305
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Case No. 8:25-CV-01793

CLASS ACTION

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF *EX PARTE*
APPLICATION FOR A
TEMPORARY RESTRAINING
ORDER**

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1 **I. INTRODUCTION**

2 Plaintiffs are ten current Division II student-athletes at CUI on the women’s
3 swimming & diving and tennis teams. On May 20, 2025, CUI publicly announced
4 its intent to terminate the women’s and men’s varsity swimming & diving and
5 tennis teams.¹ Today, Plaintiffs filed the instant sex discrimination class action
6 charging CUI with violating Title IX of the Education Amendments of 1972
7 (“Title IX”). Specifically, Plaintiffs assert that CUI has deprived and is depriving
8 them and all female student-athletes of an equal opportunity to participate in
9 intercollegiate athletics—and that the elimination of the women’s swimming &
10 diving and tennis teams would constitute illegal sex discrimination barred by
11 federal law.

12 The question before the Court in the present Application is whether
13 Plaintiffs are entitled to a temporary restraining order (“TRO”) that preserves the
14 two women’s teams CUI is seeking to eliminate, and all other women’s teams at
15 CUI, while the case proceeds. Plaintiffs request a TRO issue preserving the status
16 quo until the Court issues an Order to Show Cause why a preliminary injunction
17 should not issue, conducts a hearing on that Order, and rules whether a preliminary
18 injunction is appropriate. The proposed Order to Show Cause and proposed TRO
19 are submitted concurrently with this application, per Local Rule 65-1. For the
20 reasons laid out herein, Plaintiffs application for a TRO should be granted.

21 Title IX mandates that schools provide equal participation opportunities for
22 men and women to compete in varsity intercollegiate athletics. CUI, however, has
23 a long history of depriving female athletes of equal opportunities to participate.
24 Consistent with that history, CUI opted to further discriminate against women in
25

26 ¹ [https://cuigoldeneagles.com/news/2025/5/20/general-cui-announces-](https://cuigoldeneagles.com/news/2025/5/20/general-cui-announces-discontinuation-of-four-athletic-programs-as-part-of-strategic-restructuring.aspx)
27 [discontinuation-of-four-athletic-programs-as-part-of-strategic-restructuring.aspx](https://cuigoldeneagles.com/news/2025/5/20/general-cui-announces-discontinuation-of-four-athletic-programs-as-part-of-strategic-restructuring.aspx)
28 (Accessed July 24, 2025)

1 violation of Title IX by eliminating two successful women’s teams: swimming &
2 diving and tennis. CUI’s decision to eliminate the teams violates Plaintiffs’ civil
3 rights, has irreparably harmed them, and, unless this Court grants immediate relief,
4 will continue to irreparably harm them and their academic and athletic careers.
5 Because Plaintiffs will suffer immediate and irreparable harm, as described in
6 detail below, the Court should grant a TRO to preserve the women’s swimming &
7 diving team, the women’s tennis team, and all other women’s teams at CUI while
8 this case proceeds.

9 **II. STATEMENT OF FACTS**

10 On May 20, 2025, CUI announced it would discontinue four of its Division
11 II varsity athletic teams in the upcoming 2025-26 academic year: the women’s
12 swimming & diving team, the women’s tennis team, the men’s swimming &
13 diving team, and the men’s tennis team. Bryant Decl. at Ex. 1. The late notification,
14 after the school year had ended, left Plaintiffs scrambling to arrange plans for the
15 upcoming academic year. *See* Grant Decl. at ¶¶13, 19; Gutierrez Decl. at ¶¶12, 18;
16 Barre Decl. at ¶17; Treadwell Decl. at ¶¶12, 18; Ward Decl. at ¶18; McCullough
17 Decl. at ¶¶12, 18. The opportunities to transfer to a comparable institution in terms
18 of academics, roster openings, and athletic financial aid availability, as well as
19 other considerations (e.g., a non-secular program), were and are limited and made
20 successful transfer unlikely. *See* Lopiano Decl., Ex. 1 (“Lopiano Report”). Worse
21 yet, Plaintiffs—several of whom are seniors—faced the impractical reality of
22 transferring their academic credits late in their collegiate careers, with deadlines
23 for transfer applications to different universities or post-graduate programs
24 looming on the immediate horizon. *See* Bear Decl. at ¶¶16-17; Leland Decl. at
25 ¶¶16-17; Johnson Decl. ¶¶11, 17-18; Gutierrez Decl. at ¶¶12, 18; Grant Decl. at
26 ¶¶13, 19; Barre Decl. at ¶17; Treadwell Decl. at ¶¶12, 18; Ward Decl. at ¶18;
27 McCullough Decl. at ¶¶12, 18. Seeing no other path forward, several members of
28

1 the women's swimming & diving and tennis teams—Plaintiffs—scrambled to find
2 legal representation and halt the school's effort to eliminate their teams.

3 On June 16, 2025, Plaintiffs' counsel wrote to CUI, informing the school
4 that its elimination of the two women's teams violated Title IX and exacerbated
5 an already large and prohibited participation gap for female athletes. Bryant Decl.
6 at ¶ 2, Ex. 2. Thereafter, the parties engaged in settlement discussions in an attempt
7 to resolve the present dispute without the need for litigation, to no avail. Bryant
8 Decl. at ¶¶ 3-6, 7. On July 17, 2025, CUI informed Plaintiffs that it was not willing
9 to continue the women's swimming & diving and tennis teams. Bryant Decl. at ¶7.
10 So, Plaintiffs prepared to file their lawsuit and this application for TRO. As part
11 of those efforts, Plaintiffs retained Dr. Donna Lopiano, one of the nation's
12 foremost experts on gender equity in athletics, to review and assess CUI's female
13 and male participation numbers, information, and rates. On August 5, 2025, Dr.
14 Lopiano completed her analysis and issued her initial expert report. Lopiano
15 Report, *supra*. Table 2 from Dr. Lopiano's expert report, reprinted here, shows the
16 facts:

Table 2
CUI 2004-05 Through 2024-25 Computation of Variance from Exact Proportionality Expressed
as Percentages and Number of Athletics Participants (Female Participation Gap)

Survey Year	Male Undergraduates	Female Undergraduates	Total Undergraduates	Percent Male Under Grads	Percent Female Under Grads	Male Athletes	Female Athletes	Total Athletes	Percent Male Athletes	Percent Female Athletes	Percent Female Athlete Shortfall	Female Athlete Particip. Gap	Adjusted Female Athlete Particip. Gap ¹
2004-05 ²	456	804	1260	36.2%	63.8%	83	85	168	49.4%	50.6%	13.2%	61	
2005-06	507	863	1370	37.0%	63.0%	100	96	196	51.0%	49.0%	14.0%	74	
2006-07	516	832	1348	38.3%	61.7%	110	104	214	51.4%	48.6%	13.1%	73	
2007-08	465	747	1212	38.4%	61.6%	141	135	276	51.1%	48.9%	12.7%	92	
2008-09	503	792	1295	38.8%	61.2%	150	148	298	50.3%	49.7%	11.5%	88	
2009-10 ³	540	823	1363	39.6%	60.4%	136	132	268	50.7%	49.3%	11.1%	75	106
2010-11 ⁴	582	895	1477	39.4%	60.6%	116	112	228	50.9%	49.1%	11.5%	66	90
2011-12 ⁵	632	910	1542	41.0%	59.0%	143	127	270	53.0%	47.0%	12.0%	79	109
2012-13	618	974	1592	38.8%	61.2%	174	152	326	53.4%	46.6%	14.6%	122	
2013-14	672	1070	1742	38.6%	61.4%	218	184	402	54.2%	45.8%	15.6%	163	
2014-15	654	1099	1753	37.3%	62.7%	194	174	368	52.7%	47.3%	15.4%	152	
2015-16 ⁶	620	1098	1718	36.1%	63.9%	193	230	423	45.6%	54.4%	9.5%	112	91
2016-17 ⁷	651	1121	1772	36.7%	63.3%	213	285	498	42.8%	57.2%	61.0%	82	57
2017-18	622	1019	1641	37.9%	62.1%	238	317	555	42.9%	57.1%	5.0%	73	
2018-19 ⁸	622	1037	1659	37.5%	62.5%	247	329	576	42.9%	57.1%	5.4%	83	106
2019-20 ⁹	633	957	1590	39.8%	60.2%	237	309	546	43.4%	56.6%	3.6%	49	58
2020-21 ¹⁰	596	942	1538	38.8%	61.2%	270	288	558	48.4%	51.6%	9.6%	139	136
2021-22 ¹¹	595	887	1482	40.1%	59.9%	244	262	506	48.2%	51.8%	8.1%	102	185
2022-23 ¹²	583	891	1474	39.6%	60.4%	273	286	559	48.8%	51.2%	9.2%	131	144
2023-24 ¹³	580	833	1413	41.0%	59.0%	297	328	625	47.5%	52.5%	6.5%	99	79
2024-25 ¹⁴	580	833	1413	41.0%	59.0%	318	333	651	48.8%	51.2%	7.8%	125	
Proj. 2025-26 ¹⁵	580	833	1413	41.0%	59.0%	284	296	580	49.0%	51.0%	8.0%	112	

¹There were anomalies in CUI EADA data reports, specifically, years in which varsity teams are reported on the CUI athletics website and do not appear on the EADA report. For those years, I have calculated an adjusted female participation gap to include the additional website roster count male and female participants. I explain each calculation in footnotes under the table that correspond to each of these years.

²No EADA data was submitted by CUI in 2003-04. CUI was an NAIA school through 2013-14, then NCAA D-II thereafter. However, all higher education institutions that received federal financial assistance were required under the Equity in Athletics Disclosure Act to make such submissions.

³2009-10 data did not include women's water polo (15) or men's water polo (30). Adjusted gap calculation: $(166M/.396M\text{Enr.}\%)-(166M+147F)=106$

⁴2010-11 data did not include women's water polo (17) or men's water polo (25). Adjusted gap calculation: $(141M/.394M\text{Enr.}\%)-(141M+127F)=90$

⁵2011-12 data did not include women's water polo (17) or men's water polo (33). Adjusted gap calculation: $(176M/.41M\text{Enr.}\%)-(176M+144F)=109$

⁶2015-16 data did not include women's stunt (21). Adjusted gap calculation: $(193M/.361M\text{Enr.}\%)-(193M+251F)=91$

⁷2016-17 data did not include women's stunt (25). Adjusted gap calculation: $(213M/.367M\text{Enr.}\%)-(213M+310F)=57$

⁸2018-19 data did not include women's lacrosse (20) or men's lacrosse (26). Adjusted gap calculation: $(273M/.375M\text{Enr.}\%)-(273M+349F)=106$

⁹2019-20 data did not include women's lacrosse (14) or men's lacrosse (15). Adjusted gap calculation: $(252M/.398M\text{Enr.}\%)-(252M+323F)=58$

¹⁰2020-21 data did not include women's stunt (33), women's lacrosse (13) or men's lacrosse (28). Adjusted gap calculation: $(298M/.388M\text{Enr.}\%)-(298M+334F)=136$

¹¹2021-22 data did not include women's stunt (34), women's lacrosse (17) or men's lacrosse (37). Adjusted gap calculation: $(334M/.401M\text{Enr.}\%)-(334M+313F)=185$

¹²2022-23 data did not include women's stunt (33), women's lacrosse (15) or men's lacrosse (41). Adjusted gap calculation: $(314M/.396M\text{Enr.}\%)-(314M+334F)=144$

¹³2023-24 data did not include women's lacrosse (20). Adjusted gap calculation: $(297M/.41M\text{Enr.}\%)-(297M+348F)=79$

¹⁴No EADA enrollment or athlete participation data was available for 2024-25 because that year's EADA report is not due until the fall of 2025. Therefore I used 2023-24 enrollment as a proxy and used publicly available athletics website 24-25 roster counts (see Table 1). Note that the website counts include women's lacrosse, never before reported on any CUI EADA report.

¹⁵Projected 2025-26 participation assuming enrollment and athletic participation constant at 2024-25 levels except less 11 male tennis and 23 male swimming participants and less 8 female tennis and 29 female swimming participants. Computation: $(284M/0.41M\text{Enr.}\%)-(284M+296F)=112$

Lopiano Report at 19.

1 As Dr. Lopiano's report and Table 2 make clear, CUI has been depriving
2 women of equal opportunities to participate in varsity intercollegiate athletics for
3 decades. The planned elimination of the women's swimming & diving and tennis
4 teams would continue and increase that deprivation.

5 Dr. Lopiano's report and Table 2 review CUI's historical undergraduate
6 enrollment and athletic participation opportunities for men and women from 2004
7 to 2024 based on data CUI submitted and verified as accurate to the United States
8 Department of Education ("DOE") pursuant to the Equity in Athletics Disclosure
9 Act ("EADA").² *Id.* at 14. Because EADA reports for the 2024-25 academic year
10 are not due until December 2025 and CUI's undergraduate enrollment data by
11 gender for 2024-25 and 2025-26 are not publicly available, she used the 2023-24
12 enrollment data as a proxy for the 2024-25 and 2025-26 academic years. *Id.* Dr.
13 Lopiano's analysis reveals that CUI has never provided proportional athletic
14 participation opportunities to its for female athletes going back to 2004. *See id.* at
15 19, Table 2. It is not doing so now and, if the women's swimming & diving and
16 tennis teams were eliminated, women would be getting an even smaller percentage
17 of the varsity athletic participation opportunities in the future.

18 Specifically, according to the most recent EADA data that CUI submitted
19 to the DOE, in the 2023-24 academic year, women made up 59.0% of the school's
20 undergraduate population but comprised only 52.5% of the of the varsity athletes:
21 a 6.5% gap. Based on this data, CUI would have had to add 99 athletic participation
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23
24

25
26 ² *See Balow v. Mich. State Univ.*, 24 F.4th 1051, 1059 (6th Cir. 2022) ("[A]t the
27 preliminary injunction stage, it may be appropriate to rely on EADA data to
28 calculate the size of the participation gap.") (citing *Univ. of Texas v. Camenisch*,
451 U.S. 390, 395 (1981); *see also Mansourian v. Regents of Univ. of California*,
602 F.3d 957, 968 (9th Cir. 2010).

1 opportunities for women for their opportunities to be proportional to their
2 undergraduate enrollment rate.³

3 In the 2024-25 academic year, based on the best publicly available data,
4 women were only 51.2% of the varsity athletes. Assuming their undergraduate
5 enrollment rate did not change (the numbers are not publicly available), the
6 difference between the female undergraduate enrollment rate and the female
7 athletic participation rate increased to 7.8%. CUI needed to add even more
8 opportunities for women to achieve proportionality. Instead of increasing women's
9 opportunities, however, CUI just announced its plans to eliminate two women's
10 teams.

11 Looking forward, Dr. Lopiano assessed the 2025-26 academic year using the
12 2023-24 EADA enrollment data as a proxy for the upcoming year and the 2024-
13 25 athletic participation data as a baseline before accounting for the planned
14 discontinuation of the women's and men's swimming & diving and tennis teams.
15 *Id.* at 19, fn. 15. 140. If CUI is allowed to eliminate those teams and undergraduate
16 enrollment rates stay the same, in 2025-26, the female participation gap in its
17 intercollegiate athletic program will increase to 8.0%. CUI will have to add 112
18 athletic opportunities for women to receive athletic participation opportunities
19 proportional to their undergraduate enrollment rate. *Id.* at 19-20.

20 In short, under any assessment of the available data, CUI has been and is
21 failing to provide equal participation opportunities to its female athletes and its
22 decision to eliminate the women's swimming & diving and tennis teams will make
23 things worse.

24
25
26 ³ Due to anomalies in CUI's EADA data, Dr. Lopiano performed alternative
27 calculations based on CUI's publicly available roster data to address CUI's athletic
28 participation data. Under the adjusted numbers (which corrected omissions of
certain teams in CUI's EADA submissions), CUI was still not providing
proportional opportunities for female athletes. Lopiano Report at 19, fn. 1.

1 **III. LEGAL STANDARD**

2 Plaintiffs request injunctive relief because they face the imminent violation
3 of their civil rights. Plaintiffs request that this Court preserve the status quo
4 pending hearing on an Order to Show Cause why a Preliminary Injunction should
5 not be issued. *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto*
6 *Truck Drivers*, 415 U.S. 423, 439 (1974) (purpose of a temporary restraining order
7 is to preserve the status quo until the merits of the action can be determined);
8 *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 422 (4th Cir. 1999)
9 (a TRO is intended to preserve the status quo only until a ruling can be issued on
10 a preliminary injunction).

11 Temporary restraining orders and preliminary injunctions are substantially
12 similar and are analyzed under the same standard. *Stuhlbarg Int'l Sales Co. v. John*
13 *D. Brush & Co.*, 240 F.3d 832, 839 fn.7 (9th Cir. 2001); *Lockheed Missile & Space*
14 *Co. v. Hughes Aircraft Co.*, 887 F. Supp. 1320, 1323 (N.D. Cal. 1995). “The grant
15 or denial of a preliminary injunction rests in the discretion of the district court.”
16 *Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974).

17 The Supreme Court laid out the standard a moving party seeking a TRO
18 must meet in *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (the
19 “*Winter* test”). Under the *Winter* test, the moving party must show: (1) a likelihood
20 of success on the merits; (2) a likelihood of irreparable harm to the moving party
21 in the absence of preliminary relief; (3) that the balance of equities tips in favor of
22 the moving party; and (4) that an injunction is in the public interest. *Id.*

23 The Ninth Circuit has adopted a sliding scale approach to the *Winter* test “so
24 that a stronger showing of one element may offset a weaker showing of another.”
25 *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). The
26 moving party bears the burden of persuasion. *Hill v. McDonough*, 547 U.S. 573,
27 584 (2006).

1 **IV. ARGUMENT**

2 This Court should grant Plaintiffs' motion because all four *Winter* test
3 factors weigh in favor of a TRO: (1) Plaintiffs are likely to succeed on the merits
4 because CUI cannot satisfy the three-part test for equal participation opportunities
5 under Title IX; (2) Plaintiffs and the proposed class members will suffer
6 irreparable harm if a TRO is not granted because of the ongoing violation of their
7 civil rights and the inability to compete, train, or receive coaching while their
8 sports are dropped; (3) weighing the harms Plaintiffs and the proposed class
9 members have already suffered and are likely to suffer in the future against the
10 potential for harm to CUI, which is likely only a temporary budget constraint, the
11 equities favor granting Plaintiffs' motion; and (4) the public interest counsels in
12 favor of enforcing Title IX's salutary goals and preserving opportunities for female
13 athletes to participate in all sports at CUI. Because all four factors weigh in favor
14 of the proposed relief, Plaintiffs' application for TRO should be granted.

15 **A. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS**
16 **BECAUSE CUI IS VIOLATING TITLE IX.**

17 Plaintiffs assert that CUI has denied and is denying them equal participation
18 opportunities under Title IX of the Educational Amendments of 1972. Title IX
19 provides that, "No person in the United States shall, on the basis of sex, be
20 excluded from participation in, be denied the benefits of, or be subjected to
21 discrimination under any education program or activity receiving Federal financial
22 assistance." 20 U.S.C. § 1681. To comply with Title IX's athletic participation
23 requirements, a federal funding recipient must comply with at least one prong of
24 the three-part test:

25 (1) Whether intercollegiate level participation opportunities for male
26 and female students are provided in numbers *substantially*
proportionate to their respective enrollments; or

27 (2) Where the numbers of one sex have been and are underrepresented
28 among intercollegiate athletes, whether the institution can show *a*

1 *history and continuing practice of program expansion* which is
2 demonstrably responsive to the developing interest and abilities of
3 the members of that sex; or

- 4 (3) Where the members of one sex are underrepresented among
5 intercollegiate athletes, and the institution cannot show a
6 continuing practice of program expansion such as that cited above,
7 whether it can be demonstrated that the interests and abilities of
8 the members of that sex have been *fully and effectively*
9 *accommodated* by the present program.

10 Policy Interpretation, Section VII.C.5.a., 44 Fed. Reg. 71,418 (1979) (emphases
11 added), Bryant Decl., Ex. 3; *see also* Office of Civil Rights, U.S. Dep’t of Educ.,
12 *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test*
13 (Jan. 16, 1996) (hereinafter, “1996 Policy Guidance”) (“[T]he three-part test
14 furnishes an institution with three individual avenues to choose from when
15 determining how it will provide individuals of each sex with nondiscriminatory
16 opportunities to participate in intercollegiate athletics. If an institution has met any
17 part of the three-part test, . . . the institution is meeting this requirement.”), Bryant
18 Decl., Ex. 4.⁴

19 The three-part test for Title IX compliance has been repeatedly recognized
20 and upheld in nearly every circuit in the country, including the Ninth Circuit. *See*
21 *Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 854 (9th Cir. 2014)
22 (“We have adopted [the OCR Policy Interpretation] three-part test, which by its
23 terms provides that an athletics program complies with Title IX if it satisfies any
24 one of the above conditions.”); *Neal v. Bd. of Trustees of Cal. State Univs.*, 198

25 ⁴ While the 1979 Policy Guidance has set the stage for Title IX compliance since
26 its issuance, President Trump has recently issued an Executive Order underscoring
27 the importance of preserving and expanding women’s opportunities to participate
28 in intercollegiate varsity sports: “It is the policy of the executive branch that
opportunities for scholarships and collegiate athletic competition in women’s and
non-revenue sports must be preserved and, where possible, expanded...” Exec.
Order No. 14322, 90 FR 35821 (July 24, 2025) *Saving College Sports*.

1 F.3d 763, 767-68, 772 (9th Cir. 1999); *see also* *Portz v. St. Cloud State Univ.*, 16
2 F. 4th 577, 581 (8th Cir. 2021); *Biediger v. Quinnipiac Univ.*, 691 F.3d 85, 92-93
3 (2d Cir. 2012); *Equity in Athletics, Inc. v. Dep’t of Educ.*, 639 F.3d 91, 102-05 (4th
4 Cir. 2011); *Pederson v. Louisiana State Univ.*, 213 F.3d 858, 879 (5th Cir. 2000);
5 *Horner v. Ky. High Sch. Athletic Ass’n*, 43 F.3d 265, 275 (6th Cir. 1994); *Roberts*
6 *v. Colo. State Bd. of Agric.*, 998 F.2d 824, 828 (10th Cir. 1993); *Cohen v. Brown*
7 *Univ.*, 991 F.2d 888, 898 (1st Cir. 1993); *Favia v. Indiana Univ. of Penn.*, 7 F.3d
8 332, 336 n. 5 (3d Cir. 1993).

9 **1. CUI’s Female Student-Athlete Participation Numbers Are Not**
10 **“Substantially Proportionate” to Their Undergraduate**
11 **Enrollment Numbers.**

12 The first prong of effective accommodation analysis considers whether the
13 university provides intercollegiate participation opportunities for men and women
14 in numbers that are substantially proportionate to their respective undergraduate
15 enrollment. “As a general rule, there is substantial proportionality . . . ‘if the
16 number of additional participants’ ... required for exact proportionality ‘would not
17 be sufficient to sustain a viable team.’” *Ollier*, 768 F.3d at 856 (quoting *Biediger*,
18 691 F.3d at 94, in turn quoting the OCR Policy Guidance).

19 At the preliminary-injunction stage, courts have looked to EADA data to
20 calculate the size of the participation gap. *See Balow*, 24 F.4th at 1059; *see also*
21 *Mansourian v. Regents of Univ. of Cal.*, 602 F.3d 957, 968 (9th Cir. 2010) (“EADA
22 reports contain ample data demonstrating that [the university] could not satisfy the
23 substantial proportionality option and that the trend of increasing female athletic
24 participation reversed...”).

25 CUI’s participation opportunities are not substantially proportionate. After
26 reviewing CUI’s Common Data Set 2024-25 data and publicly available roster
27 information, Dr. Lopiano determined that women currently make up 59% of CUI’s
28 undergraduate population and receive only 51.2% of the athletic opportunities.
Lopiano Report at 19. To reach compliance with Title IX, CUI would have to add

1 125 athletic opportunities for women. *Id.* That numerical gap would be only
2 slightly reduced by CUI's decision to discontinue its men's and women's tennis
3 team, as well as its men's and women's swimming & diving team. Lopiano Report
4 at 19-20 ("If the men's and women's tennis and swimming teams are eliminated
5 and all other data remain the same, the projected female athlete participation gap
6 would be 112."). The difference between the female undergraduate enrollment rate
7 and the female participation rate, however, would increase from 7.8% to 8.0%.
8 Either way, women would be receiving nothing close to substantially
9 proportionate opportunities to participate in varsity sports.

10 CUI's female participation gap grossly violates Title IX because it is easily
11 large enough to field additional viable athletic teams, including the women's
12 swimming & diving and tennis teams in their entirety. *See Ollier*, 768 F.3d at 857
13 (holding that a participation gap of 47 violates Title IX as it is sufficient to sustain
14 at least one viable competitive team); *see also Biediger v. Quinnipiac Univ.*, 728
15 F. Supp. 2d 62, 111-12 (D. Conn. 2010), *aff'd*, 691 F.3d 85 (2d Cir. 2012) (finding
16 the university out of compliance with a participation gap of 38 women).

17 **2. CUI Cannot Comply With Prongs Two or Three of Title IX's**
18 **Three-Part Equal Opportunities Test Because It Eliminated Two**
19 **Women's Teams Despite Interest and Ability to Fill Them.**

20 A school that does not meet the substantial proportionality standard may
21 still comply with Title IX if it "can show 'a history and continuing practice of
22 program expansion which is demonstrably responsive to the developing interest
23 and abilities of' female athletes." *Ollier*, 768 F.3d at 857, quoting 44 Fed. Reg. at
24 71,418; *see also Biediger v. Quinnipiac Univ.*, 616 F. Supp. 2d 277, 294 (D. Conn.
25 2009); *see also Cohen*, 991 F.2d at 898 ("The second and third parts of the
26 accommodation test recognize that there are circumstances under which, as a
27 practical matter, something short of this proportionality is a satisfactory proxy for
28 gender balance.").

1 CUI cannot meet its burden to show Title IX compliance under the second
2 or third prong because it has actively eliminated two women's teams, totaling 37
3 participation opportunities for women. *See* Lopiano Report at 15, 19 fn. 15. As the
4 court in *Biediger* explained:

5 There is no question that, if [the school] fails to meet prong one of
6 Title IX compliance, it will be out of compliance with Title IX. That
7 is because, by eliminating a women's team while there is sufficient
8 interest to field one, the University will have failed to demonstrate
9 that it is committed to expanding opportunities for the
10 underrepresented gender—women—or that it has fully and
effectively accommodated the interests and abilities of that
underrepresented gender.

11 616 F. Supp. 2d at 294. Even factoring out the planned elimination of 37 women's
12 participation opportunities, CUI cannot demonstrate a history and continuing
13 practice of expanding opportunities. In fact, Dr. Lopiano demonstrates that
14 women's participation in athletics at CUI has consistently been underrepresented
15 compared to full-time female undergraduate enrollment. Lopiano Report at 19, 22.
16 Further, despite a consistently significant female participation gap since 2004, the
17 only women's teams CUI has added are swimming & diving (which it now intends
18 to eliminate), water polo, beach volleyball and stunt. *Id.* at 21. The addition of
19 these teams did not close the participation gap. *Id.* at 19. During the same period
20 CUI had the opportunity to add additional women's sports where competition was
21 readily available for CUI—this included at a minimum women's golf. *Id.* at 21.

22 Certainly CUI cannot claim a 'steady march forward' of expanding
23 opportunities for female athletes given the abrupt and sometimes dramatic
24 increases in participation gap revealed in recent EADA data. Lopiano Report at
25 19. (e.g., participation gap of 49 in 2019-20 followed by participation gap of 139
26 in 2020-21; participation gap of 102 in 2021-22 followed by participation gap of
27 131 in 2022-23; participation gap of 99 [79 under 'adjusted' data] in 2023-24
28 followed by participation gap of 125 in 2024-25). Without steady progress, CUI

1 cannot avail itself of the second prong. *Ollier*, 768 F.3d at 857.

2 As to the third prong, courts evaluate three factors in determining whether
3 an institution has accommodated the interests and abilities of the underrepresented
4 sex: (1) whether there is unmet interest in a particular sport; (2) whether there is
5 sufficient ability to sustain a team in the sport; and (3) whether there is a reasonable
6 expectation of competition for the team. *See Ollier*, 768 F.3d at 858 (citing the
7 1996 Policy Guidance).

8 The analysis under the third part of the three-part test is similar. There, as
9 the *Portz* court put it:

10 Where an institution has recently eliminated a viable team for the
11 underrepresented sex from its intercollegiate athletics program, the
12 Court will find that sufficient interest, ability, and available competition
13 [exists] to sustain an intercollegiate team in that sport. This creates a
14 presumption that the institution is not in compliance with Prong Three
that the institution can rebut through strong evidence that interest,
ability, or competition no longer exists.

15 *Portz v. St. Cloud State University*, 401 F. Supp. 3d 834, 858 (D. Minn. 2019)
16 (citation omitted), affirmed in part, reversed in part by *Portz v. St. Cloud State*
17 *Univ.*, 16 F.4th 577, 585 (8th Cir. 2021).

18 Like prong two, where a university has eliminated a competitive varsity
19 women's team for which there is clearly sufficient interest, ability, and available
20 competition—as the teams' histories and the accompanying Plaintiffs'
21 declarations make clear—the university cannot claim full and effective
22 accommodation for female athletes. *Ollier*, 768 F.3d at 858-59; Grant Decl. at ¶14;
23 Bear Decl. at ¶¶12-13; Leland Decl. at ¶¶12-13; Johnson Decl. ¶¶12-13; Gutierrez
24 Decl. at ¶¶13-14; Barre Decl. at ¶13; Treadwell Decl. at ¶13; Ward Decl. at ¶13;
25 McCullough Decl. at ¶¶13-14.

26 Accordingly, just as CUI cannot succeed on the substantial proportionality
27 prong, it also cannot escape liability through the second or third prongs because it
28 has chosen to eliminate existing women's varsity teams.

1 **B. PLAINTIFFS AND THE PROPOSED CLASS MEMBERS WILL**
2 **SUFFER IRREPARABLE HARM IF A TEMPORARY**
3 **RESTRAINING ORDER IS NOT GRANTED.**

4 “An irreparable harm is one that cannot be redressed by a legal or equitable
5 remedy following trial.” *Optinrealbig.com, LLC v. Ironport Sys., Inc.*, 323 F.
6 Supp. 2d 1037, 1050 (N.D. Cal. 2004) (citing *Pub. Util. Comm'n v. FERC*, 814
7 F.2d 560, 562 (9th Cir. 1987)).

8 Fundamentally, Plaintiffs and the proposed class members will suffer
9 irreparable harm because CUI’s elimination of their teams and ongoing violation
10 of Title IX deprives each of them of their civil rights. *See Silver Sage Partners,*
11 *Ltd. v. City of Desert Hot Springs*, 251 F.3d 814, 827 (9th Cir. 2001) (“[W]here a
12 defendant has violated a civil rights statute, we will presume that the plaintiff has
13 suffered irreparable injury from the fact of the defendant’s violation.”); *see also*
14 *Roake v. Brumley*, No. 24-30706; 2025 WL 1719978, at *20 (5th Cir. June 20,
15 2025) (holding defendants’ conduct would cause an irreparable deprivation of their
16 First Amendment rights); *Bd. of Educ. of the Highland Local Sch. Dist. v. United*
17 *States Dep’t of Educ.*, 208 F. Supp. 3d 850, 877-78 (S.D. Ohio 2016) (“[Plaintiff]
18 can show irreparable injury simply because both her Title IX claim and
19 constitutional claim are likely to succeed on the merits.”); *Vietnamese Fishermen’s*
20 *Ass’n v. Knights of the Ku Klux Klan*, 543 F. Supp. 198, 218 (S.D. Tex. 1982)
21 (“Victims of discrimination suffer irreparable injury, regardless of pecuniary
22 damage.”).

23 “In general, courts have found that the elimination of a women’s team
24 creates irreparable harm when the plaintiffs have demonstrated a strong likelihood
25 of success on the merits of their Title IX claim.” *Mayerova v. E. Mich. Univ.*, 346
26 F. Supp. 3d 983, 997 (E.D. Mich. 2018) (citing *Biediger*, 616 F. Supp. 2d at 291-
27 93; *Neal v. Bd. of Trs. of California State Univ.*, No. CV-F-97-5009 REC, 1999
28 WL 1569047, at *3 (E.D. Cal. Feb. 22, 1999), *rev’d sub nom. Neal v. Bd. of Trs.*
 of California State Universities, 198 F.3d 763 (9th Cir. 1999); *Cohen v. Brown*

1 *Univ.*, 809 F. Supp. 978 (D.R.I. 1992), *aff'd*, 991 F.2d 888 (1st Cir. 1993); *Favia*
2 *v. Indiana Univ. of Penn.*, 812 F. Supp. 578 (W.D. Pa. 1993), *aff'd*, 7 F.3d 332 (3d
3 Cir. 1993); *Choike v. Slippery Rock Univ.*, Civil Action No. 06-622, 2006 WL
4 2060576 (W.D. Pa. July 21, 2006); *Barrett v. West Chester Univ. of Penn.*, No.
5 Civ.A. 03-CV-4978, 2003 WL 22803477 (E.D. Pa. Nov. 12, 2003)). This is
6 because, inherently, the ability to compete in intercollegiate competition is
7 fleeting. *Biediger*, 616 F. Supp. 2d at 291; *Barrett*, 2003 WL 22803477, at *14
8 (“Plaintiffs have a finite period of time in which to compete.”). Thus, CUI’s
9 continuing violation of Title IX’s three-part test necessarily results in irreparable
10 harm.

11 As a practical matter, Plaintiffs and the proposed class members will suffer
12 a deterioration of their athletic skills because they will not be unable to train,
13 practice, or receive coaching if a TRO is not granted.⁵ Lopiano Report at 29-30,
14 *see also Ohlensehlen v. Univ. of Iowa*, 509 F. Supp. 3d 1085, 1102 (S.D. Iowa
15 2020) (“[T]he current women on the team stand in a far less favorable position to
16 train and prepare for major meets that are the peak of their athletic careers.”);
17 *Barrett*, 2003 WL 22803477, at *14 (“Further loss of training time could lead to a
18 loss in a competitive edge and an increase in the potential for injury.”). Similarly,
19

20 ⁵ That harm is not alleviated by the ability to stay at CUI and maintain their
21 scholarships—which will require Plaintiffs to give up their sports—or transfer to
22 another institution, which will require Plaintiffs to find a new athletic program and
23 transfer their academic credits to a new university, assuming they even can after
24 CUI’s untimely and abrupt elimination of their teams in late May. *See Biediger*,
25 616 F. Supp. 2d at 292 (“The interruption in competition and need to break into
26 new programs with new coaches and established rosters will necessarily stunt the
27 plaintiffs’ development . . . at the highest level of amateur competition. The harm
28 the plaintiffs will suffer is not primarily monetary, so the continuation of their
scholarships cannot cure or prevent it.”); *see also Ohlensehlen*, 509 F. Supp. 3d at
1103 (“The Hobson’s choice callously presented by Defendants is cold comfort to
students like Plaintiffs who have poured much of their lives into [their sport] and
have loyally chosen to call [the university] their home.”).

1 courts have held that elimination of women’s sports teams denies female athletes
2 other intangible benefits of intercollegiate competition. *See Lazor v. Univ. of*
3 *Conn.*, 560 F. Supp. 3d 674, 684 (D. Conn. 2021). In *Favia*, the court found that
4 elimination of women’s teams “denied plaintiffs the benefits to women athletes
5 who compete interscholastically: they develop skill, self-confidence, learn team
6 cohesion and a sense of accomplishment, increase their physical and mental well-
7 being, and develop a lifelong healthy attitude.” 812 F. Supp. at 583. Additionally,
8 the eliminated teams can no longer recruit incoming freshman or transfers or
9 schedule games against other teams in their conference, which ultimately
10 decreases their competitive opportunities and deprives potential female athletes of
11 the opportunity to compete at CUI. *See Cohen*, 809 F. Supp. at 997-98.

12 Separate from the competitive harms, Plaintiffs have also suffered
13 emotional distress from the CUI’s announced cancellation of their teams—and will
14 suffer more if the teams are not continued. However, Plaintiffs cannot recover
15 monetary damages for emotional distress under Title IX. *See Cummings v. Premier*
16 *Rehab Heller, P.L.L.C.*, 596 U.S. 212, 230 (2022) (holding that emotional distress
17 damages are not recoverable under Spending Clause antidiscrimination statutes
18 like Title IX). As a result, Plaintiffs are faced with harm which is not redressable
19 through the legal remedy available to them under Title IX—only an injunction will
20 prevent such irreparable harm. *See also Sonner v. Premier Nutrition Corp.*, 971
21 F.3d 834 (9th Cir. 2020).

22 The findings of the courts are consistent with Dr. Lopiano’s report based on
23 her eighteen years of experience as an athletic director and five years as a college
24 coach. For example, Dr. Lopiano concluded that it would be “extremely difficult
25 to restart the women’s swimming & diving and tennis teams, if the decision to
26 eliminate them...is not stayed,” before the 2028-29 academic year at the earliest,
27 due to the need to recruit coaching staffs and additional players, set the teams’
28 schedules, and rebuild their reputation to gain the confidence of incoming athletes.

1 Lopiano Report at 25-27. Dr. Lopiano also found that the elimination of the two
2 women's teams would likely result in harm to the athletes' academic careers due
3 to their inability to transfer all of their academic credits, financial injury to
4 transferring players who will likely suffer a reduction in athletic scholarships,
5 mental and physical injury to athletes remaining at CUI caused by the loss of their
6 sport, and moral injury to all players who have been treated as second class citizens
7 by CUI. *Id.* at 27-31.

8 These considerations are each borne out by the Plaintiffs' declarations
9 submitted in support of this application: Grant Decl. at ¶¶14-21; Bear Decl. at
10 ¶¶12-19; Leland Decl. at ¶¶12-19; Johnson Decl. ¶¶12-23; Gutierrez Decl. at ¶¶13-
11 21; Barre Decl. at ¶¶13-19; Treadwell Decl. at ¶¶13-20; Ward Decl. at ¶¶14-20;
12 McCullough Decl. at ¶¶13-19. Plaintiffs will imminently suffer from the
13 cancellation of their sports mentally, physically, academically, and morally. These
14 irreparable harms would be avoided if the status quo is maintained pending
15 resolution of the case on its merits.

16 Accordingly, because Plaintiffs' have suffered an inherent deprivation of
17 their civil rights and are likely to suffer irreparable injury due to the
18 discontinuation of their sports, the second factor weighs in favor of granting a
19 TRO.

20 **C. PLAINTIFFS' AND THE PROPOSED CLASS MEMBERS'**
21 **SUBSTANTIAL INJURIES OUTWEIGH ANY HARM TO CUI.**

22 It is well settled that, in considering an injunction request, the court should
23 look to the balance of injury and inconvenience and consider whether a greater
24 injury will be done by granting than by refusing an injunction. *Contra Costa Water*
25 *Co. v. Oakland*, 165 F. 518, 533 (N.D. Cal. 1904).

26 The injury that Plaintiffs and the proposed class members will suffer from
27 the abrupt discontinuation of their teams substantially outweighs any potential
28 harm to CUI. To date, CUI has advanced only financial justifications for the

1 elimination of the teams. *See* Bryant Decl. at Ex. 5, Bear Decl. at ¶8; Gutierrez
2 Decl. at ¶8; Barre Decl. at ¶8; Treadwell Decl. at ¶8; Ward Decl. at ¶8. At the same
3 time, however, CUI is pressing on with new investments in athletics facilities
4 announced to exceed \$25 million as part of CUI’s Vision 2025 project. *See* Bryant
5 Decl., Exs. 6-7; Grant Decl. at ¶11, *inter alia*. But even assuming CUI’s arguments
6 about facing a deficit are true, financial constraints are no safe harbor for
7 institutions that fail to comply with Title IX. *See, e.g., Horner*, 43 F.3d at 275 (“[A]
8 recipient may not simply plead limited resources to excuse the fact that there are
9 fewer opportunities for girls than for boys.”); *Ollier v. Sweetwater Union High*
10 *Sch. Dist.*, 267 F.R.D. 339, 341 (S.D. Cal. 2010), *aff’d*, 768 F.3d 843 (9th Cir.
11 2014) (“[P]ublic school finance and declining budgets are not at issue in a Title IX
12 claim for failure to provide equal treatment and benefits to the class.”); *Mayerova*,
13 346 F. Supp. 3d at 998 (“Indeed, financial hardship is not a defense to a Title IX
14 violation.”); *Roberts v. Colo. State Univ.*, 814 F. Supp. 1507, 1518 (D. Colo.
15 1993), *aff’d in part, rev’d in part sub nom. Roberts v. Colo. State Bd. of Agric.*,
16 998 F.2d 824 (10th Cir. 1993) (“[A] financial crisis cannot justify gender
17 discrimination.”).

18 For this reason, courts regularly conclude that the harm to athletes
19 outweighs any harm to the university. *See Lazor*, 560 F. Supp. 3d at 685;
20 *Ohlensehlen*, 509 F. Supp. 3d at 1104; *Cohen*, 809 F. Supp. at 1000-01. Because
21 budgetary constraints are not a legitimate defense to Title IX, the balance of the
22 equities weighs strongly in Plaintiffs’ favor.

23 Even if CUI’s financial condition were relevant to the inquiry, it is
24 outweighed given the substantial evidence that Plaintiffs will imminently suffer
25 irreparable harm if the programs are not continued, including academic injury,
26 financial injury, emotional distress, and moral injury. *See* Grant Decl. at ¶¶14-21;
27 Bear Decl. at ¶¶12-19; Leland Decl. at ¶¶12-19; Johnson Decl. ¶¶12-23; Gutierrez
28 Decl. at ¶¶13-21; Barre Decl. at ¶¶13-19; Treadwell Decl. at ¶¶13-20; Ward Decl.

1 at ¶¶14-20; McCullough Decl. at ¶¶13-19. Indeed, CUI itself recognized the
2 likelihood and severity of the circumstances for Plaintiffs in an email sent just
3 moments after its announcement of the intent to discontinue the women’s
4 swimming & diving and women’s tennis teams. Bryant Decl., Ex. 8. (Email to
5 athletes included resources on the transfer portal, academic advice, financial aid
6 resources, and mental health support resources).

7 **D. A TEMPORARY RESTRAINING ORDER AND PRELIMINARY**
8 **INJUNCTION ARE IN THE PUBLIC INTEREST TO**
9 **VINDICATE CIVIL RIGHTS PROTECTED BY CONGRESS.**

10 Finally, the public interest is best served by vindicating civil rights
11 guaranteed by Title IX. *See Lazor*, 560 F. Supp. 3d at 685 (“In this case, the public
12 interest lies in vindicating Plaintiffs’ civil rights as guaranteed under Title IX...”);
13 *Mayerova*, 346 F. Supp. 3d at 999 (“[T]he public interest is best served by
14 upholding the goals of Title IX.”); *Barrett*, 2003 WL 22803477, at *15
15 (“Promoting compliance with Title IX serves the public interest.”); *Cohen*, 809 F.
16 Supp. at 1001 (“[T]he public interest will be served by vindicating a legal interest
17 that Congress has determined to be an important one.”); *Favia*, 812 F. Supp. at
18 585 (“The public has a strong interest in the prevention of any violation of
19 constitutional rights.”). To the extent CUI’s financial autonomy is implicated at
20 all, it must give way to Title IX’s mandates. *See, e.g., Cohen*, 991 F.2d at 905
21 (“Title IX does not purport to override financial necessity. Yet, the pruning of
22 athletic budgets cannot take place solely in comptrollers’ office, isolated from the
23 legislative and regulatory imperatives that Title IX imposes.”); *see also, Neal v.*
24 *Bd. of Trs. of California State Universities*, 198 F.3d at 770.

25 Thus, the public interest weighs in favor of granting the TRO.

26 **E. PLAINTIFFS HAVE PROVIDED NOTICE REQUIRED UNDER**
27 **FRCP 65 and LOCAL RULE 65-1.**

28 As described in detail above, Plaintiffs will suffer immediate and irreparable

1 harm if a TRO is not granted instantly.⁶ Accordingly, avoiding irreparable harm
2 would be impossible if this request for injunctive relief proceeded under the
3 ordinary timing for a fully noticed motion for preliminary injunction under Local
4 Rule 6-1. Without immediate judicial intervention, CUI may claim the women’s
5 teams cannot be continued—that it succeeded in eliminating them even if that
6 violates Title IX—because it is too late to meet critical deadlines for planning and
7 providing equitable athletic opportunities in advance of the Fall 2025 semester.
8 This includes the recruitment of coaching staff, scheduling of competitions,
9 allocation of facilities, and compliance with NCAA or conference requirements.
10 These may involve logistical and budgetary decisions and actions that cannot be
11 retroactively taken or remedied after the semester begins. Within the standard
12 twenty-eight days’ notice on a preliminary injunction motion, additional class
13 members may be forced to transfer to continue their athletic careers, the coaches
14 may find new jobs, and interested potential athletes may look elsewhere. *See*
15 *Lazor*, 560 F. Supp. 3d at 685 (“[I]t is likely that nothing will be left of the women’s
16 rowing team if I do not issue a temporary restraining order.”). If the Court does
17 not grant the requested TRO, Plaintiffs—and similarly situated athletes—will
18 suffer injuries that cannot be undone at a later date, even if they ultimately prevail.
19 Consequently, Plaintiffs respectfully request that the Court grant the TRO and
20 enter an Order to Show Cause why a preliminary injunction should not issue.

21 Plaintiffs have provided CUI’s counsel with notice of this *Ex Parte*
22 Application. Bryant Decl. at ¶ 14.

23
24 ⁶ For clarity, Plaintiffs will suffer irreparable harm in the period between when a
25 TRO could be issued and when a fully noticed motion for preliminary injunction
26 could be heard—primarily this is reflected by the limited windows to make transfer
27 decisions and plan for alternative enrollment, as well as training opportunities.
28 This truly is a case of “sooner is better.” However, if this application for a TRO is
denied, a portion of the irreparable harm facing Plaintiffs could nonetheless be
avoided by the entry of a preliminary injunction.

1 **F. REQUEST FOR WAIVER OF BOND.**

2 Plaintiffs respectfully seek excusal from the bond requirement under FRCP
3 65(c) due to their status as young student-athletes with limited resources currently
4 enrolled as full-time students. Additionally, this lawsuit is a form of public interest
5 litigation seeking to protect the interests of a class of disadvantaged female
6 athletes. Plaintiffs request that the Court exercise its discretion to require no
7 security at all.

8 The financial burden a bond would place on these women would both
9 unduly harm them and act as a deterrent for future women who want to ensure
10 their schools comply with Title IX. Indeed, it would likely place them in the
11 unenviable position of not being able to *afford* to win. Given these realities, courts
12 that issue preliminary injunctions in Title IX cases routinely dispense with the
13 bond requirement. *See City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636
14 F.2d 1084, 1094 (5th Cir. 1981) (“[P]laintiffs were engaged in public-interest
15 litigation, an area in which the courts have recognized an exception to the Rule 65
16 security requirement.”); *Portz v. St. Cloud Univ.*, 196 F. Supp. 3d 963, 978–79 (D.
17 Minn. 2016) (“Plaintiffs need not post a bond for the preliminary injunction to take
18 effect[.]”); *Daniels v. Sch. Bd. of Brevard Cnty., Fla.*, 985 F. Supp. 1458, 1462
19 (M.D. Fla. 1997).

20 **G. REQUEST FOR ORAL ARGUMENT AT PRELIMINARY**
21 **INJUNCTION HEARING.**

22 Plaintiffs respectfully request oral argument on the matter of the preliminary
23 injunction and estimate that, depending on whether the Court wishes to receive
24 testimony, the hearing will take one to two days.


25 **V. CONCLUSION**

26 For the foregoing reasons, Plaintiffs’ *Ex Parte* Application for a Temporary
27 Restraining Order should be granted. Accordingly, Plaintiffs respectfully request
28 that the Court enjoin CUI from eliminating the women’s swimming & diving and

women's tennis teams and from eliminating any other women's sport during the pendency of this case.

Dated: August 13, 2025

Respectfully submitted,


Arthur H. Bryant (SBN 208365)
ARTHUR BRYANT LAW, P.C.
1999 Harrison Street, 18th Floor
Oakland, California 94612
Telephone: (510)-391-5454
Email: arthur@arthurbryantlaw.com

Eric A. Grover (SBN 136080)
Robert W. Spencer (SBN 238491)
KELLER GROVER LLP
1965 Market Street
San Francisco, California 94103
Telephone: (415) 543-1305
Facsimile: (415) 543-7861
egrover@kellergrover.com
rspencer@kellergrover.com

John Clune (Pro Hac Vice Pending)
Ashlyn Hare (Pro Hac Vice Pending)
HUTCHINSON, BLACK, AND COOK, LLC
921 Walnut Street Ste 200
Boulder, Colorado 80302
Telephone: (303)442-5614
Fax: (303) 442-6593
john.clune@hbcboulder.com
ashlyn.hare@hbcboulder.com

Anne Andrews (SBN 103280)
Robert Siko (SBN 312856)
ANDREWS & THORNTON
4701 Von Karman Ave. Suite 300
Newport Beach, California 92660
Telephone: (949) 748-1000
Facsimile: (949) 315-3540
aa@andrewsthornton.com
rsiko@andrewsthornton.com

ATTORNEYS FOR PLAINTIFFS

1 Arthur H. Bryant (SBN 208365)
2 **ARTHUR BRYANT LAW, P.C.**
3 1999 Harrison Street, 18th Floor
4 Oakland, California 94612
5 Telephone: (510) 391-5454
6 arthur@arthurbryantlaw.com

Eric A. Grover (SBN 136080)
Robert W. Spencer (SBN 238491)
KELLER GROVER LLP
1965 Market Street
San Francisco, California 94103
Telephone: (415) 543-1305
Facsimile: (415) 543-7861
eagrover@kellergrover.com
rspencer@kellergrover.com

7
8 Attorneys for Plaintiffs

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

12 ALEXANDRA GRANT, MIKAYLA
13 BARRE, JESSICA BEAR, KIERA
14 GUTIERREZ, BRYN JOHNSON,
15 ALEXANDRA LELAND, RUBY
16 MCCULLOUGH, ALIYAH
17 TREADWELL, and CARISSA
WARD, individually and on behalf of
all others similarly situated,

18 Plaintiffs,

19 v.

20
21 CONCORDIA UNIVERSITY
22 IRVINE,

23 Defendant.
24
25
26
27
28

Case No. 8:25-CV-01793

CLASS ACTION

[PROPOSED] ORDER

1 **[PROPOSED] ORDER**

2 The application for a Temporary Restraining Order came on before the
3 undersigned on _____ at _____ A.M./P.M. in Department
4 _____ of the above-captioned court.

5 Based on the Application, Points and Authorities, and supporting
6 declarations in the moving papers, and good cause having been shown, the Court
7 finds as follows:

8 **TEMPORARY RESTRAINING ORDER**

9 Pending hearing on the below Order to Show Cause, Defendant Concordia
10 University Irvine, their employees, agents and/or any other person or entity acting
11 with them or on their behalf are hereby restrained and enjoined as follows:

- 12 a. From taking any action in furtherance of eliminating women's tennis and
13 women's swimming & diving teams at the institution pending a full trial on
14 the merits or until the Court orders otherwise; and
15 b. From retaliating against Plaintiffs in any manner for asserting their legal
16 rights in this case.

17 **ORDER TO SHOW CAUSE**

18 Defendant Concordia University Irvine is hereby Ordered to Show Cause in
19 writing why a preliminary injunction adopting the prohibitory order above should
20 not issue pending resolution of this action on its merits.

21 This Order to Show Cause and supporting papers shall be served on
22 Defendants no later than _____ by email (or _____).
23 Proof of such service shall be filed and delivered to the Court by no later than
24 _____.

25 Any Opposition papers by Defendants shall be filed and served on Plaintiff
26 by no later than _____. Any Reply by Plaintiffs shall be filed
27
28

1 and served by no later than _____. Email or facsimile service
2 of these documents is permitted.

3
4 **IT IS SO ORDERED.**

5
6
7 Dated: _____

_____ Honorable District Court Judge

Arthur H. Bryant (SBN 208365)
ARTHUR BRYANT LAW, P.C.
1999 Harrison Street, 18th Floor
Oakland, California 94612
Telephone: (510) 391-5454
arthur@arthurbryantlaw.com

Eric A. Grover (SBN 136080)
Robert W. Spencer (SBN 238491)
KELLER GROVER LLP
1965 Market Street
San Francisco, California 94103
Telephone: (415) 543-1305
Facsimile: (415) 543-7861
eagrover@kellergrover.com
rspencer@kellergrover.com

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

ALEXANDRA GRANT, MIKAYLA
BARRE, JESSICA BEAR, KIERA
GUTIERREZ, BRYN JOHNSON,
ALEXANDRA LELAND, RUBY
MCCULLOUGH, ALIYAH
TREADWELL, and CARISSA
WARD, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

CONCORDIA UNIVERSITY
IRVINE,

Defendant.

Case No. 8:25-CV-01793

CLASS ACTION

**DECLARATION OF ARTHUR H.
BRYANT**

1 I, Arthur H. Bryant, am over 18 years of age and competent to make the
2 following statement. All of the statements below are based on my personal
3 knowledge.

4 1. I am lead counsel for Plaintiffs in this matter.

5 2. On May 20, 2025, Concordia University Irvine (“CUI”) announced its
6 intention to discontinue the women’s swimming & diving and tennis teams. Shortly
7 thereafter, I was contacted by members of those teams to represent them, seek to
8 continue the teams, and make CUI comply with Title IX. A true and correct copy of
9 CUI’s announcement regarding the planned discontinuation of the teams is attached
10 as Exhibit 1.

11 3. On June 16, 2025, I sent a letter to Michael A. Thomas, Ph.D., President of
12 CUI, by email, explaining that CUI’s announced elimination of its women’s
13 swimming & diving and tennis teams would violate Title IX. I requested that CUI
14 meet with me, agree not to eliminate the women’s teams, and come into compliance
15 with Title IX. A true and correct copy of this letter is attached as Exhibit 2.

16 4. On June 17, 2025, I received a response to my letter from Ronald Van
17 Blarcom, Vice President of Legal Affairs and General Counsel for CUI. The email
18 promised a response to my initial letter on or before June 20th.

19 5. On June 20, 2025, I received a follow-up email from Ronald Van Blarcom
20 indicating that CUI was consulting with its attorneys and would provide a response
21 the following week.

22 6. On June 24, 2025, I was contacted by Carol Ashley, outside counsel for CUI.
23 Upon making Ms. Ashley’s acquaintance, we proceeded to organize a series of
24 conferences to discuss the Plaintiffs’ claims in this matter and CUI’s willingness to
25 resolve the dispute without the need for legal action. I conducted these calls as
26 scheduled with my co-counsel and Ms. Ashley.

1 7. On July 17, 2025, Ms. Ashley contacted me to share CUI's decision that it
2 was not willing to continue the women's swimming & diving and tennis teams. After
3 learning that attempts to resolve the dispute without litigation would be
4 unsuccessful, Plaintiffs and I, along with my co-counsel, immediately began
5 preparing to file a complaint and the instant application for a temporary restraining
6 order. At the same time, I informed Ms. Ashley that Plaintiffs would be filing suit.

7 8. Attached as Exhibit 3 to this declaration is a true and correct copy of the
8 December 11, 1979, publication in the Federal Register, *A Policy Interpretation:*
9 *Title IX and Intercollegiate Athletics* from the Office for Civil Rights of the United
10 States Department of Education (then the Department of Health, Education, and
11 Welfare).

12 9. Attached as Exhibit 4 to this declaration is a true and correct copy of the
13 January 16, 1996, publication, *Clarification of Intercollegiate Athletics Policy*
14 *Guidance: The Three-Part Test* from the Office for Civil Rights of the United States
15 Department of Education.

16 10. Attached as Exhibit 5 is a true and correct copy of a May 20, 2025, letter sent
17 by CUI President Michael A. Thomas, Ph.D., to CUI staff citing financial constraints
18 as the reason for a budget which terminates sports teams.

19 11. Attached as Exhibit 6 is a true and correct copy of the CUI website available
20 at [https://www.cui.edu/aboutcui/president/articles/post/vision-2025-moving-our-](https://www.cui.edu/aboutcui/president/articles/post/vision-2025-moving-our-vision-forward)
21 [vision-forward](https://www.cui.edu/aboutcui/president/articles/post/vision-2025-moving-our-vision-forward), discussing CUI's Vision 2025 project which includes athletic
22 facilities investment, accessed on July 30, 2025.

23 12. Attached as Exhibit 7 is a true and correct copy of an email sent by CUI
24 Associate Vice President of Athletics Crystal Rosenthal shortly after May 20, 2025,
25 to athletes on teams it was not eliminating, detailing the school's substantial
26 investments in athletic facilities.

1 13. Attached as Exhibit 8 is a true and correct copy of the May 20, 2025, email
2 sent by Associate Vice President of Athletics Crystal Rosenthal to Plaintiffs in this
3 action immediately following the announcement that CUI intended to discontinue
4 the women's swimming & diving and women's tennis teams.

5 14. On August 11, 2025 at 1:21 PM, I notified Carol Ashley, counsel for CUI,
6 of Plaintiffs' intention to file this *Ex Parte* Application for a Temporary Restraining
7 Order. Notice of the *Ex Parte* Application was provided both over the phone and in
8 writing. I intend to provide notice of the hearing date as soon as it is issued by the
9 Court. Counsel for CUI indicated on August 12, 2025 at 3:23 PM that CUI would
10 be opposing Plaintiffs' *Ex Parte* Application.

11
12
13 DATED: August 13, 2025

Respectfully submitted,

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Arthur H. Bryant

EXHIBIT 1

Concordia University Irvine Athletics



CUI Announces Discontinuation of Four Athletic Programs as Part of Strategic Restructuring

Ben Rosehart

General

Posted: May 20 | 4:00 PM

Irvine, Calif. — May 20, 2025 — Concordia University Irvine (CUI) has announced the difficult decision to discontinue its men's & women's tennis and men's & women's swim and dive programs, effective at the end of the 2024-2025 athletic season.

The decision follows a comprehensive evaluation of the university's academic and athletic offerings, resource allocation, and long-term strategic priorities. University leadership, in partnership with the Department of Athletics, determined that the current model is not sustainable in the midst of increasing operational costs, facility limitations, and significant changes in the collegiate athletics landscape.

"We are thankful to our student-athletes and coaches for their dedication, hard work, and the pride they have brought to our university in competition, the classroom, and the community," said Crystal Rosenthal, Associate Vice President and Director of Athletics. "This decision is in no way a reflection of their performance or commitment. It is a necessary step to address broader challenges and to ensure a sustainable future for the university."

In keeping with CUI's commitment to academic and personal success, student-athletes affected by this transition will be supported with compassion and transparency if

they decide to go through the transfer process. Those who choose to continue their studies at Concordia will retain their scholarship amounts, provided they remain in good academic and conduct standing. Coaching staff members will receive institutional support and career resources to assist with their transition.

Concordia University Irvine remains committed to a broad-based, inclusive NCAA DII athletics program and will continue to sponsor 20 varsity programs aligned with the institution's values of balance, academic excellence and student well-being.

For media inquiries, please contact Ben Rosehart, CUI Sports Information Director at ben.rosehart@cui.edu or 949-214-3211

Copyright ©2025 Concordia University Irvine Athletics

EXHIBIT 2

June 16, 2025

Via e-mail: michael.thomas@cui.edu

Michael A. Thomas, Ph.D., President
Concordia University Irvine
1530 Concordia West
Irvine, CA, USA 92612

RE: Elimination of Women's Varsity Teams in Violation of Title IX

Dear President Thomas:

I and my co-counsel have been retained by female athletes at Concordia University Irvine ("CUI") to prevent the elimination of the women's swimming & diving and tennis teams and, if necessary, pursue a class action lawsuit against CUI for depriving women athletes and potential athletes of equal participation opportunities and treatment in violation of Title IX of the Education Amendments of 1972. Please respond to this letter as soon as possible and, in any event, no later than Friday, June 20, 2025.

One month earlier, on May 20, 2025, CUI announced that it was eliminating its women's varsity swimming & diving and tennis teams at the end of the 2024-25 athletic season, along with its men's varsity swimming & diving and tennis teams. Because CUI was already depriving women of equal opportunities to participate in varsity intercollegiate athletics, the elimination of the women's teams is a clear violation of Title IX that pushes CUI even further from compliance.

Title IX bars sex discrimination by CUI and all other educational institutions receiving federal funds. Under Title IX, schools cannot eliminate women's teams for which interest, ability, and competition are available unless "intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments." 44 Fed. Reg. 71418 (Jan. 16, 1996). CUI fails this test.

According to the most recent publicly available Equity in Athletics Disclosure Act data that CUI submitted and verified to the U.S. Department of Education as accurate, CUI had a total undergraduate population of 1,413 in 2023-24, including 833 women and 580 men. So, undergraduate enrollment was 58.95% women. The school's intercollegiate athletic teams had 625 athletes: 328 women and 297 men. They were only 52.48% women—creating a gap of 6.47% between the women's undergraduate enrollment rate and their intercollegiate athletic participation rate. CUI needed to *add* women's opportunities to comply with Title IX.

But CUI just announced that it is *eliminating* two women's teams that include 38 women (along with two men's teams that include 33 men). As a result, the school's athletic participation numbers and rates for women will *decrease* when they need to *increase*. After the cuts, based on the most recent publicly available numbers, CUI will need to add approximately 87 opportunities for women to reach gender equity under Title IX. This is, of course, far more opportunities to participate in varsity athletics than the women's swimming & diving and tennis teams provide.

CUI Title IX Violation

June 16, 2025

Page 2

I and my co-counsel would like to meet with you and/or the school's lawyers immediately and discuss the relevant facts and the law, as well as the likely outcome if a lawsuit is filed. We would also like to discuss with you the concerning differences between the number of varsity teams and athletic participation opportunities CUI has posted on its web site and those it has reported to the federal government as accurate. Those differences underscore the need for CUI to agree to reinstate the women's teams and come into compliance with Title IX.

Unless CUI does so—or has plans for compliance with Title IX we do not know about—we will file a class action and seek a preliminary injunction immediately preserving the women's teams. Courts throughout the country have consistently issued preliminary injunctions preserving women's varsity teams when the elimination of a women's team violates Title IX. *See, e.g., Lazor v. Univ. of Connecticut*, No. 3:21-CV-583 (SRU), 2021 WL 2138832, at *1 (D. Conn. May 26, 2021) (granting temporary restraining order to reinstate the women's rowing team); *Ohlensehlen v. Univ. of Iowa*, 509 F. Supp. 3d 1085, 1088 (S.D. Iowa 2020), *appeal dismissed*, No. 21-1203, 2021 WL 3174982 (8th Cir. Feb. 26, 2021) (granting preliminary injunction to reinstate the women's swimming and diving team); *Mayerova v. E. Michigan Univ.*, 346 F. Supp. 3d 983, 997 (E.D. Mich. 2018), *appeal dismissed*, No. 18-2238, 2020 WL 1970535 (6th Cir. Apr. 20, 2020) (granting preliminary injunction to reinstate the women's varsity softball and tennis teams); *Portz v. St. Cloud State Univ.*, 196 F. Supp. 3d 963, 978 (D. Minn. 2016) (granting preliminary injunction to reinstate the women's varsity tennis team); *Biediger v. Quinnipiac Univ.*, 616 F. Supp. 2d 277 (D. Conn. 2009) (granting preliminary injunction to reinstate the women's varsity volleyball team); *Choike v. Slippery Rock Univ.*, 2006 WL 2060576 (W.D. Pa. July 21, 2006) (granting preliminary injunction to reinstate the women's varsity water polo and swimming teams); *Barrett v. West Chester Univ. of Penn.*, 2003 WL 22803477 (E.D. Pa. Nov. 12, 2003) (granting preliminary injunction to reinstate the women's varsity gymnastics team); *Favia v. Indiana Univ. of Penn.*, 812 F. Supp. 578 (1993) (granting preliminary injunction to reinstate the women's varsity gymnastics and field hockey teams); *Cohen v. Brown Univ.*, 809 F. Supp. 978 (D. R.I. 1992), *aff'd* 991 F.2d 888 (1st Cir. 1993) (granting preliminary injunction to reinstate the women's varsity gymnastics and volleyball teams).

We hope that will not be necessary in this case.

I look forward to hearing from you as soon as possible and, in any event, no later than Friday, June 20, 2025.

Sincerely,

A handwritten signature in blue ink, appearing to read "Arthur H. Bryant", with a horizontal line extending from the end of the signature.

Arthur H. Bryant

cc: Ronald Van Blarcom, Vice President of Legal Affairs and General Counsel
John Clune and Ashlyn Hare, Hutchison Black and Cook

EXHIBIT 3



A Policy Interpretation: Title IX and Intercollegiate Athletics

[OCR-00005]

Federal Register, Vol. 44, No. 239 – Tuesday, Dec. 11, 1979

Intercollegiate athletics policy interpretation; provides more specific factors to be reviewed by OCR under program factors listed at 34 C.F.R. Section 106.41 of the Title IX regulation; explains OCR's approach to determining compliance in intercollegiate athletics; adds two program factors, recruitment and support services, to be reviewed; clarifies requirement for athletic scholarships – 34 C.F.R. Section 106.37(c). The document contains dated references, and footnote 6 is out of date; however, the policy is still current.

Federal Register / Vol. 44, No. 239 / Tuesday, December 11, 1979 / Rules and Regulations

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office for Civil Rights

Office of the Secretary

45 CFR Part 86

Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX

and Intercollegiate Athletics

AGENCY: Office for Civil Rights, Office of the Secretary, HEW.

ACTION: Policy interpretation.

SUMMARY: The following Policy Interpretation represents the Department of Health, Education, and Welfare's interpretation of the intercollegiate athletic provisions of Title IX of the Education Amendments of 1972 and its implementing regulation. Title IX prohibits educational programs and institutions funded or otherwise supported by the Department from discriminating on the basis of sex. The Department published a proposed Policy Interpretation for public comment on December 11, 1978. Over 700 comments reflecting a broad range of opinion were received. In addition, HEW staff visited eight universities during June and July, 1979, to see how the proposed policy and other suggested alternatives would apply in actual practice at individual campuses. The final Policy Interpretation reflects the many comments HEW received and the results of the individual campus visits

EFFECTIVE DATE: December 11, 1979

FOR FURTHER INFORMATION CONTACT: Colleen O'Connor, 330 Independence Avenue, Washington, D.C. (202) 245-6671

SUPPLEMENTARY INFORMATION:

1. Legal Background

A. The Statute

Section 901(a) of Title IX of the Education Amendments of 1972 provides:

- No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Section 844 of the Education Amendments of 1974 further provides:

- The Secretary of [of HEW] shall prepare and publish * * * proposed regulations implementing the provisions of Title IX of the Education Amendments of 1972 relating to the prohibition of sex discrimination in federally assisted education programs which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports.

Congress passed Section 844 after the Conference Committee deleted a Senate floor amendment that would have exempted revenue-producing athletics from the jurisdiction of Title IX.

B. The Regulation

The regulation implementing Title IX is set forth, in pertinent part, in the Policy Interpretation below. It was signed by President Ford on May 27, 1975, and submitted to the Congress for review pursuant to Section 431(d)(1) of the General Education Provisions Act (GEPA).

During this review, the House Subcommittee on Postsecondary Education held hearings on a resolution disapproving the regulation. The Congress did not disapprove the regulation within the 45 days allowed under GEPA, and it therefore became effective on July 21, 1975.

Subsequent hearings were held in the Senate Subcommittee on Education on a bill to exclude revenues produced by sports to the extent they are used to pay the costs of those sports. The Committee, however, took no action on this bill.

The regulation established a three year transition period to give institutions time to comply with its equal athletic opportunity requirements. That transition period expired on July 21, 1978.

II. Purpose of Policy Interpretation

By the end of July 1978, the Department had received nearly 100 complaints alleging discrimination in athletics against more than 50 institutions of higher education. In attempting to investigate these complaints, and to answer questions from the

university community, the Department determined that it should provide further guidance on what constitutes compliance with the law. Accordingly, this Policy Interpretation explains the regulation so as to provide a framework within which the complaints can be resolved, and to provide institutions of higher education with additional guidance on the requirements for compliance with Title IX in intercollegiate athletic programs.

III. Scope of Application

This Policy Interpretation is designed specifically for intercollegiate athletics. However, its general principles will often apply to club, intramural, and interscholastic athletic programs, which are also covered by regulation.¹ Accordingly, the Policy Interpretation may be used for guidance by the administrators of such programs when appropriate.

This policy interpretation applies to any public or private institution, person or other entity that operates an educational program or activity which receives or benefits from financial assistance authorized or extended under a law administered by the Department. This includes educational institutions whose students participate in HEW funded or guaranteed student loan or assistance programs. For further information see definition of "recipient" in Section 86.2 of the Title IX regulation.

IV. Summary of Final Policy Interpretation

The final Policy Interpretation clarifies the meaning of "equal opportunity" in intercollegiate athletics. It explains the factors and standards set out in the law and regulation which the Department will consider in determining whether an institution's intercollegiate athletics program complies with the law and regulations. It also provides guidance to assist institutions in determining whether any disparities which may exist between men's and women's programs are justifiable and nondiscriminatory. The Policy Interpretation is divided into three sections:

- *Compliance in Financial Assistance (Scholarships) Based on Athletic Ability:* Pursuant to the regulation, the governing principle in this area is that all such assistance should be available on a substantially proportional basis to the number of male and female participants in the institution's athletic program.

- *Compliance in Other Program Areas (Equipment and supplies; games and practice times; travel and per diem, coaching and academic tutoring; assignment and compensation of coaches and tutors; locker rooms, and practice and competitive facilities; medical and training facilities; housing and dining facilities; publicity; recruitment; and support services)*: Pursuant to the regulation, the governing principle is that male and female athletes should receive equivalent treatment, benefits, and opportunities.
- *Compliance in Meeting the Interests and Abilities of Male and Female Students*: Pursuant to the regulation, the governing principle in this area is that the athletic interests and abilities of male and female students must be equally effectively accommodated.

V. Major Changes to Proposed Policy Interpretation

The final Policy Interpretation has been revised from the one published in proposed form on December 11, 1978. The proposed Policy Interpretation was based on a two-part approach. Part I addressed equal opportunity for participants in athletic programs. It required the elimination of discrimination in financial support and other benefits and opportunities in an institution's existing athletic program. Institutions could establish a presumption of compliance if they could demonstrate that:

- "Average per capita" expenditures for male and female athletes were substantially equal in the area of "readily financially measurable" benefits and opportunities or, if not, that any disparities were the result of nondiscriminatory factors, and
- Benefits and opportunities for male and female athletes, in areas which are not financially measurable, "were comparable."

Part II of the proposed Policy Interpretation addressed an institution's obligation to accommodate effectively the athletic interests and abilities of women as well as men on a continuing basis. It required an institution either:

- To follow a policy of development of its women's athletic program to provide the participation and competition opportunities needed to accommodate the growing interests and abilities of women, or
- To demonstrate that it was effectively (and equally) accommodating the athletic interests and abilities of students, particularly as the interests and abilities of women students developed.

While the basic considerations of equal opportunity remain, the final Policy Interpretation sets forth the factors that will be examined to determine an institution's actual, as opposed to presumed, compliance with Title IX in the area of intercollegiate athletics.

The final Policy Interpretation does not contain a separate section on institutions' future responsibilities. However, institutions remain obligated by the Title IX regulation to accommodate effectively the interests and abilities of male and female students with regard to the selection of sports and levels of competition available. In most cases, this will entail development of athletic programs that substantially expand opportunities for women to participate and compete at all levels.

The major reasons for the change in approach are as follows:

(1) Institutions and representatives of athletic program participants expressed a need for more definitive guidance on what constituted compliance than the discussion of a presumption of compliance provided. Consequently the final Policy Interpretation explains the meaning of "equal athletic opportunity" in such a way as to facilitate an assessment of compliance.

(2) Many comments reflected a serious misunderstanding of the presumption of compliance. Most institutions based objections to the proposed Policy Interpretation in part on the assumption that failure to provide compelling justifications for disparities in per capita expenditures would have automatically resulted in a finding of noncompliance. In fact, such a failure would only have deprived an institution of the benefit of the presumption that it was in compliance with the law. The Department would still have had the burden of demonstrating that the institution was actually engaged in unlawful discrimination. Since the purpose of issuing a policy interpretation was to clarify the regulation, the Department has determined that the approach of stating actual compliance factors would be more useful to all concerned.

(3) The Department has concluded that purely financial measures such as the per capita test do not in themselves offer conclusive documentation of discrimination, except where the benefit or opportunity under review, like a scholarship, is itself financial in nature. Consequently, in the final Policy Interpretation, the Department

has detailed the factors to be considered in assessing actual compliance. While per capita breakdowns and other devices to examine expenditure patterns will be used as tools of analysis in the Department's investigative process, it is achievement of "equal opportunity" for which recipients are responsible and to which the final Policy Interpretation is addressed.

A description of the comments received, and other information obtained through the comment/consultation process, with a description of Departmental action in response to the major points raised, is set forth at Appendix "B" to this document.

VI. Historic Patterns of Intercollegiate Athletics Program Development and Operations

In its proposed Policy Interpretation of December 11, 1978, the Department published a summary of historic patterns affecting the relative status of men's and women's athletic programs. The Department has modified that summary to reflect additional information obtained during the comment and consultation process. The summary is set forth at Appendix A to this document.

VII. The Policy Interpretation

This Policy Interpretation clarifies the obligations which recipients of Federal aid have under Title IX to provide equal opportunities in athletic programs. In particular, this Policy Interpretation provides a means to assess an institution's compliance with the equal opportunity requirements of the regulation which are set forth at 45 CFR 86.37(c) and 86.41(c).

A. Athletic Financial Assistance (Scholarships)

1. *The Regulation*—Section 86.37(c) of the regulation provides:

[Institutions] must provide reasonable opportunities for such award [of financial assistance] for member of each sex in proportion to the number of students of each sex participating in * * * inter-collegiate athletics.²

2. *The Policy*—The Department will examine compliance with this provision of the regulation primarily by means of a financial comparison to determine whether proportionately equal amounts of financial assistance (scholarship aid) are available to men's and women's athletic programs. The Department will measure compliance with this standard by dividing the amounts of aid available for the members of each sex by the numbers of male or female participants in the athletic program and comparing the results. Institutions may be found in compliance if this comparison results in substantially equal amounts or if a resulting disparity can be explained by adjustments to take into account legitimate, nondiscriminatory factors. Two such factors are:

a. At public institutions, the higher costs of tuition for students from out-of-state may in some years be unevenly distributed between men's and women's programs. These differences will be considered nondiscriminatory if they are not the result of policies or practices which disproportionately limit the availability of out-of-state scholarships to either men or women.

b. An institution may make reasonable professional decisions concerning the awards most appropriate for program development. For example, team development initially may require spreading scholarships over as much as a full generation (four years) of student athletes. This may result in the award of fewer scholarships in the first few years than would be necessary to create proportionality between male and female athletes.

3. *Application of the Policy*—a. This section does not require a proportionate number of scholarships for men and women or individual scholarships of equal dollar value. It does mean that the total amount of scholarship aid made available to men and women must be substantially proportionate to their participation rates.

b. When financial assistance is provided in forms other than grants, the distribution of non-grant assistance will also be compared to determine whether equivalent benefits are proportionately available to male and female athletes. A disproportionate amount of work-related aid or loans in the assistance made available to the members of one sex, for example, could constitute a violation of Title IX.

Definition—For purposes of examining compliance with this Section, the participants will be defined as those athletes:

- a. 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
- b. Who are participating in organized practice sessions and other team meetings and activities on a regular basis during a sport's season: and
- c. Who are listed on the eligibility or squad lists maintained for each sport, or
- d. Who, because of injury, cannot meet a, b, or c above but continue to receive financial aid on the basis of athletic ability.

B. Equivalence in Other Athletic Benefits and Opportunities

1. *The Regulation*—The Regulation requires that recipients that operate or sponsor interscholastic, intercollegiate, club or intramural athletics. "provide equal athletic opportunities for members of both sexes." In determining whether an institution is providing equal opportunity in intercollegiate athletics the regulation requires the Department to consider, among others, the following factors:

- (1) [3](#)
- (2) Provision and maintenance of equipment and supplies;
- (3) Scheduling of games and practice times;
- (4) Travel and per diem expenses;
- (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 services and facilities;

(9) Provision of housing and dining services and facilities; and

(10) Publicity

Section 86.41(c) also permits the Director of the Office for Civil Rights to consider other factors in the determination of equal opportunity. Accordingly, this Section also addresses recruitment of student athletes and provision of support services.

This list is not exhaustive. Under the regulation, it may be expanded as necessary at the discretion of the Director of the Office for Civil Rights.[4](#)

2. *The Policy*—The Department will assess compliance with both the recruitment and the general athletic program requirements of the regulation by comparing the availability, quality and kinds of benefits, opportunities, and treatment afforded members of both sexes. Institutions will be in compliance if the compared program components are equivalent, that is, equal or equal in effect. Under this standard, identical benefits, opportunities, or treatment are not required, provided the overall effects of any differences is negligible.

If comparisons of program components reveal that treatment, benefits, or opportunities are not equivalent in kind, quality or availability, a finding of compliance may still be justified if the differences are the result of nondiscriminatory factors. Some of the factors that may justify these differences are as follows:

a. Some aspects of athletic programs may not be equivalent for men and women because of unique aspects of particular sports or athletic activities. This type of distinction was called for by the "Javits' Amendment" [5](#) to Title IX which instructed HEW to make "reasonable (regulatory) provisions considering the nature of particular sports" in intercollegiate athletics.

Generally, these differences will be the result of factors that are inherent to the basic operation of specific sports. Such factors may include rules of play, nature/replacement of equipment, rates of injury resulting from participation, nature of facilities required for competition, and the maintenance/ upkeep requirements of those facilities. For the most part, differences involving such factors will occur in

programs offering football, and consequently these differences will favor men. If sport-specific needs are met equivalently in both men's and women's programs, however, differences in particular program components will be found to be justifiable.

b. Some aspects of athletic programs may not be equivalent for men and women because of legitimately sex-neutral factors related to special circumstances of a temporary nature. For example, large disparities in recruitment activity for any particular year may be the result of annual fluctuations in team needs for first-year athletes. Such differences are justifiable to the extent that they do not reduce overall equality of opportunity.

c. The activities directly associated with the operation of a competitive event in a single-sex sport may, under some circumstances, create unique demands or imbalances in particular program components. Provided any special demands associated with the activities of sports involving participants of the other sex are met to an equivalent degree, the resulting differences may be found nondiscriminatory. At many schools, for example, certain sports—notably football and men's basketball—traditionally draw large crowds. Since the costs of managing an athletic event increase with crowd size, the overall support made available for event management to men's and women's programs may differ in degree and kind. These differences would not violate Title IX if the recipient does not limit the potential for women's athletic events to rise in spectator appeal and if the levels of event management support available to both programs are based on sex-neutral criteria (e.g., facilities used, projected attendance, and staffing needs).

d. Some aspects of athletic programs may not be equivalent for men and women because institutions are undertaking voluntary affirmative actions to overcome effects of historical conditions that have limited participation in athletics by the members of one sex. This is authorized at § 86.3(b) of the regulation.

3. Application of the Policy—General Athletic Program Components—

a. *Equipment and Supplies (§ 86.41(c)(2))*. Equipment and supplies include but are not limited to uniforms, other apparel, sport-specific equipment and supplies, general

equipment and supplies, instructional devices, and conditioning and weight training equipment.

Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

- (1) The quality of equipment and supplies;
- (2) The amount of equipment and supplies;
- (3) The suitability of equipment and supplies;
- (4) The maintenance and replacement of the equipment and supplies; and
- (5) The availability of equipment and supplies.

b. *Scheduling of Games and Practice Times (§ 86.41(c)(3))*. Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

- (1) The number of competitive events per sport;
- (2) The number and length of practice opportunities;
- (3) The time of day competitive events are scheduled;
- (4) The time of day practice opportunities are scheduled; and
- (5) The opportunities to engage in available pre-season and post-season competition.

c. *Travel and Per Diem Allowances (§ 86.41(c)(4))*. Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

- (1) Modes of transportation;
- (2) Housing furnished during travel;
- (3) Length of stay before and after competitive events;

(4) Per diem allowances; and

(5) Dining arrangements.

d. Opportunity to Receive Coaching and Academic Tutoring (§ 86.41(c)(5)).

(1) Coaching—Compliance will be assessed by examining, among other factors:

(a) Relative availability of full-time coaches;

(b) Relative availability of part-time and assistant coaches; and

(c) Relative availability of graduate assistants.

(2) Academic tutoring—Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

(a) The availability of tutoring; and

(b) Procedures and criteria for obtaining tutorial assistance.

*e. Assignment and Compensation of Coaches and Tutors (§ 86.41(c)(6)).*⁶ In general, a violation of Section 86.41(c)(6) will be found only where compensation or assignment policies or practices deny male and female athletes coaching of equivalent quality, nature, or availability.

Nondiscriminatory factors can affect the compensation of coaches. In determining whether differences are caused by permissible factors, the range and nature of duties, the experience of individual coaches, the number of participants for particular sports, the number of assistant coaches supervised, and the level of competition will be considered.

Where these or similar factors represent valid differences in skill, effort, responsibility or working conditions they may, in specific circumstances, justify differences in compensation. Similarly, there may be unique situations in which a particular person

may possess such an outstanding record of achievement as to justify an abnormally high salary.

(1) Assignment of Coaches—Compliance will be assessed by examining, among other factors, the equivalence for men's and women's coaches of:

- (a) Training, experience, and other professional qualifications;
- (b) Professional standing.

(2) Assignment of Tutors—Compliance will be assessed by examining, among other factors, the equivalence for men's and women's tutors of:

- (a) Tutor qualifications;
- (b) Training, experience, and other qualifications.

(3) Compensation of Coaches—Compliance will be assessed by examining, among other factors, the equivalence for men's and women's coaches of:

- (a) Rate of compensation (per sport, per season);
- (b) Duration of contracts;
- (c) Conditions relating to contract renewal;
- (d) Experience;
- (e) Nature of coaching duties performed;
- (f) Working conditions; and
- (g) Other terms and conditions of employment.

(4) Compensation of Tutors—Compliance will be assessed by examining, among other factors, the equivalence for men's and women's tutors of:

- (a) Hourly rate of payment by nature subjects tutored;

- (b) Pupil loads per tutoring season;
- (c) Tutor qualifications;
- (d) Experience;
- (e) Other terms and conditions of employment.

f. *Provision of Locker Rooms, Practice and Competitive Facilities (§ 86.41(c)(7)).*

Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

- (1) Quality and availability of the facilities provided for practice and competitive events;
- (2) Exclusivity of use of facilities provided for practice and competitive events;
- (3) Availability of locker rooms;
- (4) Quality of locker rooms;
- (5) Maintenance of practice and competitive facilities; and
- (6) Preparation of facilities for practice and competitive events.

g. *Provision of Medical and Training Facilities and Services (§ 86.41(c)(8)).* Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

- (1) Availability of medical personnel and assistance;
- (2) Health, accident and injury insurance coverage;
- (3) Availability and quality of weight and training facilities;
- (4) Availability and quality of conditioning facilities; and
- (5) Availability and qualifications of athletic trainers.

h. *Provision of Housing and Dining Facilities and Services (§ 86.41(c)(9))*. Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

(1) Housing provided;

(2) Special services as part of housing arrangements (e.g., laundry facilities, parking space, maid service).

i. *Publicity (§ 86.41(c)(10))*. Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

(1) Availability and quality of sports information personnel;

(2) Access to other publicity resources for men's and women's programs; and

(3) Quantity and quality of publications and other promotional devices featuring men's and women's programs.

4. *Application of the Policy—Other Factors (§ 86.41(c))*. a. *Recruitment of Student Athletes.*⁷ The athletic recruitment practices of institutions often affect the overall provision of opportunity to male and female athletes. Accordingly, where equal athletic opportunities are not present for male and female students, compliance will be assessed by examining the recruitment practices of the athletic programs for both sexes to determine whether the provision of equal opportunity will require modification of those practices.

Such examinations will review the following factors:

(1) Whether coaches or other professional athletic personnel in the programs serving male and female athletes are provided with substantially equal opportunities to recruit;

(2) Whether the financial and other resources made available for recruitment in male and female athletic programs are equivalently adequate to meet the needs of each program; and

(3) Whether the differences in benefits, opportunities, and treatment afforded prospective student athletes of each sex have a disproportionately limiting effect upon the recruitment of students of either sex.

b. *Provision of Support Services.* The administrative and clerical support provided to an athletic program can affect the overall provision of opportunity to male and female athletes, particularly to the extent that the provided services enable coaches to perform better their coaching functions.

In the provision of support services, compliance will be assessed by examining, among other factors, the equivalence of:

(1) The amount of administrative assistance provided to men's and women's programs;

(2) The amount of secretarial and clerical assistance provided to men's and women's programs.

5. *Overall Determination of Compliance.* The Department will base its compliance determination under ' 86.41(c) of the regulation upon an examination of the following:

a. Whether the policies of an institution are discriminatory in language or effect; or

b. Whether disparities of a substantial and unjustified nature exist in the benefits, treatment, services, or opportunities afforded male and female athletes in the institution's program as a whole; or

c. Whether disparities in benefits, treatment, services, or opportunities in individual segments of the program are substantial enough in and of themselves to deny equality of athletic opportunity.

C. *Effective Accommodation of Student Interests and Abilities.*

1. *The Regulation.* The regulation requires institutions to accommodate effectively the interests and abilities of students to the extent necessary to provide equal opportunity in the selection of sports and levels of competition available to members of both sexes.

Specifically, the regulation, at § 86.41(c)(1), requires the Director to consider, when determining whether equal opportunities are available—

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

Section 86.41(c) also permits the Director of the Office for Civil Rights to consider other factors in the determination of equal opportunity. Accordingly, this section also addresses competitive opportunities in terms of the competitive team schedules available to athletes of both sexes.

2. The Policy. The Department will assess compliance with the interests and abilities section of the regulation by examining the following factors:

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

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 an underrepresented 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 an underrepresented sex.

4. Application of the Policy—Selection of Sports.

In the selection of sports, the regulation does not require institutions to integrate their teams nor to provide exactly the same choice of sports to men and women. However, where an institution sponsors a team in a particular sport for members of one sex, it may be required either to permit the excluded sex to try out for the team or to sponsor a separate team for the previously excluded sex.

a. Contact Sports—Effective accommodation means that if an institution sponsors a team for members of one sex in a contact sport, it must do so for members of the other sex under the following circumstances:

(1) The opportunities for members of the excluded sex have historically been limited; and

(2) There is sufficient interest and ability among the members of the excluded sex to sustain a viable team and a reasonable expectation of intercollegiate competition for that team.

b. Non-Contact Sports—Effective accommodation means that if an institution sponsors a team for members of one sex in a non-contact sport, it must do so for members of the other sex under the following circumstances:

(1) The opportunities for members of the excluded sex have historically been limited;

(2) There is sufficient interest and ability among the members of the excluded sex to sustain a viable team and a reasonable expectation of intercollegiate competition for that team; and

(3) Members of the excluded sex do not possess sufficient skill to be selected for a single integrated team, or to compete actively on such a team if selected.

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 individuals of each sex to participate in intercollegiate competition, and for athletes of each sex to have competitive team schedules which equally reflect their abilities.

a. Compliance will be assessed in any one of the following ways:

(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 which is demonstrably responsive to the developing interest and abilities of the members 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.

b. Compliance with this provision of the regulation will also be assessed by examining the following:

(1) Whether the competitive schedules for men's and women's teams, on a program-wide basis, afford proportionally similar numbers of male and female athletes equivalently advanced competitive opportunities; or

(2) Whether the institution can demonstrate a history and continuing practice of upgrading the competitive opportunities available to the historically disadvantaged sex as warranted by developing abilities among the athletes of that sex.

c. Institutions are not required to upgrade teams to intercollegiate status or otherwise develop intercollegiate sports absent a reasonable expectation that intercollegiate competition in that sport will be available within the institution's normal competitive regions. Institutions may be required by the Title IX regulation to actively encourage the development of such competition, however, when overall athletic opportunities within that region have been historically limited for the members of one sex.

6. Overall Determination of Compliance.

The Department will base its compliance determination under § 86.41(c) of the regulation upon a determination of the following:

- a. Whether the policies of an institution are discriminatory in language or effect; or
- b. Whether disparities of a substantial and unjustified nature in the benefits, treatment, services, or opportunities afforded male and female athletes exist in the institution's program as a whole; or
- c. Whether disparities in individual segments of the program with respect to benefits, treatment, services, or opportunities are substantial enough in and of themselves to deny equality of athletic opportunity.

VIII. The Enforcement Process

The process of Title IX enforcement is set forth in § 86.71 of the Title IX regulation, which incorporates by reference the enforcement procedures applicable to Title VI of the Civil Rights Act of 1964.⁸ The enforcement process prescribed by the regulation is supplemented by an order of the Federal District Court, District of Columbia, which establishes time frames for each of the enforcement steps.⁹

According to the regulation, there are two ways in which enforcement is initiated:

- *Compliance Reviews*—Periodically the Department must select a number of recipients (in this case, colleges and universities which operate intercollegiate athletic programs) and conduct investigations to determine whether recipients are complying with Title IX (45 CFR 80.7(a))
- *Complaints*—The Department must investigate all valid (written and timely) complaints alleging discrimination on the basis of sex in a recipient's programs. (45 CFR 80.7(b))

The Department must inform the recipient (and the complainant, if applicable) of the results of its investigation. If the investigation indicates that a recipient is in compliance, the Department states this, and the case is closed. If the investigation indicates noncompliance, the Department outlines the violations found.

The Department has 90 days to conduct an investigation and inform the recipient of its findings, and an additional 90 days to resolve violations by obtaining a voluntary compliance agreement from the recipient. This is done through negotiations between the Department and the recipient, the goal of which is agreement on steps the recipient will take to achieve compliance. Sometimes the violation is relatively minor and can be corrected immediately. At other times, however, the negotiations result in a plan that will correct the violations within a specified period of time. To be acceptable, a plan must describe the manner in which institutional resources will be used to correct the violation. It also must state acceptable time tables for reaching interim goals and full compliance. When agreement is reached, the Department notifies the institution that its plan is acceptable. The Department then is obligated to review periodically the implementation of the plan.

An institution that is in violation of Title IX may already be implementing a corrective plan. In this case, prior to informing the recipient about the results of its investigation, the Department will determine whether the plan is adequate. If the plan is not adequate to correct the violations (or to correct them within a reasonable period of time) the recipient will be found in noncompliance and voluntary negotiations will begin. However, if the institutional plan is acceptable, the Department will inform the institution that although the institution has violations, it is found to be in compliance because it is implementing a corrective plan. The Department, in this instance also, would monitor the progress of the institutional plan. If the institution subsequently does not completely implement its plan, it will be found in noncompliance.

When a recipient is found in noncompliance and voluntary compliance attempts are unsuccessful, the formal process leading to termination of Federal assistance will be begun. These procedures, which include the opportunity for a hearing before an administrative law judge, are set forth at 45 CFR 80.8–80.11 and 45 CFR Part 81.

IX. Authority

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374, 20 U.S.C. 1681, 1682; sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 612; and 45 CFR Part 86)

Dated December 3, 1979.

Roma Stewart,

Director, Office for Civil Rights, Department of Health, Education, and Welfare.

Dated December 4, 1979.

Patricia Roberts Harris,

Secretary, Department of Health, Education, and Welfare.

Appendix A—Historic Patterns of Intercollegiate Athletics Program Development

1. Participation in intercollegiate sports has historically been emphasized for men but not women. Partially as a consequence of this, participation rates of women are far below those of men. During the 1977–78 academic year women students accounted for 48 percent of the national undergraduate enrollment (5,496,000 of 11,267,000 students).¹ Yet, only 30 percent of the intercollegiate athletes are women.²

The historic emphasis on men's intercollegiate athletic programs has also contributed to existing differences in the number of sports and scope of competition offered men and women. One source indicates that, on the average, colleges and universities are providing twice the number of sports for men as they are for women.³

2. Participation by women in sports is growing rapidly. During the period from 1971–1978, for example, the number of female participants in organized high school sports increased from 294,000 to 2,083,000—an increase of over 600 percent.⁴ In contrast, between Fall 1971 and Fall 1977, the enrollment of females in high school decreased from approximately 7,600,000 to approximately 7,150,000 a decrease of over 5 percent.⁵

The growth in athletic participation by high school women has been reflected on the campuses of the nation's colleges and universities. During the period from 1971 to 1976 the enrollment of women in the nation's institutions of higher education rose 52 percent, from 3,400,000 to 5,201,000.⁶ During this same period, the number of women participating in intramural sports increased 108 percent from 276,167 to

576,167. In club sports, the number of women participants increased from 16,386 to 25,541 or 55 percent. In intercollegiate sports, women's participation increased 102 percent from 31,852 to 64,375.⁷ These developments reflect the growing interest of women in competitive athletics, as well as the efforts of colleges and universities to accommodate those interests.

3. The overall growth of women's intercollegiate programs has not been at the expense of men's programs. During the past decade of rapid growth in women's programs, the number of intercollegiate sports available for men has remained stable, and the number of male athletes has increased slightly. Funding for men's programs has increased from \$1.2 to \$2.2 million between 1970–1977 alone.⁸

4. On most campuses, the primary problem confronting women athletes is the absence of a fair and adequate level of resources, services, and benefits. For example, disproportionately more financial aid has been made available for male athletes than for female athletes. Presently, in institutions that are members of both the National Collegiate Athletic Association (NCAA) and the Association for Intercollegiate Athletics for Women (AIAW), the average annual scholarship budget is \$39,000. Male athletes receive \$32,000 or 78 percent of this amount, and female athletes receive \$7,000 or 22 percent, although women are 30 percent of all the athletes eligible for scholarships.⁹

Likewise, substantial amounts have been provided for the recruitment of male athletes, but little funding has been made available for recruitment of female athletes.

Congressional testimony on Title IX and subsequent surveys indicates that discrepancies also exist in the opportunity to receive coaching and in other benefits and opportunities, such as the quality and amount of equipment, access to facilities and practice times, publicity, medical and training facilities, and housing and dining facilities.¹⁰

5. At several institutions, intercollegiate football is unique among sports. The size of the teams, the expense of the operation, and the revenue produced distinguish football from other sports, both men's and women's. Title IX requires that "an

institution of higher education must comply with the prohibition against sex discrimination imposed by that title and its implementing regulations in the administration of any revenue producing intercollegiate athletic activity."¹¹ However, the unique size and cost of football programs have been taken into account in developing this Policy Interpretation.

Appendix B—Comments and Responses

The Office for Civil Rights (OCR) received over 700 comments and recommendations in response to the December 11, 1978 publication of the proposed Policy Interpretation. After the formal comment period, representatives of the Department met for additional discussions with many individuals and groups including college and university officials, athletic associations, athletic directors, women's rights organizations and other interested parties. HEW representatives also visited eight universities in order to assess the potential of the proposed Policy Interpretation and of suggested alternative approaches for effective enforcement of Title IX.

The Department carefully considered all information before preparing the final policy. Some changes in the structure and substance of the Policy Interpretation have been made as a result of concerns that were identified in the comment and consultation process.

Persons who responded to the request for public comment were asked to comment generally and also to respond specifically to eight questions that focused on different aspects of the proposed Policy Interpretation.

Question No. 1: Is the description of the current status and development of intercollegiate athletics for men and women accurate? What other factors should be considered?

Comment A: Some commentators noted that the description implied the presence of intent on the part of all universities to discriminate against women. Many of these same commentators noted an absence of concern in the proposed Policy Interpretation for those universities that have in good faith attempted to meet what they felt to be a vague compliance standard in the regulation.

Response: The description of the current status and development of intercollegiate athletics for men and women was designed to be a factual, historical overview. There was no intent to imply the universal presence of discrimination. The Department recognizes that there are many colleges and universities that have been and are making good faith efforts, in the midst of increasing financial pressures, to provide equal athletic opportunities to their male and female athletes.

Comment B: Commentors stated that the statistics used were outdated in some areas, incomplete in some areas, and inaccurate in some areas.

Response: Comment accepted. The statistics have been updated and corrected where necessary.

Question No. 2: Is the proposed two-stage approach to compliance practical? Should it be modified? Are there other approaches to be considered?

Comment: Some commentors stated that Part II of the proposed Policy Interpretation "Equally Accommodating the Interests and Abilities of Women" represented an extension of the July 1978, compliance deadline established in § 86.41(d) of the Title IX regulation.

Response: Part II of the proposed Policy Interpretation was not intended to extend the compliance deadline. The format of the two stage approach, however, seems to have encouraged that perception; therefore, the elements of both stages have been unified in this Policy Interpretation.

Question No. 3: Is the equal average per capita standard based on participation rates practical? Are there alternatives or modifications that should be considered?

Comment A: Some commentors stated it was unfair or illegal to find noncompliance solely on the basis of a financial test when more valid indicators of equality of opportunity exist.

Response: The equal average per capita standard was not a standard by which noncompliance could be found. It was offered as a standard of presumptive compliance. In order to prove noncompliance, HEW would have been required to show

that the unexplained disparities in expenditures were discriminatory in effect. The standard, in part, was offered as a means of simplifying proof of compliance for universities. The widespread confusion concerning the significance of failure to satisfy the equal average per capita expenditure standard, however, is one of the reasons it was withdrawn.

Comment B: Many commentors stated that the equal average per capita standard penalizes those institutions that have increased participation opportunities for women and rewards institutions that have limited women's participation.

Response: Since equality of average per capita expenditures has been dropped as a standard of presumptive compliance, the question of its effect is no longer relevant. However, the Department agrees that universities that had increased participation opportunities for women and wished to take advantage of the presumptive compliance standard, would have had a bigger financial burden than universities that had done little to increase participation opportunities for women.

Question No. 4: Is there a basis for treating part of the expenses of a particular revenue producing sport differently because the sport produces income used by the university for non-athletic operating expenses on a non-discriminatory basis? If, so, how should such funds be identified and treated?

Comment: Commentors stated that this question was largely irrelevant because there were so few universities at which revenue from the athletic program was used in the university operating budget.

Response: Since equality of average per capita expenditures has been dropped as a standard of presumed compliance, a decision is no longer necessary on this issue.

Question No. 5: Is the grouping of financially measurable benefits into three categories practical? Are there alternatives that should be considered? Specifically, should recruiting expenses be considered together with all other financially measurable benefits?

Comment A: Most commentors stated that, if measured solely on a financial standard, recruiting should be grouped with the other financially measurable items. Some of

these commentators held that at the current stage of development of women's intercollegiate athletics, the amount of money that would flow into the women's recruitment budget as a result of separate application of the equal average per capita standard to recruiting expenses, would make recruitment a disproportionately large percentage of the entire women's budget. Women's athletic directors, particularly, wanted the flexibility to have the money available for other uses, and they generally agreed on including recruitment expenses with the other financially measurable items.

Comment B: Some commentators stated that it was particularly inappropriate to base any measure of compliance in recruitment solely on financial expenditures. They stated that even if proportionate amounts of money were allocated to recruitment, major inequities could remain in the benefits to athletes. For instance, universities could maintain a policy of subsidizing visits to their campuses of prospective students of one sex but not the other. Commentors suggested that including an examination of differences in benefits to prospective athletes that result from recruiting methods would be appropriate.

Response: In the final Policy Interpretation, recruitment has been moved to the group of program areas to be examined under § 86.41(c) to determine whether overall equal athletic opportunity exists. The Department accepts the comment that a financial measure is not sufficient to determine whether equal opportunity is being provided. Therefore, in examining athletic recruitment, the Department will primarily review the opportunity to recruit, the resources provided for recruiting, and methods of recruiting.

Question No. 6: Are the factors used to justify differences in equal average per capita expenditures for financially measurable benefits and opportunities fair? Are there other factors that should be considered?

Comment: Most commentators indicated that the factors named in the proposed Policy Interpretation (the "scope of competition" and the "nature of the sport") as justifications for differences in equal average per capita expenditures were so vague and ambiguous as to be meaningless. Some stated that it would be impossible to

define the phrase "scope of competition", given the greatly differing competitive structure of men's and women's programs. Other commentators were concerned that the "scope of competition" factor that may currently be designated as "nondiscriminatory" was, in reality, the result of many years of inequitable treatment of women's athletic programs.

Response: The Department agrees that it would have been difficult to define clearly and then to quantify the "scope of competition" factor. Since equal average per capita expenditures has been dropped as a standard of presumed compliance, such financial justifications are no longer necessary. Under the equivalency standard, however, the "nature of the sport" remains an important concept. As explained within the Policy Interpretation, the unique nature of a sport may account for perceived inequities in some program areas.

Question No 7: Is the comparability standard for benefits and opportunities that are not financially measurably fair and realistic? Should other factors controlling comparability be included? Should the comparability standard be revised? Is there a different standard which should be considered?

Comment: Many commentators stated that the comparability standard was fair and realistic. Some commentators were concerned, however, that the standard was vague and subjective and could lead to uneven enforcement.

Response: The concept of comparing the non-financially measurable benefits and opportunities provided to male and female athletes has been preserved and expanded in the final Policy Interpretation to include all areas of examination except scholarships and accommodation of the interests and abilities of both sexes. The standard is that equivalent benefits and opportunities must be provided. To avoid vagueness and subjectivity, further guidance is given about what elements will be considered in each program area to determine the equivalency of benefits and opportunities.

Question No. 8: Is the proposal for increasing the opportunity for women to participate in competitive athletics appropriate and effective? Are there other

procedures that should be considered? Is there a more effective way to ensure that the interest and abilities of both men and women are equally accommodated?

Comment: Several commentors indicated that the proposal to allow a university to gain the status of presumed compliance by having policies and procedures to encourage the growth of women's athletics was appropriate and effective for future students, but ignored students presently enrolled. They indicated that nowhere in the proposed Policy Interpretation was concern shown that the current selection of sports and levels of competition effectively accommodate the interests and abilities of women as well as men.

Response: Comment accepted. The requirement that universities equally accommodate the interests and abilities of their male and female athletes (Part II of the proposed Policy Interpretation) has been directly addressed and is now a part of the unified final Policy Interpretation.

Additional Comments

The following comments were not responses to questions raised in the proposed Policy Interpretation. They represent additional concerns expressed by a large number of commentors.

(1) *Comment:* Football and other "revenue producing" sports should be totally exempted or should receive special treatment under Title IX.

Response: The April 18, 1978, opinion of the General Counsel, HEW, concludes that "an institution of higher education must comply with the prohibition against sex discrimination imposed by that title and its implementing regulation in the administration of any revenue producing activity". Therefore, football or other "revenue producing" sports cannot be exempted from coverage of Title IX.

In developing the proposed Policy Interpretation the Department concluded that although the fact of revenue production could not justify disparity in average per capita expenditure between men and women, there were characteristics common to most revenue producing sports that could result in legitimate nondiscriminatory differences in per capita expenditures. For instance, some "revenue producing" sports

require expensive protective equipment and most require high expenditures for the management of events attended by large numbers of people. These characteristics and others described in the proposed Policy Interpretation were considered acceptable, nondiscriminatory reasons for differences in per capita average expenditures.

In the final Policy Interpretation, under the equivalent benefits and opportunities standard of compliance, some of these non-discriminatory factors are still relevant and applicable.

(2) *Comment:* Commentors stated that since the equal average per capita standard of presumed compliance was based on participation rates, the word should be explicitly defined.

Response: Although the final Policy Interpretation does not use the equal average per capita standard of presumed compliance, a clear understanding of the word "participant" is still necessary, particularly in the determination of compliance where scholarships are involved. The word "participant" is defined in the final Policy Interpretation.

(3) *Comment:* Many commentors were concerned that the proposed Policy Interpretation neglected the rights of individuals.

Response: The proposed Policy Interpretation was intended to further clarify what colleges and universities must do within their intercollegiate athletic programs to avoid discrimination against individuals on the basis of sex. The Interpretation, therefore, spoke to institutions in terms of their male and female athletes. It spoke specifically in terms of equal, average per capita expenditures and in terms of comparability of other opportunities and benefits for male and female participating athletes.

The Department believes that under this approach the rights of individuals were protected. If women athletes, as a class, are receiving opportunities and benefits equal to those of male athletes, individuals within the class should be protected thereby. Under the proposed Policy Interpretation, for example, if female athletes as a

whole were receiving their proportional share of athletic financial assistance, a university would have been presumed in compliance with that section of the regulation. The Department does not want and does not have the authority to force universities to offer identical programs to men and women. Therefore, to allow flexibility within women's programs and within men's programs, the proposed Policy Interpretation stated that an institution would be presumed in compliance if the average per capita expenditures on athletic scholarships for men and women, were equal. This same flexibility (in scholarships and in other areas) remains in the final Policy Interpretation.

(4) *Comment:* Several commentors stated that the provision of a separate dormitory to athletes of only one sex, even where no other special benefits were involved, is inherently discriminatory. They felt such separation indicated the different degrees of importance attached to athletes on the basis of sex.

Response: Comment accepted. The provision of a separate dormitory to athletes of one sex but not the other will be considered a failure to provide equivalent benefits as required by the regulation.

(5) *Comment:* Commentors, particularly colleges and universities, expressed concern that the differences in the rules of intercollegiate athletic associations could result in unequal distribution of benefits and opportunities to men's and women's athletic programs, thus placing the institutions in a posture of noncompliance with Title IX.

Response: Commentors made this point with regard to § 86.6(c) of the Title IX regulation, which reads in part:

"The obligation to comply with (Title IX) is not obviated or alleviated by any rule or regulation of any * * * athletic or other * * * association * * *"

Since the penalties for violation of intercollegiate athletic association rules can have a severe effect on the athletic opportunities within an affected program, the Department has reexamined this regulatory requirement to determine whether it should be modified. Our conclusion is that modification would not have a beneficial effect, and that the present requirement will stand.

Several factors enter into this decision. First, the differences between rules affecting men's and women's programs are numerous and change constantly. Despite this, the Department has been unable to discover a single case in which those differences require members to act in a discriminatory manner. Second, some rule differences may permit decisions resulting in discriminatory distribution of benefits and opportunities to men's and women's programs. The fact that institutions respond to differences in rules by choosing to deny equal opportunities, however, does not mean that the rules themselves are at fault; the rules do not prohibit choices that would result in compliance with Title IX. Finally, the rules in question are all established and subject to change by the membership of the association. Since all (or virtually all) association member institutions are subject to Title IX, the opportunity exists for these institutions to resolve collectively any wide-spread Title IX compliance problems resulting from association rules. To the extent that this has not taken place, Federal intervention on behalf of statutory beneficiaries is both warranted and required by the law. Consequently, the Department can follow no course other than to continue to disallow any defenses against findings of noncompliance with Title IX that are based on intercollegiate athletic association rules.

(6) *Comment:* Some commentators suggested that the equal average per capita test was unfairly skewed by the high cost of some "major" men's sports, particularly football, that have no equivalently expensive counterpart among women's sports. They suggested that a certain percentage of those costs (e.g., 50% of football scholarships) should be excluded from the expenditures on male athletes prior to application of the equal average per capita test.

Response: Since equality of average per capita expenditures has been eliminated as a standard of presumed compliance, the suggestion is no longer relevant. However, it was possible under that standard to exclude expenditures that were due to the nature of the sport, or the scope of competition and thus were not discriminatory in effect. Given the diversity of intercollegiate athletic programs, determinations as to whether disparities in expenditures were nondiscriminatory would have been made on a case-by-case basis. There was no legal support for the proposition that an arbitrary percentage of expenditures should be excluded from the calculations.

(7) *Comment:* Some commentators urged the Department to adopt various forms of team-based comparisons in assessing equality of opportunity between men's and women's athletic programs. They stated that well-developed men's programs are frequently characterized by a few "major" teams that have the greatest spectator appeal, earn the greatest income, cost the most to operate, and dominate the program in other ways. They suggested that women's programs should be similarly constructed and that comparability should then be required only between "men's major" and "women's major" teams, and between "men's minor" and "women's minor" teams. The men's teams most often cited as appropriate for "major" designation have been football and basketball, with women's basketball and volleyball being frequently selected as the counterparts.

Response: There are two problems with this approach to assessing equal opportunity. First, neither the statute nor the regulation calls for identical programs for male and female athletes. Absent such a requirement, the Department cannot base noncompliance upon a failure to provide arbitrarily identical programs, either in whole or in part.

Second, no subgrouping of male or female students (such as a team) may be used in such a way as to diminish the protection of the larger class of males and females in their rights to equal participation in educational benefits or opportunities. Use of the "major/minor" classification does not meet this test where large participation sports (e.g., football) are compared to smaller ones (e.g., women's volleyball) in such a manner as to have the effect of disproportionately providing benefits or opportunities to the members of one sex.

(8) *Comment:* Some commentators suggest that equality of opportunity should be measured by a "sport-specific" comparison. Under this approach, institutions offering the same sports to men and women would have an obligation to provide equal opportunity within each of those sports. For example, the men's basketball team and the women's basketball team would have to receive equal opportunities and benefits.

Response: As noted above, there is no provision for the requirement of identical programs for men and women, and no such requirement will be made by the

Department. Moreover, a sport-specific comparison could actually create unequal opportunity. For example, the sports available for men at an institution might include most or all of those available for women; but the men's program might concentrate resources on sports not available to women (e.g., football, ice hockey). In addition, the sport-specific concept overlooks two key elements of the Title IX regulation.

First, the regulation states that the selection of sports is to be representative of student interests and abilities (86.41(c)(1)). A requirement that sports for the members of one sex be available or developed solely on the basis of their existence or development in the program for members of the other sex could conflict with the regulation where the interests and abilities of male and female students diverge.

Second, the regulation frames the general compliance obligations of recipients in terms of program-wide benefits and opportunities (86.41(c)). As implied above, Title IX protects the individual as a student-athlete, not all a basketball player, or swimmer.

(9) *Comment:* A coalition of many colleges and universities urged that there are no objective standards against which compliance with Title IX in intercollegiate athletics could be measured. They felt that diversity is so great among colleges and universities that no single standard or set of standards could practicably apply to all affected institutions. They concluded that it would be best for individual institutions to determine the policies and procedures by which to ensure nondiscrimination in intercollegiate athletic programs.

Specifically, this coalition suggested that each institution should create a group representative of all affected parties on campus.

This group would then assess existing athletic opportunities for men and women, and, on the basis of the assessment, develop a plan to ensure nondiscrimination. This plan would then be recommended to the Board of Trustees or other appropriate governing body.

The role foreseen for the Department under this concept is:

(a) The Department would use the plan as a framework for evaluating complaints and assessing compliance;

(b) The Department would determine whether the plan satisfies the interests of the involved parties; and

(c) The Department would determine whether the institution is adhering to the plan.

These commenters felt that this approach to Title IX enforcement would ensure an environment of equal opportunity.

Response: Title IX is an antidiscrimination law. It prohibits discrimination based on sex in educational institutions that are recipients of Federal assistance. The legislative history of Title IX clearly shows that it was enacted because of discrimination that currently was being practiced against women in educational institutions. The Department accepts that colleges and universities are sincere in their intention to ensure equal opportunity in intercollegiate athletics to their male and female students. It cannot, however, turn over its responsibility for interpreting and enforcing the law. In this case, its responsibility includes articulating the standards by which compliance with the Title IX statute will be evaluated.

The Department agrees with this group of commenters that the proposed self-assessment and institutional plan is an excellent idea. Any institution that engages in the assessment/planning process, particularly with the full participation of interested parties as envisioned in the proposal, would clearly reach or move well toward compliance. In addition, as explained in Section VIII of this Policy Interpretation, any college or university that has compliance problems but is implementing a plan that the Department determines will correct those problems within a reasonable period of time, will be found in compliance.

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1 The regulation specifically refers to club sports separately from intercollegiate athletics. Accordingly, under this Policy Interpretation, club teams will not be

considered to be intercollegiate teams except in those instances where they regularly participate in varsity competition.

2 See also § 86.37(a) of the regulation.

3 86.41(c)(1) on the accommodation of student interests and abilities, is covered in detail in the following Section C of this policy Interpretation.

4 See also § 86.41(a) and (b) of the regulation.

5 Section 844 of the Education Amendments of 1974, Pub. L. 93-380, Title VIII, (August 21, 1974) 88 Stat. 612.

6 The Department's jurisdiction over the employment practices of recipients under Subpart E, §§ 86.51–86.61 of the Title IX regulation has been successfully challenged in several court cases. Accordingly, the Department has suspended enforcement of Subpart E. Section 86.41(c)(6) of the regulation, however, authorizes the Department to consider the compensation of coaches of men and women in the determination of the equality of athletic opportunity provided to male and female athletes. It is on this section of the regulation that this Policy Interpretation is based.

7 Public undergraduate institutions are also subject to the general anti-discrimination provision at § 86.23 of the regulation, which reads in part:

*“A recipient * * * shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action * * * and may choose to undertake such efforts as affirmative action * * *”*

Accordingly, institutions subject to § 86.23 are required in all cases to maintain equivalently effective recruitment programs for both sexes and, under § 86.41(c), to provide equivalent benefits, opportunities, and treatment to student athletes of both sexes.

8 Those procedures may be found at 45 CFR 80.6–80.11 and 45 CFR Part 8.

9 *WEAL v. Harris*, Civil Action No. 74-1720 (D.D.C., December 29, 1977).

1 *The Condition of Education 1979*, National Center for Education Statistics, p. 112.

2 Figure obtained from Association for Intercollegiate Athletics for Women (AIAW) member survey, *AIAW Structure Implementation Survey Data Summary*, October 1978, p. 11.

3 *U.S. Commission on Civil Rights, Comments to DHEW on proposed Policy*

Interpretation; Analysis of data supplied by the National Association of Directors of Collegiate Athletics.

[4](#) *Figures obtained from National Federation of High School Associations (NFHSA) data.*

[5](#) *Digest of Education Statistics 1977–78, National Center for Education Statistics (1978), Table 40, at 44. Data, by sex, are unavailable for the period from 1971 to 1977; consequently, these figures represent 50 percent of total enrollment for that period. This is the best comparison that could be made based on available data.*

[6](#) *Ibid, p. 112.*

[7](#) *These figures, which are not precisely comparable to those cited at footnote 2, were obtained from Sports and Recreational Programs of the Nation's Universities and Colleges, NCAA Report No. 5, March 1978. It includes figures only from the 722 NCAA member institutions because comparable data was not available from other associations.*

[8](#) *Compiled from NCAA Revenues and Expenses for Intercollegiate Athletic Programs, 1978.*

[9](#) *Figures obtained from AIAW Structure Implementation Survey Data Summary, October, 1978, p. 11.*

[10](#) *121 Cong. REc. 29791–95 (1975) (remarks of Senator Williams); Comments by Senator Bayh, Hearings on S. 2106 Before the Subcommittee on Education of the Senate Committee on Labor and Public Welfare, 94th Congress, 1st Session 48 (1975); "Survey of Women's Athletic Directors," AIAW Workshop (January 1978).*

[11](#) *See April 18, 1979, Opinion of General Counsel, Department of Health, Education, and Welfare, page 1.*

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Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test

[OCR-00016-A]

Jan 16, 1996

Dear Colleague:

It is my pleasure to send you the enclosed [Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test](#) (the Clarification).

As you know, the Office for Civil Rights (OCR) enforces Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities. The regulation implementing Title IX and the Department's Intercollegiate Athletics Policy Interpretation published in 1979--both of which followed publication for notice and the receipt, review and consideration of extensive comments--specifically address intercollegiate athletics. Since becoming Assistant Secretary, I have recognized the need to provide additional clarification regarding what is commonly referred to as the "three-part test," a test used to determine whether students of both sexes are provided nondiscriminatory opportunities to

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participate in athletics. The three-part test is described in the Department's 1979 Policy Interpretation.

Accordingly, on September 20, 1995, OCR circulated to over 4500 interested parties a draft of the proposed Clarification, soliciting comments about whether the document provided sufficient clarity to assist institutions in their efforts to comply with Title IX. As indicated when circulating the draft of the Clarification, the objective of the Clarification is to respond to requests for specific guidance about the existing standards that have guided the enforcement of Title IX in the area of intercollegiate athletics. Further, the Clarification is limited to an elaboration of the "three-part test." This test, which has generated the majority of the questions that have been raised about Title IX compliance, is a portion of a larger analytical framework reflected in the 1979 Policy Interpretation.

OCR appreciates the efforts of the more than 200 individuals who commented on the draft of the Clarification. In addition to providing specific comments regarding clarity, some parties suggested that the Clarification did not go far enough in protecting women's sports. Others, by contrast, suggested that the Clarification, or the Policy Interpretation itself, provided more protection for women's sports than intended by Title IX. However, it would not be appropriate to revise the 1979 Policy Interpretation, and adherence to its provisions shaped OCR's consideration of these comments. The Policy Interpretation has guided OCR's enforcement in the area of athletics for over fifteen years, enjoying the bipartisan support of Congress. The Policy Interpretation has also enjoyed the support of every court that has addressed issues of Title IX athletics. As one recent court decision recognized, the "three-part test" draws its "essence" from the Title IX statute.

The draft has been revised to incorporate suggestions that OCR received regarding how to make the document more useful and clearer. For instance, the Clarification now has additional examples to illustrate how to meet part one of the three-part test and makes clear that the term "developing interests" under part two of the test includes interests that already exist at the institution. The document also clarifies that an institution can choose which part of the test it plans to meet. In addition, it further clarifies how Title IX requires OCR to count participation opportunities and why Title IX

does not require an institution, under part three of the test, to accommodate the interests and abilities of potential students.

OCR also received requests for clarification that relate primarily to fact- or institution-specific situations that only apply to a small number of athletes or institutions. These comments are more appropriately handled on an individual basis and, accordingly, OCR will follow-up on these comments and questions in the context of OCR's ongoing technical assistance efforts.

It is important to outline several points about the final document.

The Clarification confirms that institutions need to comply only with any one part of the three-part test in order to provide nondiscriminatory participation opportunities for individuals of both sexes. The first part of the test--substantial proportionality--focuses on the participation rates of men and women at an institution and affords an institution a "safe harbor" for establishing that it provides nondiscriminatory participation opportunities. An institution that does not provide substantially proportional participation opportunities for men and women may comply with Title IX by satisfying either part two or part three of the test. The second part--history and continuing practice--is an examination of an institution's good faith expansion of athletic opportunities through its response to developing interests of the underrepresented sex at that institution. The third part--fully and effectively accommodating interests and abilities of the underrepresented sex--centers on the inquiry of whether there are concrete and viable interests among the underrepresented sex that should be accommodated by an institution.

In addition, the Clarification does not provide strict numerical formulas or "cookie cutter" answers to the issues that are inherently case- and fact-specific. Such an effort not only would belie the meaning of Title IX, but would at the same time deprive institutions of the flexibility to which they are entitled when deciding how best to comply with the law.

Several parties who provided comments expressed opposition to the three-part test. The crux of the arguments made on behalf of those opposed to the three-part test is that the test does not really provide three different ways to comply. Opponents of the

test assert, therefore, that the test improperly establishes arbitrary quotas. Similarly, they also argue that the three-part test runs counter to the intent of Title IX because it measures gender discrimination by underrepresentation and requires the full accommodation of only one sex. However, this understanding of Title IX and the three-part test is wrong.

First, it is clear from the Clarification that there are three different avenues of compliance. Institutions have flexibility in providing nondiscriminatory participation opportunities to their students, and OCR does not require quotas. For example, if an institution chooses to and does comply with part three of the test, OCR will not require it to provide substantially proportionate participation opportunities to, or demonstrate a history and continuing practice of program expansion that is responsive to the developing interests of, the underrepresented sex. In fact, if an institution believes that its female students are less interested and able to play intercollegiate sports, that institution may continue to provide more athletic opportunities to men than to women, or even to add opportunities for men, as long as the recipient can show that its female students are not being denied opportunities, i.e., that women's interests and abilities are fully and effectively accommodated. The fact that each part of the three-part test considers participation rates does not mean, as some opponents of the test have suggested, that the three parts do not provide different ways to comply with Title IX.

Second, it is appropriate for parts two and three of the test to focus only on the underrepresented sex. Indeed, such a focus is required because Title IX, by definition, addresses discrimination. Notably, Title IX's athletic provisions are unique in permitting institutions--notwithstanding the long history of discrimination based on sex in athletics programs--to establish separate athletic programs on the basis of sex, thus allowing institutions to determine the number of athletic opportunities that are available to students of each sex. (By contrast, Title VI of the Civil Rights Act of 1964 forbids institutions from providing separate athletic programs on the basis of race or national origin.)

OCR focuses on the interests and abilities of the underrepresented sex only if the institution provides proportionately fewer athletic opportunities to members of one

sex and has failed to make a good faith effort to expand its program for the underrepresented sex. Thus, the Policy Interpretation requires the full accommodation of the underrepresented sex only to the extent necessary to provide equal athletic opportunity, i.e., only where an institution has failed to respond to the interests and abilities of the underrepresented sex when it allocated a disproportionately large number of opportunities for athletes of the other sex.

What is clear then--because, for example, part three of the three-part test permits evidence that underrepresentation is caused not by discrimination but by lack of interest--is that underrepresentation alone is not the measure of discrimination. Substantial proportionality merely provides institutions with a safe harbor. Even if this were not the case and proportional opportunities were the only test, the "quota" criticism would be misplaced. Quotas are impermissible where opportunities are required to be created without regard to sex. However, schools are permitted to create athletic participation opportunities based on sex. Where they do so unequally, that is a legitimate measure of unequal opportunity under Title IX. OCR has chosen to make substantial proportionality only one of three alternative measures.

Several parties also suggested that, in determining the number of participation opportunities offered by an institution, OCR count unfilled slots, i.e., those positions on a team that an institution claims the team can support but which are not filled by actual athletes. OCR must, however, count actual athletes because participation opportunities must be real, not illusory. Moreover, this makes sense because, under other parts of the Policy Interpretation, OCR considers the quality and kind of other benefits and opportunities offered to male and female athletes in determining overall whether an institution provides equal athletic opportunity. In this context, OCR must consider actual benefits provided to real students.

OCR also received comments that indicate that there is still confusion about the elimination and capping of men's teams in the context of Title IX compliance. The rules here are straightforward. An institution can choose to eliminate or cap teams as a way of complying with part one of the three-part test. However, nothing in the Clarification requires that an institution cap or eliminate participation opportunities for men. In fact, cutting or capping men's teams will not help an institution comply with

part two or part three of the test because these tests measure an institution's positive, ongoing response to the interests and abilities of the underrepresented sex. Ultimately, Title IX provides institutions with flexibility and choice regarding how they will provide nondiscriminatory participation opportunities.

Finally, several parties suggested that OCR provide more information regarding the specific elements of an appropriate assessment of student interest and ability. The Policy Interpretation is intended to give institutions flexibility to determine interests and abilities consistent with the unique circumstances and needs of an institution. We recognize, however, that it might be useful to share ideas on good assessment strategies. Accordingly, OCR will work to identify, and encourage institutions to share, good strategies that institutions have developed, as well as to facilitate discussions among institutions regarding potential assessment techniques.

OCR recognizes that the question of how to comply with Title IX and to provide equal athletic opportunities for all students is a significant challenge that many institutions face today, especially in the face of increasing budget constraints. It has been OCR's experience, however, that institutions committed to maintaining their men's program have been able to do so--and comply with Title IX--notwithstanding limited athletic budgets. In many cases, OCR and these institutions have worked together to find creative solutions that ensured equal opportunities in intercollegiate athletics. OCR is similarly prepared to join with other institutions in assisting them to address their own situations.

OCR is committed to continuing to work in partnership with colleges and universities to ensure that the promise of Title IX becomes a reality for all students. Thank you for your continuing interest in this subject.

Sincerely,

/signed/

Norma V. Cantú

Assistant Secretary

for Civil Rights

Enclosure

[OCR-00016-B]

Jan 16, 1996

[CLARIFICATION OF INTERCOLLEGIATE ATHLETICS POLICY GUIDANCE: THE THREE-PART TEST](#)

The Office for Civil Rights (OCR) enforces Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. (Title IX), which prohibits discrimination on the basis of sex in education programs and activities by recipients of federal funds. The regulation implementing Title IX, at 34 C.F.R. Part 106, effective July 21, 1975, contains specific provisions governing athletic programs, at 34 C.F.R. § 106.41, and the awarding of athletic scholarships, at 34 C.F.R. § 106.37(c). Further clarification of the Title IX regulatory requirements is provided by the Intercollegiate Athletics Policy Interpretation, issued December 11, 1979 (44 Fed. Reg. 71413 et seq. (1979)).¹

The Title IX regulation provides that if an institution sponsors an athletic program it must provide equal athletic opportunities for members of both sexes. Among other factors, the regulation requires that an institution must effectively accommodate the athletic interests and abilities of students of both sexes to the extent necessary to provide equal athletic opportunity.

The 1979 Policy Interpretation provides that as part of this determination OCR will apply the following three-part test to assess whether an institution is providing nondiscriminatory participation opportunities for individuals of both sexes:

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 which is demonstrably responsive to the developing interests and abilities of the members of that sex; or
3. Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a history and continuing practice of program expansion, as described 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.

Thus, the three-part test furnishes an institution with three individual avenues to choose from when determining how it will provide individuals of each sex with nondiscriminatory opportunities to participate in intercollegiate athletics. If an institution has met any part of the three-part test, OCR will determine that the institution is meeting this requirement.

It is important to note that under the Policy Interpretation the requirement to provide nondiscriminatory participation opportunities is only one of many factors that OCR examines to determine if an institution is in compliance with the athletics provision of Title IX. OCR also considers the quality of competition offered to members of both sexes in order to determine whether an institution effectively accommodates the interests and abilities of its students.

In addition, when an "overall determination of compliance" is made by OCR, 44 *Fed. Reg.* 71417, 71418, OCR examines the institution's program as a whole. Thus OCR considers the effective accommodation of interests and abilities in conjunction with equivalence in the availability, quality and kinds of other athletic benefits and opportunities provided male and female athletes to determine whether an institution provides equal athletic opportunity as required by Title IX. These other benefits include coaching, equipment, practice and competitive facilities, recruitment, scheduling of games, and publicity, among others. An institution's failure to provide

nondiscriminatory participation opportunities usually amounts to a denial of equal athletic opportunity because these opportunities provide access to all other athletic benefits, treatment, and services.

This Clarification provides specific factors that guide an analysis of each part of the three-part test. In addition, it provides examples to demonstrate, in concrete terms, how these factors will be considered. These examples are intended to be illustrative, and the conclusions drawn in each example are based solely on the facts included in the example.

THREE-PART TEST -- Part One: Are Participation Opportunities Substantially Proportionate to Enrollment?

Under part one of the three-part test (part one), where an institution provides intercollegiate level athletic participation opportunities for male and female students in numbers substantially proportionate to their respective full-time undergraduate enrollments, OCR will find that the institution is providing nondiscriminatory participation opportunities for individuals of both sexes.

OCR's analysis begins with a determination of the number of participation opportunities afforded to male and female athletes in the intercollegiate athletic program. The Policy Interpretation defines participants as those athletes:

- a. 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
- b. Who are participating in organized practice sessions and other team meetings and activities on a regular basis during a sport's season; and
- c. Who are listed on the eligibility or squad lists maintained for each sport, or
- d. Who, because of injury, cannot meet a, b, or c above but continue to receive financial aid on the basis of athletic ability.

44 *Fed. Reg.* at 71415.

OCR uses this definition of participant to determine the number of participation opportunities provided by an institution for purposes of the three-part test.

Under this definition, OCR considers a sport's season to commence on the date of a team's first intercollegiate competitive event and to conclude on the date of the team's final intercollegiate competitive event. As a general rule, all athletes who are listed on a team's squad or eligibility list and are on the team as of the team's first competitive event are counted as participants by OCR. In determining the number of participation opportunities for the purposes of the interests and abilities analysis, an athlete who participates in more than one sport will be counted as a participant in each sport in which he or she participates.

In determining participation opportunities, OCR includes, among others, those athletes who do not receive scholarships (e.g., walk-ons), those athletes who compete on teams sponsored by the institution even though the team may be required to raise some or all of its operating funds, and those athletes who practice but may not compete. OCR's investigations reveal that these athletes receive numerous benefits and services, such as training and practice time, coaching, tutoring services, locker room facilities, and equipment, as well as important non-tangible benefits derived from being a member of an intercollegiate athletic team. Because these are significant benefits, and because receipt of these benefits does not depend on their cost to the institution or whether the athlete competes, it is necessary to count all athletes who receive such benefits when determining the number of athletic opportunities provided to men and women.

OCR's analysis next determines whether athletic opportunities are substantially proportionate. The Title IX regulation allows institutions to operate separate athletic programs for men and women. Accordingly, the regulation allows an institution to control the respective number of participation opportunities offered to men and women. Thus, it could be argued that to satisfy part one there should be no difference between the participation rate in an institution's intercollegiate athletic program and its full-time undergraduate student enrollment.

However, because in some circumstances it may be unreasonable to expect an institution to achieve exact proportionality--for instance, because of natural fluctuations in enrollment and participation rates or because it would be unreasonable to expect an institution to add athletic opportunities in light of the

small number of students that would have to be accommodated to achieve exact proportionality--the Policy Interpretation examines whether participation opportunities are "substantially" proportionate to enrollment rates. Because this determination depends on the institution's specific circumstances and the size of its athletic program, OCR makes this determination on a case-by-case basis, rather than through use of a statistical test.

As an example of a determination under part one: If an institution's enrollment is 52 percent male and 48 percent female and 52 percent of the participants in the athletic program are male and 48 percent female, then the institution would clearly satisfy part one. However, OCR recognizes that natural fluctuations in an institution's enrollment and/or participation rates may affect the percentages in a subsequent year. For instance, if the institution's admissions the following year resulted in an enrollment rate of 51 percent males and 49 percent females, while the participation rates of males and females in the athletic program remained constant, the institution would continue to satisfy part one because it would be unreasonable to expect the institution to fine tune its program in response to this change in enrollment.

As another example, over the past five years an institution has had a consistent enrollment rate for women of 50 percent. During this time period, it has been expanding its program for women in order to reach proportionality. In the year that the institution reaches its goal--i.e., 50 percent of the participants in its athletic program are female--its enrollment rate for women increases to 52 percent. Under these circumstances, the institution would satisfy part one.

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 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 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.

THREE-PART TEST -- Part Two: Is there a History and Continuing Practice of Program Expansion for the Underrepresented Sex?

Under part two of the three-part test (part two), an institution can show that it has a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the underrepresented sex. In effect, part two looks at an institution's past and continuing remedial efforts to provide nondiscriminatory participation opportunities through program expansion.²

OCR will review the entire history of the athletic program, focusing on the participation opportunities provided for the underrepresented sex. First, OCR will assess whether past actions of the institution have expanded participation opportunities for the underrepresented sex in a manner that was demonstrably responsive to their developing interests and abilities. Developing interests include interests that already exist at the institution.³ There are no fixed intervals of time within which an institution must have added participation opportunities. Neither is a particular number of sports dispositive. Rather, the focus is on whether the program expansion was responsive to developing interests and abilities of the underrepresented sex. In addition, the institution must demonstrate a continuing (i.e.,

present) practice of program expansion as warranted by developing interests and abilities.

OCR will consider the following factors, among others, as evidence that may indicate a history of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex:

- an institution's record of adding intercollegiate teams, or upgrading teams to intercollegiate status, for the underrepresented sex;
- an institution's record of increasing the numbers of participants in intercollegiate athletics who are members of the underrepresented sex; and
- an institution's affirmative responses to requests by students or others for addition or elevation of sports.

OCR will consider the following factors, among others, as evidence that may indicate a continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex:

- an institution's current implementation of a nondiscriminatory policy or procedure for requesting the addition of sports (including the elevation of club or intramural teams) and the effective communication of the policy or procedure to students; and
- an institution's current implementation of a plan of program expansion that is responsive to developing interests and abilities.

OCR would also find persuasive an institution's efforts to monitor developing interests and abilities of the underrepresented sex, for example, by conducting periodic nondiscriminatory assessments of developing interests and abilities and taking timely actions in response to the results.

In the event that an institution eliminated any team for the underrepresented sex, OCR would evaluate the circumstances surrounding this action in assessing whether the institution could satisfy part two of the test. However, OCR will not find a history and continuing practice of program expansion where an institution increases the proportional participation opportunities for the underrepresented sex by reducing opportunities for the overrepresented sex alone or by reducing participation

opportunities for the overrepresented sex to a proportionately greater degree than for the underrepresented sex. This is because part two considers an institution's good faith remedial efforts through actual program expansion. It is only necessary to examine part two if one sex is overrepresented in the athletic program. Cuts in the program for the underrepresented sex, even when coupled with cuts in the program for the overrepresented sex, cannot be considered remedial because they burden members of the sex already disadvantaged by the present program. However, an institution that has eliminated some participation opportunities for the underrepresented sex can still meet part two if, overall, it can show a history and continuing practice of program expansion for that sex.

In addition, OCR will not find that an institution satisfies part two where it established teams for the underrepresented sex only at the initiation of its program for the underrepresented sex or where it merely promises to expand its program for the underrepresented sex at some time in the future.

The following examples are intended to illustrate the principles discussed above.

At the inception of its women's program in the mid-1970s, Institution C established seven teams for women. In 1984 it added a women's varsity team at the request of students and coaches. In 1990 it upgraded a women's club sport to varsity team status based on a request by the club members and an NCAA survey that showed a significant increase in girls high school participation in that sport. Institution C is currently implementing a plan to add a varsity women's team in the spring of 1996 that has been identified by a regional study as an emerging women's sport in the region. The addition of these teams resulted in an increased percentage of women participating in varsity athletics at the institution. Based on these facts, OCR would find Institution C in compliance with part two because it has a history of program expansion and is continuing to expand its program for women to meet their developing interests and abilities.

By 1980, Institution D established seven teams for women. Institution D added a women's varsity team in 1983 based on the requests of students and coaches. In 1991 it added a women's varsity team after an NCAA survey showed a significant increase

in girls' high school participation in that sport. In 1993 Institution D eliminated a viable women's team and a viable men's team in an effort to reduce its athletic budget. It has taken no action relating to the underrepresented sex since 1993. Based on these facts, OCR would not find Institution D in compliance with part two. Institution D cannot show a continuing practice of program expansion that is responsive to the developing interests and abilities of the underrepresented sex where its only action since 1991 with regard to the underrepresented sex was to eliminate a team for which there was interest, ability and available competition.

In the mid-1970s, Institution E established five teams for women. In 1979 it added a women's varsity team. In 1984 it upgraded a women's club sport with twenty-five participants to varsity team status. At that time it eliminated a women's varsity team that had eight members. In 1987 and 1989 Institution E added women's varsity teams that were identified by a significant number of its enrolled and incoming female students when surveyed regarding their athletic interests and abilities. During this time it also increased the size of an existing women's team to provide opportunities for women who expressed interest in playing that sport. Within the past year, it added a women's varsity team based on a nationwide survey of the most popular girls high school teams. Based on the addition of these teams, the percentage of women participating in varsity athletics at the institution has increased. Based on these facts, OCR would find Institution E in compliance with part two because it has a history of program expansion and the elimination of the team in 1984 took place within the context of continuing program expansion for the underrepresented sex that is responsive to their developing interests.

Institution F started its women's program in the early 1970s with four teams. It did not add to its women's program until 1987 when, based on requests of students and coaches, it upgraded a women's club sport to varsity team status and expanded the size of several existing women's teams to accommodate significant expressed interest by students. In 1990 it surveyed its enrolled and incoming female students; based on that survey and a survey of the most popular sports played by women in the region, Institution F agreed to add three new women's teams by 1997. It added a women's team in 1991 and 1994. Institution F is implementing a plan to add a women's team by the spring of 1997. Based on these facts, OCR would find Institution

F in compliance with part two. Institution F's program history since 1987 shows that it is committed to program expansion for the underrepresented sex and it is continuing to expand its women's program in light of women's developing interests and abilities.

THREE-PART TEST -- Part Three: Is the Institution Fully and Effectively Accommodating the Interests and Abilities of the Underrepresented Sex?

Under part three of the three-part test (part three) OCR determines whether an institution is fully and effectively accommodating the interests and abilities of its students who are members of the underrepresented sex -- including students who are admitted to the institution though not yet enrolled. Title IX provides that at recipient must provide equal athletic opportunity to its students. Accordingly, the Policy Interpretation does not require an institution to accommodate the interests and abilities of potential students.⁴

While disproportionately high athletic participation rates by an institution's students of the overrepresented sex (as compared to their enrollment rates) may indicate that an institution is not providing equal athletic opportunities to its students of the underrepresented sex, an institution can satisfy part three where there is evidence that the imbalance does not reflect discrimination, i.e., where it can be demonstrated that, notwithstanding disproportionately low participation rates by the institution's students of the underrepresented sex, the interests and abilities of these students are, in fact, being fully and effectively accommodated.

In making this determination, OCR will consider whether there is (a) unmet interest in a particular sport; (b) sufficient ability to sustain a team in the sport; and (c) a reasonable expectation of competition for the team. If all three conditions are present OCR will find that an institution has not fully and effectively accommodated the interests and abilities of the underrepresented sex.

If an institution has recently eliminated a viable team from the intercollegiate program, OCR will find that there is sufficient interest, ability, and available competition to sustain an intercollegiate team in that sport unless an institution can provide strong evidence that interest, ability, or available competition no longer exists.

a) Is there sufficient unmet interest to support an intercollegiate team?

OCR will determine whether there is sufficient unmet interest among the institution's students who are members of the underrepresented sex to sustain an intercollegiate team. OCR will look for interest by the underrepresented sex as expressed through the following indicators, among others:

- requests by students and admitted students that a particular sport be added;
- requests that an existing club sport be elevated to intercollegiate team status;
- participation in particular club or intramural sports;
- interviews with students, admitted students, coaches, administrators and others regarding interest in particular sports;
- results of questionnaires of students and admitted students regarding interests in particular sports; and
- participation in particular interscholastic sports by admitted students.

In addition, OCR will look at participation rates in sports in high schools, amateur athletic associations, and community sports leagues that operate in areas from which the institution draws its students in order to ascertain likely interest and ability of its students and admitted students in particular sport(s).⁵ For example, where OCR's investigation finds that a substantial number of high schools from the relevant region offer a particular sport which the institution does not offer for the underrepresented sex, OCR will ask the institution to provide a basis for any assertion that its students and admitted students are not interested in playing that sport. OCR may also interview students, admitted students, coaches, and others regarding interest in that sport.

An institution may evaluate its athletic program to assess the athletic interest of its students of the underrepresented sex using nondiscriminatory methods of its choosing. Accordingly, institutions have flexibility in choosing a nondiscriminatory method of determining athletic interests and abilities provided they meet certain requirements. See 44 *Fed. Reg.* at 71417. These assessments may use straightforward and inexpensive techniques, such as a student questionnaire or an open forum, to identify students' interests and abilities. Thus, while OCR expects that an institution's assessment should reach a wide audience of students and should be open-ended

regarding the sports students can express interest in, OCR does not require elaborate scientific validation of assessments.

An institution's evaluation of interest should be done periodically so that the institution can identify in a timely and responsive manner any developing interests and abilities of the underrepresented sex. The evaluation should also take into account sports played in the high schools and communities from which the institution draws its students both as an indication of possible interest on campus and to permit the institution to plan to meet the interests of admitted students of the underrepresented sex.

b) Is there sufficient ability to sustain an intercollegiate team?

Second, OCR will determine whether there is sufficient ability among interested students of the underrepresented sex to sustain an intercollegiate team. OCR will examine indications of ability such as:

- the athletic experience and accomplishments--in interscholastic, club or intramural competition--of students and admitted students interested in playing the sport;
- opinions of coaches, administrators, and athletes at the institution regarding whether interested students and admitted students have the potential to sustain a varsity team; and
- if the team has previously competed at the club or intramural level, whether the competitive experience of the team indicates that it has the potential to sustain an intercollegiate team.

Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students and admitted students have the potential to sustain an intercollegiate team.

c) Is there a reasonable expectation of competition for the team?

Finally, OCR determines whether there is a reasonable expectation of intercollegiate competition for a particular sport in the institution's normal competitive region. In

evaluating available competition, OCR will look at available competitive opportunities in the geographic area in which the institution's athletes primarily compete, including:

- competitive opportunities offered by other schools against which the institution competes; and
- competitive opportunities offered by other schools in the institution's geographic area, including those offered by schools against which the institution does not now compete.

Under the Policy Interpretation, the institution may also be required to actively encourage the development of intercollegiate competition for a sport for members of the underrepresented sex when overall athletic opportunities within its competitive region have been historically limited for members of that sex.

CONCLUSION

This discussion clarifies that institutions have three distinct ways to provide individuals of each sex with nondiscriminatory participation opportunities. The three-part test gives institutions flexibility and control over their athletics programs. For instance, the test allows institutions to respond to different levels of interest by its male and female students. Moreover, nothing in the three-part test requires an institution to eliminate participation opportunities for men.

At the same time, this flexibility must be used by institutions consistent with Title IX's requirement that they not discriminate on the basis of sex. OCR recognizes that institutions face challenges in providing nondiscriminatory participation opportunities for their students and will continue to assist institutions in finding ways to meet these challenges.

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1. [The](#) Policy Interpretation is designed for intercollegiate athletics. However, its general principles, and those of this Clarification, often will apply to elementary and secondary interscholastic athletic programs, which are also covered by the regulation. [See](#) 44 *Fed. Reg.* 71413.
 2. [Part](#) two focuses on whether an institution has expanded the number of intercollegiate participation opportunities provided to the underrepresented sex.

Improvements in the quality of competition, and of other athletic benefits, provided to women athletes, while not considered under the three-part test, can be considered by OCR in making an overall determination of compliance with the athletics provision of Title IX.

3. [However](#), under this part of the test an institution is not required, as it is under part three, to accommodate all interests and abilities of the underrepresented sex. Moreover, under part two an institution has flexibility in choosing which teams it adds for the underrepresented sex, as long as it can show overall a history and continuing practice of program expansion for members of that sex.
4. [However](#), OCR does examine an institution's recruitment practices under another part of the Policy Interpretation. *See* 44 *Fed. Reg.* 71417. Accordingly, where an institution recruits potential student athletes for its men's teams, it must ensure that women's teams are provided with substantially equal opportunities to recruit potential student athletes.
5. [While](#) these indications of interest may be helpful to OCR in ascertaining likely interest on campus, particularly in the absence of more direct indicia, an institution is expected to meet the actual interests and abilities of its students and admitted students.

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Office for Civil Rights (OCR)

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EXHIBIT 5



CONCORDIA
UNIVERSITY
IRVINE

OFFICE OF THE
PRESIDENT

May 20, 2025

Dear Concordia Colleagues,

Each and every day the faculty and staff of Concordia University Irvine live out Concordia's mission to form students into wise, honorable, and cultivated students who serve society and the church. While the mission statement may be new, our commitment to Christ's Great Commission is deeply embedded in our history and our collective vocations to serve our students. With our renewed efforts to communicate our mission in marketing, storytelling, and branding—we ensure that students and families can make well-informed and confident decisions about choosing Concordia University Irvine. We are seeing evidence that the clear communication of who we are is paying dividends in terms of enrollment of new students and retention of current students.

Enrollment growth in many academic programs, such as Nursing, Engineering, School Counseling, and the Townsend Institute has been strong, and the academic schools have consistently brought forward new academic offerings, including at least four more in the development pipeline.

In response to growing demand for Nursing programs, Concordia University Irvine has opened two new campuses to support and enlarge our Accelerated Bachelors in Nursing Program (ABSN) program, which continues to produce exceptional, highly sought-after nursing students both in Irvine and now in Rancho Cucamonga, CA. And we are excited that our new MSN: Family Nurse Practitioner program has launched this spring.

Simultaneously, we have invested heavily in the students' educational experience—renovating residence halls and lounges, upgrading science labs, improving athletics facilities, and modernizing learning environments. These investments are already contributing to improved student satisfaction, retention, and a growing demand for living in the residential halls.

Recognizing that our compensation structure for faculty and staff had not kept pace with the competitive realities of Southern California, the university's leadership has

Concordia University Irvine, 1530 Concordia West, Irvine, CA 92612

supported substantial investments in employee compensation—more than \$3 million in increased salaries over the past three years.

Finally, Vision 2025 continues to reshape the heart of the Turtle Rock campus as we significantly renovate the CU Center for Worship and the Performing Arts and construct the Golden Eagles Athletics Complex. These are state-of-the-art venues that will greatly enhance our students' experience on campus. It is very important to note that donors have contributed \$42M in gifts and pledges so far of the total \$45M, and we are on track to dedicate these facilities the fall of 2026 with no long-term indebtedness, thanks to our very faithful supporters.

The Concordia community has so much to be grateful for, as our Lord continues to bless this university beyond measure!

With all those blessings stated, it is important to note that these are certainly unprecedented times—for the State of California, for the higher education sector, and even for Concordia University Irvine.

Across the United States and especially here in Southern California, we are witnessing increasing signs of fiscal turbulence: inflation continues to drive up the cost of wages, goods, and services; some economists foresee the risk of a nationwide recession; and families are navigating increasing uncertainty in their own financial circumstances.

Within the higher education sector, these broader economic headwinds are intensified by long-developing trends now coming into sharper focus. The effects of the so-called “demographic cliff,” which has resulted in fewer domestic students, are beginning to impact undergraduate enrollment, and the competition for those students grows more intense. Additionally, there is a growing reluctance among international students to pursue collegiate studies in the U.S.

Federal and state funding for student support services, grants, and even student loans remain in question, putting many universities in an increasingly fragile position. In the past several months, hiring freezes, program closures, campus consolidations, and other cost cutting measures have been announced across the country—including within the entire University of California and California State University systems.

Concordia University Irvine is not immune from these pressures. And while we continue to be blessed with a dedicated community, a Christ-centered mission, growing opportunities, and dedicated donors, we must also confront our own specific realities with clarity and courage.

As a private Christian university of The Lutheran Church–Missouri Synod, we have the fiduciary responsibility to make very hard financial decisions because we, unlike the state universities, do not have a safety net of the state tax coffers. Despite our deep commitment to our mission, identity, and values, Concordia also operates within economic and fiscal realities.

Since 2016, Concordia has experienced a 19% decline in undergraduate enrollment and a 12% decline in graduate enrollment. While we have launched several new programs that have attracted new students, the pace of enrollment growth since COVID has been slower than we hoped.

We have made substantial progress on compensation for faculty and staff, but these gains are being outpaced by inflationary pressures: California's minimum wage, for example, has increased nearly 70% over the past decade, so our employees sense they are moving backwards regardless of \$3M in increases. The university's fixed costs, including utilities, casualty insurance, medical insurance, pension funding, travel, goods, services, etc. continue to rise at a rapid rate, often a double-digit pace.

New leadership in our Finance and Business Operations division has completed a thorough financial review, replicating a forensic audit, confirming that our operational expenses are outpacing our operational revenues. While we have ended each of the past few years in the black, this was partly due to federal pandemic-era funding that helped balance revenue losses and declines. Those sources of funding have ended, highlighting more starkly the gap between our expenses and revenues.

We now face a fundamental and painful reality: the growth strategy we pursued—while yielding some gains—has not yet produced the operational revenue required to sustain our current staffing levels and operational expenses. Accordingly, the university's leadership has made the very difficult decision to downsize our operations, even as we increase targeted investments in strategic areas such as faculty and staff compensation, marketing, and facilities upgrades.

The FY26 budget has been constructed to reduce operational expenses by eliminating some low-enrolled graduate academic programs, closing a few athletics teams, and reducing program budgets. No traditional undergraduate majors are being closed. Any students impacted by athletics team closures will retain their current scholarship amounts.

The Concordia University Irvine community will experience loss while simultaneously preparing to celebrate our 50th anniversary. It's understandably confusing to eliminate positions, close programs, and reduce budgets while erecting new buildings on campus. But remember, restricted dollars that have been contributed for specific capital projects cannot be spent on general operational expenses.

Like a driver navigating with one foot on the brake and the other on the gas, the year ahead will require slowing or stopping some practices while accelerating investments into other areas that will carry us into the future. These investments are in marketing, enrollment, philanthropy, program growth, and personnel, including compensation increases. This dual approach, while difficult, is aimed at putting Concordia University Irvine on a firm, stable, and sustainable financial footing moving into the future.

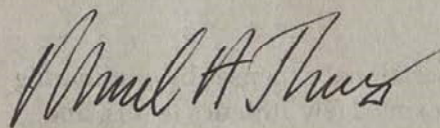
Let me emphasize what is most important: we are making these decisions now to prevent finding ourselves in a crisis later.

In fact, Concordia has accomplished remarkable achievements in recent years. We have received two outstanding reviews from objective, third party observers. Our academic accreditor, WSCUC, during our formal accreditation visit granted us an excellent endorsement of 8 years, commending us on many features of our academic community, curricular offerings, student experience, and mission-aligned community. Likewise, the Concordia University System ecclesiastical visitation team gave us the highest possible endorsement for mission fidelity.

We have much to look forward to as we prepare to celebrate Concordia's 50th anniversary. Vision 2025 is well underway, philanthropic support is very strong, our faculty and staff are mission-driven, the OCVIBE and Anaheim Ducks marketing and academic partnership begins July 2025, and each and every day we prepare students who are formed into wise, honorable, and cultivated students who serve society and the church. Our future looks very promising!

I ask for your prayers and support as we navigate this moment together and prioritize the long-term health of Concordia University Irvine and its faculty, staff, students, and alumni.

For His Students,

A handwritten signature in black ink, appearing to read "Michael A. Thomas". The signature is fluid and cursive, with a stylized "M" and "T".

Michael A. Thomas, Ph.D.
President
Concordia University Irvine

EXHIBIT 6

Vision 2025: Moving Our Vision Forward

July 27, 2024 - 7 minute read



Concordia University Irvine has entered the next phase of its campus master plan, called Vision 2025, which will see the construction of two key athletics buildings and the renovation and enhancement of the iconic CU Center to strengthen the heart of campus.

“Whenever a university engages in new construction, it shows vibrancy, financial health, and a commitment to invest back into the student experience, which is key,” says Concordia president, Dr. Michael Thomas. “The construction we accomplish in Vision 2025 will result in showcase facilities. It’s exciting to be at the point of building out the heart of our campus.”

Changes are already underway to the CU Center for Worship and the Performing Arts, the campus's primary gathering place for worship and community events. With 500 seats, the CU Center has been unable to accommodate the growing number of students who attend worship and other events. "It is a great problem to have, but we often have so many people in the building that there are no available seats," says Thomas.

When the CU Center was originally built, it was ahead of its time in design and technology. But the room has certain acoustical "dead spots" and places where participants cannot view the altar and platform areas. To address these problems, the interior of the CU Center is being renovated and upgraded to include auditorium seating so 800 people can gather for communal worship, participate in convocations, listen to guest speakers, engage with others in conferences, or view musical and theatrical performances. Thomas says the updated CU Center will support Concordia's commitment to worshipping together and will provide new, cutting-edge technology to properly showcase the university's exemplary music programs.

Changes and updates to the CU Center include:

- Expansion by roughly 6,000 square feet

- Expansion of the altar and platform areas

- A new entrance, featuring a central baptismal font

- Complete ADA accessibility

- A new lighting system, featuring a high level of control of the visual environment

- A new, state-of-the-art acoustical system to enhance the listening experience

- Auditorium seating which raises seating capacity from 500 to 800

- A thrust platform surrounded by 270-degree seating

- Permanent choir lofts built into the platform which double as additional seating for convocations and other large events

- A fully rebuilt Casavant Organ with updated systems, refurbished pipes, additional ranks of pipes, and a new console.

On its exterior, the CU Center's roof will be raised on one side to make room for expanded seating inside, and will retain a similar but not exact profile as before. A cross will be prominently placed above the main entrance, as is already depicted in the updated university logo, which was designed with the new construction of the CU Center imagined. The new construction will allow for the addition of a dedicated entrance, where the new baptismal font and Christian art will be featured.

“Improving the existing CU Center has been part of the conversation from the beginning of our planning,” says Tim Jaeger, vice president of university advancement. “While the new CU Center for Worship and the Performing Arts will be different, it will pay homage to the original, iconic building which has served us wonderfully over these many years. The rooflines will be similar, not exact. The work being done to the CU Center moves forward our vision for worship and the performing arts.”

Thomas says it is important for the campus to have a space to host events and speakers for the broader community. “We want to be known as the place in Orange County where difficult conversations can be hosted civilly, which our society desperately needs,” he says. The newly-renovated CU Center for Worship and the Performing Arts will help accomplish that.

LEADING ATHLETIC COMPLEX

Vision 2025 will also feature the construction of two brand-new buildings to serve athletes and all students with some of the best facilities in the NCAA Division II. Presently, Concordia’s fitness and weight room facilities are scattered about campus in three locations. Space limitations require staggering of schedules based on which sport is in season.

“We’ve never had a big weight room and that has been a hindrance and a bottleneck,” says Tim Odle, vice president of university operations. “When 40 percent of our undergraduate population are rostered student-athletes, we need a real weight room. It’s also important when recruiting to get the caliber of people we want here, and for staffing.”

The new Golden Eagles Fitness & Training Center (GEFT) will consist of two buildings — a field house and a fitness center — which add 19,000 square feet of space and profoundly affect the way visitors, athletics teams, and students of all types engage in athletics events and move about the campus. The fitness center will include a 5,000-square-foot weight room with workout stations, new weight training equipment and enough space for 55 athletes to work out at one time, making it the largest fitness center in the Division II PacWest conference. Also in the building will be a dance room, a strength and conditioning office, plus 1,000 square feet of offices. Glass rollup doors will allow students to extend workouts and circuit activities outside, if they choose.

Most importantly, the fitness center will be for everyone on campus to use. “The fitness center is not just for student-athletes,” says Thomas. “It is for all students and available to our whole community. A state-of-the-art fitness center like this is an amenity that all residential students expect, and we are very excited to offer this facility to our campus community!”

On the roof of the fitness center will be a viewing area where spectators can watch softball, baseball, lacrosse and soccer games, and track and field events. Restrooms will be located in closer proximity to the fields. When games are not taking place, the viewing deck will be available for students to use for studying and gathering. “The Golden Eagles Fitness & Training Center will dramatically improve the spectator experience here at Concordia,” says Jaeger. “Even the press box is going to be better.”

The second building, informally known as the “Field House,” will include 12,000 square feet of locker rooms, referee changing rooms, a film room, a new athletic training center with massage tables, taping tables and ice baths, public restrooms, another entertainment area and 356 newly-installed seats for viewing soccer, lacrosse, and track and field competitions — sports which up till now have had no permanent seating.

Odle says the two buildings will elevate Concordia to one of the premier Division II programs and athletics departments west of the Rockies. “I have traveled all around, and as far as facilities and beauty, there will be very few that can compete with us,” he says.

The upgrades already made to the softball and baseball fields — including professional Musco field lights and new seating — have made Concordia’s fields the go-to place for other teams. “Other coaches want to play at our facilities even if they’re not playing us because it’s so much nicer,” Odle says. “Everybody wants us to host regionals and super-regional tournaments.”

In a broader way, the GEFT and its new parking and walking paths will shift the center of gravity of campus and change the way people move about it. A skybridge will connect the two new buildings and the track, soccer and lacrosse field, tying together the lower and upper fields and offering dedicated parking and pathways for spectators’ families who come to watch sporting events on the upper field. At present, visitors must park in residential areas and walk through residential halls to reach the fields. Thomas calls this a “game-changer.”

“This will allow a whole new reorientation of the spectator experience for our athletic contests,” he says. “It will impact the flow of foot traffic and car traffic tremendously on campus.”

The \$45 million Vision 2025 capital project is proceeding on the strength of donations and without the University taking on any long-term debt. “We don’t build buildings here with long-term debt because it's not in the best interests of the University,” says Thomas. “We are blessed that our donors and alumni believe in our mission and are willing to support our growth initiatives. That support helps keep our tuition price point as low as possible. We are not building these buildings and expanding facilities on the back of tuition dollars. For that reason we probably build slower than other campuses, but when we build, we pay as we go.”

Jaeger says the beauty of Vision 2025 is that it nearly completes Phase 2 of the Campus Master Plan, achieving two major additions and renovations, and improving the quality of life for students in worship, athletics, and more in the heart of campus. Construction is scheduled to be completed in time for a ribbon-cutting during Concordia’s 50th anniversary.

“We are really excited that for our 50th anniversary we will celebrate this huge milestone in the University’s history by opening these three new facilities,” says Thomas.

6/8



(<https://www.cui.edu/visit>)



(<https://www.cui.edu/requestinfo>)



(<https://www.cui.edu/virtual-tour-ug>)



(<https://www.cui.edu/aboutcui/connect/contact-us>)



**CONCORDIA
UNIVERSITY**
IRVINE

(<https://www.cui.edu>)

(<https://www.facebook.com/concordiairvine/>)



(<https://twitter.com/ConcordiaIrvine>)

(<https://www.instagram.com/concordiairvine/>)

(<https://www.youtube.com/ConcordiaIrvine>)



(<https://www.tiktok.com/@concordiairvine>)

Connect

(<https://www.cui.edu/aboutcui/social-media>)

Resources

Campus Map

Employment

(<https://www.cui.edu/hr>)

MyCUI

(<https://www.cui.edu/mycui>)

Parents

(<https://www.cui.edu/parents-and-families>)

Pay Tuition Online

(<https://www.cui.edu/onlinepayments>)

Press Room

(<https://www.cui.edu/aboutcui/news/press-room>)

Site map

(<https://www.cui.edu/site-map-2>)

Veterans Resource Center

(<https://www.cui.edu/studentlife/veterans>)

Services

Academic Advising

(<https://www.cui.edu/studentli>)

Bursar's Office

(<https://www.cui.edu/studentli>)

Campus Safety

(<https://www.cui.edu/campus-safety>)

Financial Aid

(<https://www.cui.edu/studentli-aid>)

Library

(<https://www.cui.edu/library>)

Brand and Marketing

Resources

(<https://www.cui.edu/marketing-resources>)

Registrar

(<https://www.cui.edu/studentli>)

University Services

(<https://www.cui.edu/studentli-services>)

University Events
(<https://www.cui.edu/event-calendar>)

Concordia University Irvine is a private, Christian university that is ranked nationally among the "Top Performers on Social Mobility" universities by *U.S. News & World Report*. Concordia is accredited by WASC Senior College and University Commission (WSCUC) and serves over 5,000 students annually.

Concordia
University Irvine
1530 Concordia
West
Irvine, CA, USA
92612



(<https://www.cccu.edu>)



(<https://www.cui.edu>)
university-
system)



(<https://www.wasc.org>)
research-
assessment/regional-
accreditation)



(<https://www.ncaa.org>)



(<https://www.yellowribbon.org>)

(949) 854-8002

info@cui.edu
(mailto:info@cui.edu)

(<https://www.cui.edu/studentlife/veterans>)

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EXHIBIT 7



Concordia University Irvine
Athletics Department
[1530 Concordia
Irvine, CA 92612](#)

Dear [REDACTED]

Concordia University Irvine's Board of Regents voted this week to discontinue the **Swimming & Diving and Tennis programs** at the end of the current academic year.

As you know, the landscape of collegiate athletics is evolving rapidly, and institutions across the country are being called upon to make difficult, forward-thinking decisions. At our University, we recently made the painful choice to discontinue four athletic programs. These were not easy decisions, but they were necessary to ensure the long-term strength and sustainability of our department.

I want to reassure you that your program remains secure and a vital part of our campus community. More than that, I want to emphasize the tremendous commitment the University continues to make to Golden Eagles Athletics.

We are currently in the midst of a major \$17.5 million construction project that includes a new 19,000-square-foot facility featuring a state-of-the-art weight room, locker rooms, and modern training room space. This facility represents our belief in the future of our athletic programs and our student-athletes.

In addition, the University has invested over \$8 million in upgrades to our baseball, softball, and soccer/track/lacrosse facilities—including the installation of lights on each of our outdoor fields. These enhancements are not just physical improvements—they are a reflection of our belief in your potential and our commitment to giving you the tools and environment to succeed at the highest level.

We are proud of all that you do to represent the Golden Eagles. Your dedication, resilience, and excellence continue to inspire us, and we remain committed to supporting you as you pursue your academic and athletic goals.

Thank you for all you do for this University. We are moving forward together—with purpose, with pride, and with a clear vision for the future. If you have any questions or concerns please feel free to contact me directly. I look forward to welcoming you all back to campus next fall!

Crystal Rosenthal

Crystal Rosenthal

Associate Vice President of Athletics/Head Softball Coach

Office: (949) 214-3210

Email: crystal.rosenthal@cui.edu

Concordia University Irvine

[1530 Concordia](#) West, Irvine, CA 92612



↩ Reply

➡ Forward

EXHIBIT 8

Update Regarding Swimming & Diving and Tennis

From Crystal Rosenthal <crystal.rosenthal@cui.edu>

Date Tue 2025-05-20 2:40 PM

To [REDACTED]

Dear [REDACTED]

As many of you have heard by now, the Concordia University Irvine's Board of Regents voted this week to discontinue the **Swimming & Diving and Tennis programs** at the end of the team's season/end of the academic year.

We recognize this is a deeply emotional and uncertain time, and we are committed to supporting you through the transition ahead. Please know that our entire athletics, academic, and student services teams are here for you during this transition. Whether you choose to transfer or stay, we want to ensure you have all the resources you need to make the best decision for your future.

Next Steps & Support Available to You:

Athletic Transfer Guidance: The compliance office will assign you the NCAA Transfer Portal workflow in ARMS, to start the process of being entered into the portal. In accordance with Bylaw 13.1.1.3.5 Discontinued Sport Exception, coaches are able to make contact with you once a public announcement is made that your sport will be discontinued. A public release will be posted at 4:00pm and you can send this to 4-year college coaches in order to start recruitment. However, you will still need to be entered into the NCAA Transfer Portal in order for compliance administrators to view your remaining athletic and academic eligibility. Please contact Andrea Riche andrea.riche@cui.edu for assistance.

13.1.1.3.5 Discontinued Sport Exception. Authorization through the notification of transfer process is not required for a student-athlete at an institution that indicates through public announcement that the student-athlete's sport will be discontinued.

Instructions on how to be added to the NCAA Transfer Portal: Before compliance can enter you into the transfer portal, you will need to watch the transfer module which can be found at the link below. Once you complete the module, please complete the workflow from the NCAA and the form on ARMS I have assigned to you. Student-athletes do not have access to the transfer portal but you will receive an email notification once you have been added. [NCAA DII Transfer Module](#)

Academic Advising & Course Planning: It's important to maintain your academic progress during this time. Your academic advisor can help ensure your courses and credits transfer smoothly if you choose to move to another institution, or help you plan your continued education here at Concordia University

Irvine. Please contact Laura Courvoisier or your academic advisor for assistance at Laura.Courvoisier@cui.edu

Counseling & Mental Health Support: We understand this news can be incredibly upsetting. Our counseling services are available to support you emotionally and mentally. You can schedule an appointment by contacting 949-214-3102 or wellness@cui.edu or scheduling an appointment [HERE](#).

Scholarship & Financial Aid: If you're considering staying at Concordia University Irvine, we will honor your current athletic and academic aid. If you have additional questions, please contact the Financial Aid Office at ken.dillinger@cui.edu or call 949-214-3068.

In this time of transition, we remain firmly committed to supporting our incoming and current student-athletes by retaining their current scholarship amounts should they choose to continue and complete their education at Concordia.

We are committed to providing support services to impacted student-athletes who wish to pursue the transfer portal.

Should you have any further questions please contact me or Deputy Athletic Director, Brittany Pereda at brittany.pereda@cui.edu.

Sincerely,

Crystal Rosenthal
Associate Vice President of Athletics

1 Arthur H. Bryant (SBN 208365)
2 **ARTHUR BRYANT LAW, P.C.**
3 1999 Harrison Street, 18th Floor
4 Oakland, California 94612
5 Telephone: (510) 391-5454
6 arthur@arthurbryantlaw.com

Eric A. Grover (SBN 136080)
Robert W. Spencer (SBN 238491)
KELLER GROVER LLP
1965 Market Street
San Francisco, California 94103
Telephone: (415) 543-1305
Facsimile: (415) 543-7861
eagrover@kellergrover.com
rspencer@kellergrover.com

7 Attorneys for Plaintiffs

8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**
11

12 ALEXANDRA GRANT, MIKAYLA
13 BARRE, JESSICA BEAR, KIERA
14 GUTIERREZ, BRYN JOHNSON,
15 ALEXANDRA LELAND, RUBY
16 MCCULLOUGH, ALIYAH
17 TREADWELL, CARISSA WARD,
individually and on behalf of all
others similarly situated,

18 Plaintiffs,

19 v.

20
21 CONCORDIA UNIVERSITY
22 IRVINE,

23 Defendant.
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27
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Case No. 8:25-CV-01793

CLASS ACTION

**DECLARATION OF DONNA
LOPIANO, Ph.D.**

1 I, Donna Lopiano, Ph.D., am over 18 years of age and competent to make the
2 following statements. All of the statements below are based on my personal
3 knowledge:

4 1. I have been retained as an expert by Plaintiffs in this matter to provide
5 opinions and analysis in regard to the opportunities to participate in varsity
6 intercollegiate athletics provided by Concordia University Irvine ("CUI") to its
7 female and male athletes and potential athletes in light of CUI's announcement that
8 it will discontinue the women's and men's swimming & diving and tennis teams.

9 2. As part of my work on this case, I was asked to compile my findings
10 and opinions in a report. A true and correct copy of that report is attached to this
11 declaration as Exhibit 1.

12
13 DATED: August 8, 2025

Respectfully submitted,

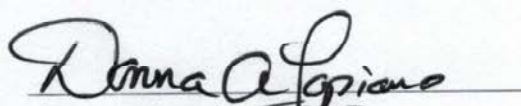
14 
15 Donna Lopiano, Ph.D.
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EXHIBIT 1

**Report by
DONNA LOPIANO, PH.D.**

**Alexandra Grant, individually and on behalf of all those
similarly situated,**

v.

CONCORDIA UNIVERSITY IRVINE

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2 | Page

I. SCOPE OF OPINIONS TO BE RENDERED

I have been asked to prepare a report giving my expert opinion on the following questions relevant to this case:

- A. Given the decision of Concordia University Irvine (CUI) to cut its women's and men's varsity swimming & diving and tennis teams:
 - 1. Has CUI been, and will it be, providing women and men with opportunities to participate in varsity intercollegiate athletics in numbers that are exactly proportionate to their respective undergraduate enrollments? If not, how far from exact proportionality has it been or will it be?
 - 2. Does CUI have a history and continuing practice of expanding varsity intercollegiate athletic participation opportunities for women?
 - 3. Will CUI be fully and effectively accommodating the interests and abilities of women to participate in its varsity intercollegiate athletic program?
- B. How are the members of CUI's women's varsity swimming & diving and tennis teams likely to be harmed as a result of the elimination of their teams?

My opinions are based upon my expertise in sports management and gender equity in sports, my knowledge of federal gender equity laws and guidance regarding their meaning, my review of publicly available information about the CUI athletics program, my knowledge of collegiate sports governance association rules, and my higher education athletics administration experience related to knowledge of financial and other challenges faced by students who transfer from one four-year college to another.

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 for 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 regarding 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 as Exhibit B. I have agreed to charge at the following specified hourly rates for my preparation and consulting services on this case:

- \$350 per hour for report preparation
- \$300 per hour for consultation with attorneys related to preparation for expert reports or depositions
- \$700 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 that may have been requested but not yet delivered, depositions which have yet to be taken in this case, or other information which 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. UNDERLYING CONSIDERATIONS

A. Rendering opinions, not legal judgments. I am not an attorney, a judge, or a member of a jury charged with the responsibility of determining whether actions taken by CUI or its administrators constitute illegal discrimination, violations of Title IX, or other practices that may not be legal. Rather, my opinions and conclusions reflect and are based on my years of experience as an athletic director, academic, researcher, teacher, and consultant who educates coaches and administrators about best practices in gender equity and sport management. Many of the vernacular terms used to teach and advise administrators, Title IX coordinators, and others may also be legal terms, but should not be interpreted as rendering legal opinions. I am assessing CUI as I would assess any university that asks me to consult on gender equity, Title IX athletics compliance, or management best practices.

Thus, any opinions rendered for this report as to whether CUI data or practices meet standards of gender equitable participation are my expert opinions, are not legal conclusions, and are not intended to usurp the authority of a judge or jury to render a legal judgment related to whether a fact situation complies with legal requirements.

B. Principles governing gender equity assessments. Before I present my opinions, it is important to understand several important principles that govern gender equity assessments. First, the assessment of gender equity in athletics is institution specific such that comparisons are made within each institution rather than compared to what any other institution is doing. In other words, no comparisons are made to the participation, financial aid, or treatment of males and females at

other institutions. Therefore, if an institution's athletic program is inequitable, it does not get a free pass from its gender equity obligations just because another institution in the same athletic conference runs an even more inequitable athletic program.

Second, the assessment of gender equity in athletics is total program oriented, which means that a proper gender equity analysis looks at the treatment of all male student-athletes versus the treatment of all female student-athletes, rather than comparing one sport to another (e.g., men's basketball compared to women's basketball). However, when an institution conducts an athletic program that treats various sports differently and provides better treatment to some sports than others, the proper gender equity analysis is to examine whether male and female athletes, overall, are treated equally.

Third, it is important to understand that the lack of financial resources does not excuse an institution's failure to treat male and female student-athletes equally or its failure to provide equal participation opportunities. Once an institution determines its available financial resources, it must allocate those resources so that males and females receive an equal opportunity to participate at each level of competition, receive equal access to athletic aid, and receive equal athletics treatment and benefits.

Fourth, the fact that a sport may generate revenue is not an acceptable reason for treating student-athletes in that sport better than student-athletes of the opposite sex. Congress considered exempting revenue-producing sports from Title IX analysis in the 1970s but ultimately rejected all such proposals. College athletic opportunities are educational opportunities that must be equally available to men and women. Therefore, once revenues are accepted by the institution or generated by a team or athletic event or activity (e.g., tuition, student fees, donor gifts, gate receipts, booster

club contributions, media rights fees, sponsorships, etc.), the institution controls the revenues and is obligated to treat male and female students equally in expending those revenues.

Fifth, it should also be noted that the affirmative and proactive aspects of Title IX compliance are so important that the federal regulations require that all school districts and institutions of higher education assure that they comply with Title IX and do not discriminate on the basis of sex as a condition for annual receipt of federal funds. By doing so, institutions represent that they have taken affirmative efforts to eliminate past discrimination, that they do not discriminate now, that they will continue not to discriminate, and that they will take whatever remedial action is necessary to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination.

Sixth, Title IX does not require equal expenditures on men's and women's teams. However, financial aid (scholarships, academic financial awards, or other dollars provided to male and female athletes) must generally be distributed to male and female student-athletes in proportion to their participation rates in the athletic program. Male and female student-athletes must be supported in such a way that their sport interests and abilities are equally accommodated and are provided with equal treatment and benefits.

VII. EQUAL PARTICIPATION OPPORTUNITIES: THE THREE-PART TEST

To determine whether a school is providing men and women with equal opportunities to participate in intercollegiate athletics, the U.S. Department of Education's Office for Civil Rights set forth a "Three-Part Test" in its 1979 Policy Interpretation. It examines:

- 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[c][5](a)

In 1996, DOE issued a Dear Colleague Letter that enclosed guidance on the application of the Three-Part Test known as the *Clarification of Intercollegiate Athletics Policy Guidance: The Three Part Test* (the “1996 Clarification”). In 2010, DOE issued a Dear Colleague Letter that provides specific guidance on complying with Prong Three of the Three-Part Test. All athletic administrators and Title IX officers should be well-versed in these guidance documents.

For the purposes of this report, I have been asked to address the facts at CUI relevant to each part of the Three-Part Test. I do so below.

VIII. METHODOLOGY

A. Participant Counting. The first step in determining whether men and women are provided opportunities to participate in varsity intercollegiate athletics in numbers substantially proportionate to their respective undergraduate enrollments is to make a participation count. I count participants in a formulaic way that is consistent with my understanding of guidance promulgated by the Department of Education Office for Civil Rights (OCR). The January 1996 Clarification of

Intercollegiate Athletics Policy Guidance: The Three-Part Test¹ (“1996 Clarification”) includes all 1975 Regulation and 1976 Interpretation references and provides additional information, such as the application of counting rules to institution-specific examples. In addition, I may rely upon my understanding of past court decisions if I encounter similar institution-specific circumstances. Where neither regulatory nor prior judicial guidance is available, I use a common-sense interpretation of OCR guidance.

Key to the use of each of these assessment rules is the requirement that all male and all female student-athletes be counted in the same way. So, the identification of male and female student-athletes and their participation rates would be determined on a classwide basis in a manner that would not vary for any individual class member. My methodology is flexible and can account for other methods of identifying and counting male and female student-athletes in order to determine each gender’s participation rate.

OCR defines a “participant” in the financial aid section of the 1979 Policy Interpretation and the 1996 Clarification (p. 3). The 1979 Policy Interpretation explains that counted participants are those athletes:

OCR defines a “participant” in the financial aid section of the 1979 Policy Interpretation and the 1996 Clarification (p. 3). The 1979 Policy Interpretation explains that counted participants are those athletes:

- (a) *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***

¹ Department of Education Office for Civil Rights, *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test*. (1996), <https://www.ed.gov/laws-and-policy/higher-education-laws-and-policy/higher-education-policy/clarification-of-intercollegiate-athletics-policy-guidance-the-three-part-test> .

- (b) *Who are participating in organized practice sessions and other team meetings and activities on a regular basis during a sport's season; and*
- (c) *Who are listed on the eligibility or squad lists maintained for each sport; or*
- (d) *Who, because of injury, cannot meet a, b, or c above but continue to receive financial aid on the basis of athletic ability.*

The 1996 Clarification states that OCR “considers a sport’s season to commence on the date of a team’s first intercollegiate competitive event and to conclude on the date of the team’s final intercollegiate competitive event.” Athletes thus are counted as participants if they participate on a regular basis during this period. Any athlete who joins the teams following the last date of competition (think of a football player who joins the team in the spring semester and plays in the spring game) or is on the squad list because the player is trying out for the team but is cut before the beginning of the season does not count. A team member who attends a majority of the practices and activities during this designated period counts. The Clarification also details other specific situations in which players may or may not count.

There may be other situations where government guidance is not clear, courts have not considered the situation, or the situation falls outside the plain meaning of the OCR stated participation definitions. OCR, if it came to campus to do a Title IX assessment, would look at the individual institution’s fact situation and then decide. If I encounter such a fact situation not covered in the above situations, I would explain the reason for my counting decision and the identical standard would be applied to any similarly situated male or female athletes, ensuring that the identification of male and female student-athletes and their participation rates would be determined on a class wide basis in a manner that would not vary for any individual class member.

Several sources may be used to determine participation in an actual competition. The primary source for participant counting by sport is the “NCAA Squad List” (“squad list”), which is usually maintained by a rules compliance administrator employed by the athletic department. As a general rule, all athletes who are listed on a team’s squad list are those who have been recruited, received financial aid, have been cleared to participate in practice or tryouts, or who were on the team as of the team’s first competitive event. Information contained on the squad list may be used to indicate whether the athlete should or should not count. Squad lists reflect data that is maintained and coded to reflect dated changes in the status of a participant (e.g., quit, cut, etc.).

Institutions are also required by the NCAA to keep a CARA Record² by athlete of every countable athletics related activity³ attended by the athlete. When completed in accordance with applicable guidelines, the CARA record is the most definitive record of whether an athlete has participated regularly in practice, competition, team meetings, and other team activities. Other sources of information can also be used to identify participants. For example, institutions may keep a separate competition record⁴ for each team, which would verify that an athlete counts as a participant for that year through actual participation in one or more competitive events. Similarly,

² The CARA Record is a record of Countable Athletics Related Activity. *See* NCAA Division II Manual 2024-25—“17.1.6.4.4 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.” (Adopted: Jan. 10, 1991 effective Aug. 1, 1991) at 199. A countable athletically related activity is defined “as any required activity with an athletics purpose involving student-athletes and at the direction of, or supervised by, one or more of an institution’s coaching staff (including strength and conditioning coaches).”

³ *Id.* 17.02.1 at 192 “any required activity with an athletics purpose involving student-athletes and at the direction of, or supervised by, one or more of an institution’s coaching staff (including strength and conditioning coaches).”

⁴ The “competition record” is normally a simple table with the team roster listed in alphabetical order down the left and the date of each exhibition, regular season, and post-season competition across the top. An “X” is placed opposite the name of each athlete under the date of every competition in which the athlete participated.

various competition statistics records⁵ can also be used to identify contests in which an athlete has actually played.

Because there has been no discovery to date in this case, none of the above primary sources (e.g., NCAA squad lists, CARA records, CUI competition statistics) have been produced by CUI for me to examine. Under such circumstances, I use either of two publicly available participation counts produced by the institution: the institution's Equity in Athletics Participation Report⁶ or its team rosters as displayed on its athletics department website. I have a high level of confidence in these sources because both are based on the three internally maintained primary sources. If both are available, I use the EADA report because the EADA counting instructions⁷ closely approximate those detailed in Section VIII.A. of this report and submission is a condition of receipt of federal funds. For this report, EADA reports were available from 2004-05 through 2023-24. Because 2024-25 reports are not due until December 2025, I used CUI's 2023-24 enrollment data as a proxy for 2024-25 and 2025-26 projections and CUI web rosters located at <https://cuigoldeneagles.com/> for the counting of participants. Table 1 displays the participant counts for 2024-25 from those website rosters, that I used for this report.

⁵ Statistical records (*i.e.*, games played, at-bats, etc.) may be obtained from several sources. For example, athletic department websites often contain statistics and competition results going back several years. Athletic departments often maintain this information for their own internal use, even if it is not available on an institution's website.

⁶ 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. 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. EADA reports are not Title IX compliance reports. Rather, these reports are conditions of 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.

⁷ United States Department of Education. (2023) *User's Guide for The Equity in Athletics Disclosure Act Web-Based Data Collection*. See p. 29. Retrieve from: https://surveys.ope.ed.gov/athletics2023/wwwroot/documents/2023_EADA_Users_Guide.pdf

Table 1
2024-25 CUI Website Participant Counts by Sport and Overall

Sport	Men	Women
Baseball	41	0
Basketball	15	14
Beach Volleyball	0	22
Cross Country	15	16
Golf	11	8
Lacrosse	55	25
Soccer	29	28
Softball	0	22
Stunt	0	41
Swimming	23	29
Tennis	11	8
Track (Ind)*	37	45
Track (Otdr)*	37	45
Volleyball	23	11
Water Polo	21	19
Total	318	333

*Track and field officially counts as two sports because they have separate seasons. However, all institutions list one track and field web roster because all participants are eligible to compete in both seasons and train throughout both seasons. Note that actual participation in a competition is not required for an eligible athlete to count, only that they meet the definition provided in Section VIII. A. of this report

B. Computation of Proportionality. An institution achieves actual equity when the percentage of female athletes is proportionate to the percentage of full-time female students enrolled at the institution. An institution’s permissible deviation from exact proportionality is fact specific. “Substantial proportionality” is required, not exact proportionality. The allowable variance is not based on a percentage, but instead turns on the number of participation opportunities or participants represented by that percentage, commonly referred to as the “female participation gap,” and

whether that gap is large enough to sustain a viable team The 1996 Clarification (at pp. 9-10) included the following variance examples expressed as number of participants of when an institution would not meet the part one substantial proportionality test:

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.

I use an easy mathematical way to compute the female participation gap. Using the 2023-24 EADA undergraduate enrollment data as a proxy for 2024-25 and 2024-25 website roster male/female participation data, following is an example of how I computed exact proportionality and the female participation variance (gap) previously described for each and every year 2004-05 to 2024-25 (21 years) examined in this report:

- Produce a count of all male and female participants (see Table 1 above for CUI data) and determine the percentage of male and female athletes: M = 318 (48.8%), F=333 (51.2%), Total = 651 (100%).
- Obtain the institution's male and female undergraduate student enrollment: M = 580 (41.0%), F = 833 (59.0%) women, Total = 1413 (100%).

- Determine whether the percentage of male and female athletes are over or underrepresented by comparing the percent full-time undergraduate female enrollment with the percent of athletic participants:

M athletes = 48.8%, M full-time undergraduates = 41.0%, M overrepresented by 7.8 %.

F athletes = 51.2%, F full-time undergraduates = 59.0%, F underrepresented by 7.8%.

- To determine the underrepresentation of females expressed by number of participants (female participation gap):
 - Divide the number of male athletes (overrepresented sex) by their percent of the undergraduate student body (318 divided by .410) to determine the total number of athletes if male athletes were 41.0% of all athletes: Result= 776 total athletes
 - Then subtract the actual number of male athletes (318) and the actual number of female athletes (333) from the 776 total athletes to find the number of new female participation opportunities that must be added for females to be 59.0% of all athletes: Result: 776 minus 318 total current male and 333 current female athletes = 125 female participation gap.
- Now check your math:
 - Current females are 333 plus 125 new females to be added to achieve exact proportionality = 458 total female athletes. 438 is 59.0% of 776.
 - Current males are 318. 318 is 41.0% of 776.

Once the female participation gap has been computed, in my experience, most schools wish to remedy the underrepresentation of females by adding women's teams and slightly reducing men's team rosters by setting maximum roster caps without eliminating men's teams. However, the institution may reduce the female participation gap down to less than the size of a viable team

that could be added by choosing one or any combination of (a) eliminating men's teams, (b) reducing the roster sizes of remaining men's teams, and/or (c) adding new women's teams.

IX. OPINIONS

A. Given the decision of Concordia University Irvine (CUI) to cut its women's and men's varsity swimming & diving and tennis teams:

1. Has CUI been, and will it be, providing women and men with opportunities to participate in varsity intercollegiate athletics in numbers that are exactly proportionate to their respective undergraduate enrollments? If not, how far from exact proportionality has it been and/or will it be?

Table 2 on the next page displays the results of my computations of proportionality and the female participation gap (variance from exact proportionality) expressed as both percentages and numbers of participants from 2004-05 through 2024-25. There were anomalies in CUI EADA data reports, specifically, years in which varsity teams are reported on the CUI athletics website and do not appear on the EADA report. For those years, I have calculated an adjusted female participation gap (last column on the right) to include the additional website roster count male and female participants. I explain each calculation in footnotes under the table that correspond to each of the years with such omissions. I also note that I did not have EADA enrollment or athlete participation data for 2024-25 because that year's EADA report is not due until the fall of 2025. Therefore, I used 2023-24 enrollment as a proxy and publicly available athletics website 24-25 roster counts (see Table 1). Note that the website counts include women's lacrosse, never before reported on any CUI EADA report.

Table 2
CUI 2004-05 Through 2024-25 Computation of Variance from Exact Proportionality Expressed
as Percentages and Number of Athletics Participants (Female Participation Gap)

Survey Year	Male Undergraduates	Female Undergraduates	Total Undergraduates	Percent Male Under Grads	Percent Female Under Grads	Male Athletes	Female Athletes	Total Athletes	Percent Male Athletes	Percent Female Athletes	Percent Female Athlete Shortfall	Female Athlete Particip. Gap	Adjusted Female Athlete Particip. Gap ¹
2004-05 ²	456	804	1260	36.2%	63.8%	83	85	168	49.4%	50.6%	13.2%	61	
2005-06	507	863	1370	37.0%	63.0%	100	96	196	51.0%	49.0%	14.0%	74	
2006-07	516	832	1348	38.3%	61.7%	110	104	214	51.4%	48.6%	13.1%	73	
2007-08	465	747	1212	38.4%	61.6%	141	135	276	51.1%	48.9%	12.7%	92	
2008-09	503	792	1295	38.8%	61.2%	150	148	298	50.3%	49.7%	11.5%	88	
2009-10 ³	540	823	1363	39.6%	60.4%	136	132	268	50.7%	49.3%	11.1%	75	106
2010-11 ⁴	582	895	1477	39.4%	60.6%	116	112	228	50.9%	49.1%	11.5%	66	90
2011-12 ⁵	632	910	1542	41.0%	59.0%	143	127	270	53.0%	47.0%	12.0%	79	109
2012-13	618	974	1592	38.8%	61.2%	174	152	326	53.4%	46.6%	14.6%	122	
2013-14	672	1070	1742	38.6%	61.4%	218	184	402	54.2%	45.8%	15.6%	163	
2014-15	654	1099	1753	37.3%	62.7%	194	174	368	52.7%	47.3%	15.4%	152	
2015-16 ⁶	620	1098	1718	36.1%	63.9%	193	230	423	45.6%	54.4%	9.5%	112	91
2016-17 ⁷	651	1121	1772	36.7%	63.3%	213	285	498	42.8%	57.2%	61.0%	82	57
2017-18	622	1019	1641	37.9%	62.1%	238	317	555	42.9%	57.1%	5.0%	73	
2018-19 ⁸	622	1037	1659	37.5%	62.5%	247	329	576	42.9%	57.1%	5.4%	83	106
2019-20 ⁹	633	957	1590	39.8%	60.2%	237	309	546	43.4%	56.6%	3.6%	49	58
2020-21 ¹⁰	596	942	1538	38.8%	61.2%	270	288	558	48.4%	51.6%	9.6%	139	136
2021-22 ¹¹	595	887	1482	40.1%	59.9%	244	262	506	48.2%	51.8%	8.1%	102	185
2022-23 ¹²	583	891	1474	39.6%	60.4%	273	286	559	48.8%	51.2%	9.2%	131	144
2023-24 ¹³	580	833	1413	41.0%	59.0%	297	328	625	47.5%	52.5%	6.5%	99	79
2024-25 ¹⁴	580	833	1413	41.0%	59.0%	318	333	651	48.8%	51.2%	7.8%	125	
Proj. 2025-26 ¹⁵	580	833	1413	41.0%	59.0%	284	296	580	49.0%	51.0%	8.0%	112	

¹There were anomalies in CUI EADA data reports, specifically, years in which varsity teams are reported on the CUI athletics website and do not appear on the EADA report. For those years, I have calculated an adjusted female participation gap to include the additional website roster count male and female participants. I explain each calculation in footnotes under the table that correspond to each of these years.

²No EADA data was submitted by CUI in 2003-04. CUI was an NAIA school through 2013-14, then NCAA D-II thereafter. However, all higher education institutions that received federal financial assistance were required under the Equity in Athletics Disclosure Act to make such submissions.

³2009-10 data did not include women's water polo (15) or men's water polo (30). Adjusted gap calculation: (166M/.396MEnr.%)-(166M+147F)=106

⁴2010-11 data did not include women's water polo (17) or men's water polo (25). Adjusted gap calculation: (141M/.394MEnr.%)-(141M+127F)=90

⁵2011-12 data did not include women's water polo (17) or men's water polo (33). Adjusted gap calculation: (176M/.41MEnr.%)-(176M+144F)=109

⁶2015-16 data did not include women's stunt (21) Adjusted gap calculation: (193M/.361MEnr.%)-(193M+251F)=91

⁷2016-17 data did not include women's stunt (25) Adjusted gap calculation: (213M/.367MEnr.%)-(213M+310F)=57

⁸2018-19 data did not include women's lacrosse (20) or men's lacrosse (26). Adjusted gap calculation: (273M/.375MEnr.%)-(273M+349F)=106

⁹2019-20 data did not include women's lacrosse (14) or men's lacrosse (15). Adjusted gap calculation: (252M/.398MEnr.%)-(252M+323F)=58

¹⁰2020-21 data did not include women's stunt (33), women's lacrosse (13) or men's lacrosse (28). Adjusted gap calculation: (298M/.388MEnr.%)-(298M+334F)=136

¹¹2021-22 data did not include women's stunt (34), women's lacrosse (17) or men's lacrosse (37). Adjusted gap calculation: (334M/.401MEnr.%)-(334M+313F)=185

¹²2022-23 data did not include women's stunt (33), women's lacrosse (15) or men's lacrosse (41). Adjusted gap calculation: (314M/.396MEnr.%)-(314M+334F)=144

¹³2023-24 data did not include women's lacrosse (20). Adjusted gap calculation: (297M/.41MEnr.%)-(297M+348F)=79

¹⁴No EADA enrollment or athlete participation data was available for 2024-25 because that year's EADA report is not due until the fall of 2025. Therefore I used 2023-24 enrollment as a proxy and used publicly available athletics website 24-25 roster counts (see Table 1). Note that the website counts include women's lacrosse, never before reported on any CUI EADA report.

¹⁵Projected 2025-26 participation assuming enrollment and athletic participation constant at 2024-25 levels except less 11 male tennis and 23 male swimming participants and less 8 female tennis and 29 female swimming participants. Computation: (284 M/ 0.41MEEnr.%) - (284M+296F) =112

I anticipate making adjustments in Table 2 upon receiving complete NCAA squad list and enrollment data during discovery.

Table 2 indicates that the female participation gap at the end of the 2024-25 academic year was 125—the number of varsity intercollegiate athletic opportunities for women to achieve exact proportionality compared to their 59 percent of the full-time undergraduate population. If the men’s and women’s tennis and swimming teams are eliminated and all other data remain the same, the projected female athlete participation gap would be 112.

2. Does CUI have a history and continuing practice of expanding varsity intercollegiate athletic participation opportunities for women?

Historically, when Title IX’s athletics regulations were created in 1975, athletics opportunities for women were extremely limited. Congress anticipated that, when Title IX was initially implemented, the interest in and abilities of women to participate in athletics might not rise to the level of participation proportional to enrollment. Thus, rather than immediately coming into compliance in 1975, schools had the option of adding new teams as developing interest and ability was identified until proportionality was achieved. An institution could use this option only if it demonstrated that (a) participation opportunities in women’s sports continued to increase since 1975, (b) developing interest and abilities in women’s sports was regularly assessed during this entire period (1975 to the present) and, as such interest was identified, new women’s sports were added, **and** (c) no women’s sport was dropped from the athletic program without adding another sport with an equal or greater number of participants in the same year. (1979 and 1996 Title IX policy interpretations and clarifications).

To begin with, because CUI just announced the elimination of the women's swimming & diving and tennis without replacing them with larger women's teams, it could not demonstrate such a continuing practice regardless of its history. But CUI's history shows it could not have satisfied these expanding opportunities tests in the past either. With regard to (a) demonstrating an increase in women's sports opportunities since 1975, I had no access to participation reports prior to the 2004-05 period in which I had access to EADA reports.⁸

With regard to (b), CUI failed to add new women's sports during the eight-year period from 2007-08 (when it added women's swimming and water polo) to 2015-16 when it added women's beach volleyball and stunt. During that time, a regular review of NCAA Sports Sponsorship and Participation Reports,⁹ would have indicated one or more sports, including women's golf, that were not then sponsored by CUI and were sponsored by institutions available for CUI to schedule competition within its regular competitive region.

With regard to (c) (whether women's sports have been dropped), the women's golf team was dropped in 2007-08 despite the demonstrated interest and ability of women in that sport and women's swimming and diving and water polo were added in that same year. However, no new women's sports were added during the eight-year period from 2007-08 until 2015-16.

3. Will CUI be fully and effectively accommodating the interests and abilities of women to participate in its varsity intercollegiate athletic program?

⁸ I note that UCI's obligation to add opportunities for the underrepresented sex began in 1975 if women were underrepresented at that time. I did not have access to historical data other than EADA reports which began in 2003-04.

⁹ All athletic administrators are aware of this annual publication, National Collegiate Athletic Association. (September 29, 2023) NCAA Sports Sponsorship and Participation Rates Report (1956-57 through 2022-23).

Retrieve from:

https://ncaaorg.s3.amazonaws.com/research/sportpart/2023RES_SportsSponsorshipParticipationRatesReport.pdf

Again, because CUI just announced the elimination of three active women's teams, it could not satisfy this test regardless of its history. CUI's history, however, shows it could not have satisfied this test in the past either. In each of the 21 years I examined (see Table 2), CUI did not achieve athletics participation proportional to full-time undergraduate female enrollment. In each of these years, CUI had an affirmative obligation to assess the interests and abilities of the unrepresented sex and, if such interest existed, to add teams for women. The Department of Education Office for Civil Rights has provided extensive guidance¹⁰ to institutions on non-discriminatory assessment methods which should be used to assess interest and ability. Specifically, the most recent OCR publication on this subject, the 2010 Dear Colleague letter (see Appendix D at pp. 5-15), focuses on assessing athletic interests, and abilities and states that OCR will examine whether:

- a. viable teams have been previously eliminated from the program;
- b. any requests have been made by students and admitted students that a particular sport be added;
- c. any requests have been made for the elevation of an existing club sport to intercollegiate status;
- d. participation in club or intramural sports have been reviewed;
- e. interviews with students, admitted students, coaches, administrators and others regarding interest in particular sports have been conducted and reviewed;
- f. surveys or questionnaires of students and admitted students regarding interests in particular sports have been conducted and results reviewed (noting that the failure of a student to respond to a survey cannot be considered an expression of lack of interest);
- g. previous interscholastic sports and current club and intramural sports in which admitted underrepresented students have participated have been examined;

¹⁰ Methods of assessing interest and ability are addressed by the 1979 Policy Interpretation, the 1996 Clarification, the 1980 and 1990 Title IX Investigators Manuals, and the 2010 Dear Colleague Clarification.

- h. the participation rates in sports in high schools, amateur athletic associations, and community sports leagues that operate in areas from which the institution draws or recruits its students have been examined;
- i. the institution demonstrates that it has a policy/process in place to elevate club sports and respond to expressions of student interest in varsity opportunities;
- j. competitive opportunities in sports offered by other schools against which the institution competes exist;
- k. competitive opportunities in sports offered by other schools in the institution's geographic area, including those offered by schools against which the institution does not now compete;
- l. the institution has actively encouraged the addition of new women's sports and/or the development of better competition opportunities in club sports by the member institutions in its conference (by asking that they add the same sport for women) or to help develop a sport specific conference;
- m. if the institution recruits potential athletes for its men's teams, the institution has examined whether additional women's teams could be similarly recruited and competition available for that team within the same geographical area in which its existing men's and women's teams compete;
- n. opinions of coaches, administrators, and athletes at the institution have been solicited regarding whether interested student and admitted students have the potential to sustain an intercollegiate team;
- o. participation of students in other sports (interscholastic, intercollegiate, open amateur) has been examined to determine whether they have demonstrated skills or abilities that are fundamental to other sports being considered;
- p. tryouts or other direct observations of participation in the particular sport in which there is an interest have been conducted;
- q. assessments of student interest and ability are conducted at least every two years recognizing that at a typical two-year institution, the student body changes substantially each year; and
- r. the institution has effective ongoing procedures for receiving and responding to requests for additional teams which are widely disseminated to existing and newly admitted students as well as coaches and other employees.

If, as a result of the above assessments, CUI could have demonstrated that there were no women's sports that could have been added or, while such possibilities existed, there was an insufficient number of opponents within its normal competitive region, CUI could have met this test.

While no materials have been produced to date in this case, I opine that, had CUI fulfilled its assessment responsibilities, as detailed by the Department of Education's Office for Civil Rights, CUI could have easily identified numerous women's sports that could have been added. Typically, athletics administrators are aware of the two primary resources to easily access sport addition possibilities: the National Federation of State High School Associations (NFSH) high school Participation Statistics online database¹¹ and the NCAA Sports Sponsorship and Participation Rates Report.¹² The NFSH database disaggregates participation by sport, by state, by sex. Examination of the NCAA report would have allowed CUI to identify the most likely women's sports to consider because it contains information on average team size, competitive level, and numbers of possible opponents available for scheduling with the highest female participation rates as a proxy for existence of interest and ability to participate. The NCAA report has the additional advantage of providing information on varsity sports offered at the Division II level or recognized by the NCAA as emerging sports. This NCAA information is important because CUI is required to offer sports in which male and female athletes are competing at the same competition level and which are recognized by CUI's national collegiate athletics governance organization.

Without discovery and based on my experience as an athletics administrator, I opine that CUI administrators should have been aware of these resources, could have easily identified

¹¹ National Federation of State High School Associations. Participation Statistics. Retrieve from: https://members.nfhs.org/participation_statistics

¹² National Collegiate Athletic Association. (September 29, 2023) NCAA Sports Sponsorship and Participation Rates Report (1956-57 through 2022-23). Retrieve from: https://ncaaorg.s3.amazonaws.com/research/sportpart/2023RES_SportsSponsorshipParticipationRatesReport.pdf

women's sports that could have been added, and should have been aware of their obligation to fully assess and then accommodate the interests and abilities of the underrepresented sex to remedy CUI's large female participation gap. The Table 2 data on page 20 clearly indicates that it has not yet taken action to do so. As I indicated in the previous section, by deduction, I opine that CUI either did not regularly assess the developing interest and abilities in women's sports or it ignored the existence of women's sports that could and should have been added.

B. How are the members of CUI's women's varsity swimming & diving and tennis teams likely to be harmed as a result of the elimination of their teams? I have not received or reviewed plaintiffs' declarations and have not yet interviewed plaintiffs or their coaches. I reserve the right to supplement my opinion if additional information becomes available. Nevertheless, in the following paragraphs, I offer my reasons for this opinion based on my experience as an athletics administrator.

(1) Commencing with the May 20, 2025, announcement¹³ of the elimination of these teams, it will be incredibly difficult to restart these programs if they are not immediately reinstated.

Based on my 18 years of experience as an athletic director and five years as a college coach, I believe it will be extremely difficult to restart the women's swimming & diving and tennis teams, if the decision to eliminate them at drop the teams effective the 2025-26 academic year is not stayed, before the 2028-29 academic year at the earliest. My reasons for this opinion are:

- a) Head and assistant coaches may seek employment at institutions other than CUI as soon as possible. Whether an assistant coach has been groomed to take over or a new hire replaces

¹³ Concordia University Irvine. (May 20, 2025) "CIU Announces Discontinuation of Four Athletic Programs as Part of Strategic Restructuring." Retrieve from: <https://cuigoldeneagles.com/news/2025/5/20/general-cui-announces-discontinuation-of-four-athletic-programs-as-part-of-strategic-restructuring.aspx>

the retiring head coach, neither the current assistant nor a new hire will likely consider coaching at CUI 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. Then, recruiting replacement coaches would take 6 months to a year and prospective coaches would have to be assured of the long-term stability of the team in some way. Absent a court order preserving the teams while this case goes forward, it is unlikely that a favorable court judgment could occur prior to the end of the 2026-27 academic year, which means new coaches would likely not be hired until sometime during the 2027-28 academic year and would need this entire academic year to recruit their teams. If the coach was not hired prior to the end of 2027, the 2028-29 freshman recruiting class prospects would have most likely committed to their institutions – which would not include CUI as a choice.

- b) 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 2028-29 season at the earliest, the first recruiting class of athletes would not arrive on campus until the 2028-29 season, and it is doubtful that sufficient numbers or a balanced roster of freshmen, sophomores, juniors, and seniors could be assembled for that season.
- c) 2025-26 through 2027-28 team schedules do not exist and rescheduling could occur for the 2028-29 seasons only if all judicial processes were completed, a judgment 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 2028-29 season.

- d) Many current CUI freshmen and sophomores will likely seek to transfer to other institutions for the spring 2026 or fall 2026 semesters, because of the academic and financial reasons cited below. It would be very difficult for remaining athletes to transfer for the fall 2025 semester at this late date, except to institutions in immediate proximity to athletes' hometowns. Also, if the student is transferring to a school that has opted into the *House v. NCAA* settlement, the imposition of required roster limits may limit participation opportunities.
- e) It would take two to four years, beginning in 2028-29, for CUI to rebuild its reputation and gain the confidence of the most highly sought-after prospective student-athletes, who will look at CUI's decision to drop their respective sports as a lack of institutional commitment. Only a very good coach hire would minimize this liability.

(2) There will be a high likelihood of academic harm to individual 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. CUI student athletes have been admitted to an academically respected university participating in a competitive division of the NCAA and one that is a Christian church-affiliated university. Thus, it is unlikely that there will be a successful transfer to one of the limited numbers of church-affiliated and equally respected institutions unless the athletes are exceptional students, proficient enough to qualify for an athletic scholarship, the beneficiaries of special admissions privileges associated with that status, or willing to consider institutions that are non-church affiliated. Thus, the transfer student-athlete may be forced to attend an academically less-selective or secular institution.

(3) There will be a high likelihood of financial harm to transferring athletes. Athletes are more likely to receive partial athletic scholarships than full scholarships, unless the athlete is nationally ranked and highly desired. Athletic scholarships at Division II institutions are more limited in maximum number under NCAA rules and therefore less available even under normal circumstances. 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. Typically, lower enrollment universities like CUI are less likely to have significant endowments or other scholarship resources, the proceeds of which are used to provide larger proportions of their financial aid package as non-repayable grant aid. If the athlete cannot transfer to a comparable school, it is likely that she will seek to attend a lower-cost secular Division II 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 three other factors that will minimize the availability of athletic aid for transfer students. First, institutions have still not recovered from the Covid-19 economic crisis that caused significant reductions in athletics budgets nationwide. Second, all colleges and universities are under extreme financial pressure due to lower enrollments created by declining birth rates creating smaller pools of potential students. Because almost all Division II athletic programs are 100 percent subsidized from institutional general funds (tuition) and student activity fees, athletic program budgets are belt-tightening in response to the more limited availability of institutional subsidies. Third, the imposition of the *House v. NCAA* settlement in Division I and its first-time-ever roster limits, more high-quality athletes will be considering Division II institutions, making it more difficult for Division II transfers to find athletic scholarship support. Thus, the combination of lack of availability of athletics aid, and students taking on more loan debt due to lack of availability of non-repayable grants in the packaging of other non-athletics aid or paying for extra credits needed to replace courses not accepted at the new institutions or minimum residency requirements, increases the likelihood of significant additional financial costs to complete the transfer athlete's education.

(4) There will be a high likelihood of harm to individual athletes who remain at CUI with regard to physical health and well-being and loss of the opportunity to achieve athletic performance outcomes. While we don't yet know what will happen to those athletes in dropped sports who participated in the 2024-25 season, what happened to athletes who lost their eligibility because of Covid-19, but graduated, provides historical precedent. Most would likely end their athletic careers, rather than seek another institution to complete their eligibility. Those athletes who must remain at CUI because of the previously mentioned factors face additional, different types of emotional harm. The Division II athlete's decision to attend a college or university because of the

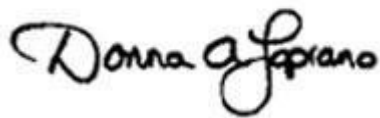
coach and participation in athletics is equally as important, and in some cases, even more important, than the academic opportunities offered. Daily physical conditioning, being pushed by the coach to achieve growth in the acquisition of skills, a commitment to devote 30 to 50 hours per week within a 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. Intercollegiate athletic participation at athletic scholarship institutions are not recreational sport activities analogous to most club sports or intramural programs. These are serious “performing arts” students developing skills in the same way as students in dance, music, or other performing arts majors. It’s a way of life. When coaches are no longer available because they have departed and when access to athletics facilities and services is limited because the athlete is no longer a member of the varsity athletic team, this is a huge culture change that affects the mental health and well-being of athletes that should not be underestimated. Research has documented the higher risk of athletes no longer permitted to participate because of injury. CUI has forced swimmers, divers, and tennis players into this higher risk category.

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.

(5) 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. CUI’s lack of notice to athletes regarding the decision 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” college athletes with no notice and no justification, they are harmed. The harm was particularly severe in this case, where the decision was unexpected and the athletes had left campus for summer break, depriving the players of teammate support during a particularly traumatic event that literally upended their CUI college life. They have received a clear message that CUI does not value their participation or its 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: August 5, 2025

EXHIBIT A

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

452 Fisher Court
Shelton, CT 06484 516-380-1213 (c) 203-538-5280 (w)
SportsManagementResources@gmail.com

Revised as of 7-27-2025

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 LLC <ul style="list-style-type: none">o a consulting firm specializing in educational sporto helping sports organizations solve integrity, growth and development challengeso www.SportsManagementResources.com
1992-2007	Chief Executive Officer, Women's Sports Foundation Built an internationally respected education, research and public policy organization: <ul style="list-style-type: none">o Secured funds that enabled the Women's Sports Foundation to award more than \$50 million in cash grants and educational materialso 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-fiveo 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 choiceso 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 treatmento 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 lawo 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 <i>The Sporting News</i> and "The 50 Most Influential People in College Sports" by <i>College Sports</i>
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: <ul style="list-style-type: none">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 2015-25 | Global Issues in Sport and Entertainment Management, Southern Connecticut State University |
| Fall 2014-24 | Governance and Administration of Sport Organizations, Southern Connecticut State University |
| Spring 2012-25 | 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

The Drake Group
The Drake Group Education Fund
Women's Sports Policy Working Group
International Consortium for Female Sports

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

Women's Basketball Hall of Fame, 2023
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

OTHER AWARDS AND HONORS (cont.)

Dallas All Sports Association Distinguished Service Award, 1992
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, Past-President, Board of Directors, The Drake Group (2015 to 2024)
Member, Board of Directors, The Drake Group Education Fund (2023 to 2024)
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 2015)
Member, Advisory Board, Champion Women (2015-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)

Past:

Member, Editorial Advisory Board of *Athletic Business* (1997 to 2015)
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 for Intercollegiate Athletics for Women v. National Collegiate Athletic Association (antitrust), 735 F.2d 577 (D.C. Cir. 1984)
Bowers v. Baylor University (employment discrimination/Title IX), 862 F. Supp. 142 (W.D. Tex. 1994)
Pederson v. Louisiana State University (Title IX), 912 F. Supp. 892 (M.D. La. 1996)
Stanley v. University of Southern California (employment discrimination), 13 F.3d 1313 (9th Cir. 1994)
Roberts v. Colorado State University (Title IX), 814 F. Supp. 1507 (D. Colo. 1993)
Rachel Sanders et al v. University of Texas at Austin (Title IX), settled out of court
Cohen v. Brown University (Title IX), 879 F. Supp. 185 (D.R.I. 1995)
Tyler v. Howard University (employment/Title IX), No. 91-CA11239 (D.C. Super. Ct. 1993).
Weaver v. Ohio State University (employment/Title IX), 71 F. Supp. 2d 789 (S.D. Ohio 1998)
Haffer v. Temple University (Title IX), 678 F. Supp. 517 (E.D. Pa. 1988)
Blair v. Washington State University (Title IX), 108 Wn.2d 558 (Wash. 1987)
Perdue v. City University of New York (employment discrimination), 13 F. Supp. 2d 326 (E.D.N.Y. 1998)
Vicki Dugan v. Oregon State University (employment discrimination/Title IX) 1999, settled out of court
Law v. National Collegiate Athletic Ass'n (employment discrimination), 5 F. Supp. 2d 921 (D. Kan. 1998)

EXPERT WITNESS/CONSULTANT – LAWSUITS (cont.)

Lowrey v. Texas a & M University System (employment discrimination/Title IX), 11 F. Supp. 2d 895 (S.D. Tex. 1998)

Grandson v. University of Minnesota (Title IX), 272 F.3d 568 (8th Cir. 2001)

Alston v. Virginia High School League Inc. (girls playing in non-traditional seasons), 144 F. Supp. 2d 526 (W.D. Va. 1999)

Daniels v. School Bd. of Brevard County (Title IX facilities and benefits), Fla., 995 F. Supp. 1394 (M.D. Fla. 1997)

Baca v. City of Los Angeles (city recreational facilities), settled out of court

Communities for Equity v. Michigan High School (non-traditional seasons), 178 F. Supp. 2d 805 (W.D. Mich. 2001)

Mason v. Minnesota State High School League (Title IX facilities), Civil No. 03-6462 (JRT/FLN) (D. Minn. Jul. 15, 2004)

Humphreys v. Regents of University of California (employee sex discrimination), No. C 04-03808 SI (N.D. Cal. Feb. 13, 2006)

Burch v. Regents of University of California (Title IX – retaliation against coaches), 433 F. Supp. 2d 1110 (E.D. Cal. 2006)

Mansourian v. Regents of the Univ. of California (Title IX – retaliation against coaches), No. CIV S-03-2591 KJM-EFB (E.D. Cal. Nov. 2, 2011)

Ollier v. Sweetwater Union High Sch. Dist. (Title IX), 858 F. Supp. 2d 1093, 284 Ed. Law Rep. 299 (S.D. Cal. 2012)

Biediger v. Quinnipiac University (Title IX – roster management), 616 F. Supp. 2d 277 (D. Conn. 2009) multiple cases

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Fast Pitch Softball: Defensive Strategies (Part I), Truckee River Studios, Inc. (Verdi, Nevada), 1984.

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

EXHIBIT B



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	\$300/hour
Preparation of written reports including review of case materials, research/data collection related to preparation of such reports; review of materials in preparation for deposition or court testimony	\$350/hour
Deposition or court testimony	\$700/hour
Hours traveling Exception: consultant travels for court testimony and such appearance does not occur for any reason - \$2,500/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: <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 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 Westchester, New Haven, Hartford, 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	Actual

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.

Exhibit C

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

The following documents and sources in addition to materials identified in the text of my report or its footnotes, were relied upon in the formulation of opinions contained in this initial report.

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- [24 CFR Part 106 \(the "Title IX regulations"\) \(1975\)](#)

- A Policy Interpretation: Title IX and Intercollegiate Athletics (1979)
- Clarification of Intercollegiate Athletics Policy Guidance: The Three Part Test (1996)
- OCR's 2010 Dear Colleague Letter re: Prong Three of the Three-Part Test
- OCR's 1990 Title IX Athletics Investigator's Manual

1 **UNITED STATES DISTRICT COURT**
2 **CENTRAL DISTRICT OF CALIFORNIA**
3 **SOUTHERN DIVISION**

4 ALEXANDRA GRANT, MIKAYLA
5 BARRE, JESSICA BEAR, KIERA
6 GUTIERREZ, BRYN JOHNSON,
7 ALEXANDRA LELAND, RUBY
8 MCCULLOUGH, ALIYAH
9 TREADWELL, CARISSA WARD,
10 individually and on behalf of all
11 others similarly situated,

12 Plaintiffs,

13 v.

14 CONCORDIA UNIVERSITY
15 IRVINE,

16 Defendant.

Case No. 8:25-CV-01793

CLASS ACTION

**DECLARATION OF PLAINTIFF
ALEXANDRA GRANT**

17
18 I, Alexandra Grant, am over 18 years of age and competent to make the
19 following declaration. All of the statements below are based on my personal
20 knowledge.

21 1. I am currently enrolled at Concordia University Irvine (“CUI”). I am
22 entering my sophomore year and majoring in kinesiology with a minor in psychology.
23 I expect to graduate in 2028.

24 2. I am a member of the women’s swimming & diving team at CUI and I
25 have three years of athletic eligibility left.

26 3. I make this declaration in support of this Court preserving the women’s
27 varsity swimming & diving team at CUI. Preserving our team is necessary to prevent
28

1 continuing injury to me and my teammates and to ensure future equal opportunities
2 for female athletes at CUI.

3 4. I am originally from Benecia, California. I started swimming lessons
4 when I was 13 months old and have been in the water since then. I joined a club team
5 when I was six and swam club for 11 years. I wanted to pursue my sport in college
6 because I wanted the experience and opportunity. I have grown up in the water and,
7 when CUI announced its intention to discontinue the team I love, it broke my heart.

8 5. I committed to CUI when I was seventeen years old. I chose CUI
9 because I loved the coaches and the area. When I visited the campus, I immediately
10 felt like I fit in with the girls on the team, the coaches, and the energy of the school.
11 CUI also has the major I wanted, kinesiology. I felt CUI gave me a strong foundation
12 to pursue my dream of pursuing a doctorate in physical therapy. CUI was a place I
13 thought I could grow as a student, an athlete, and a person. I chose to attend CUI even
14 though I had opportunities to swim at other schools, including Chapman University,
15 Smith College, and Lake Forest College.

16 6. During my time as a member of the CUI swimming & diving team, we
17 competed in the Pacific Collegiate Swim and Dive Conference (“PCSC”). My events
18 included the 100-yard backstroke and 200-yard medley. My team made the
19 conference finals and we finished sixth. I was very proud of our accomplishment.

20 7. Since I joined the CUI swimming & diving team, I have never felt
21 supported by the athletic department. This disregard was even more apparent in the
22 school’s manner of announcing its intention to discontinue our team. Andrea Riche,
23 the Associate Athletic Director - Compliance, sent out a mass email at 11:00 a.m. on
24 May 20, 2025. The email stated that there would be a Zoom meeting that afternoon
25 at 2:30 p.m. where she would provide an “athletics update.” The email also provided
26 the Zoom meeting instructions.

27 8. Ms. Riche sent this email after the school year ended. I was back home
28 in Benecia for the summer when I saw this email. I could not attend the meeting

1 because the email was sent at the last moment and it was too late for me to set time
2 aside to attend the meeting. The email also did not make it seem as though the meeting
3 was urgent or important. It was worded as if it was no big deal. If I knew it was
4 important, I would have made time to attend it. I found out that CUI announced its
5 intention to discontinue our team after the meeting ended. My phone had been on
6 silent and, when I looked at my phone again, I had a lot of Snapchat messages from
7 my teammates that told me of CUI's intention to discontinue our team. Later that
8 afternoon, I received an email from Crystal Rosenthal, the Associate Vice President
9 of Athletics, providing advice on transferring to a different school, academic advising
10 and course planning, counseling and mental health support, and scholarship and
11 financial aid. I was stunned as it came so quickly after the news that CUI intended to
12 discontinue our team.

13 9. After the meeting, I sent an email to CUI President Michael A. Thomas,
14 and included the Associate Athletic Director of Health & Student-Athlete-Well-
15 Being Glory Fung, President Thomas, Ms. Rosenthal, and Ms. Riche. A true and
16 correct copy of that announcement is submitted with this declaration as Exhibit A. I
17 never got a response.

18 10. That same day, CUI publicly announced its intention to discontinue the
19 women's swimming & diving team, the men's swimming & diving team, the
20 women's tennis team, and the men's tennis team.

21 11. I later learned that, only days after the Zoom meeting, Ms. Rosenthal –
22 who is also the Head Softball Coach – sent an email to other teams that were not
23 included in the announcement, telling them that CUI was “in the midst of a major
24 \$17.5 million construction project that includes a new 19,000-square-foot facility
25 featuring a state-of-the-art weight room, locker rooms, and modern training room
26 space. This facility represents our belief in the future of our athletic programs and our
27 student-athletes.” The email also noted that CUI has invested “over \$8 million in
28 upgrades to our baseball, softball, and soccer/track/lacrosse facilities ...” I found this

1 email to be very hurtful as the school was spending millions of dollars on other teams'
2 facilities while at the same time announcing CUI's intention to discontinue the
3 women's swimming & diving team. It was also particularly demeaning as we were
4 told of the intention to discontinue our team because of a budget deficit, yet the school
5 was spending \$17.5 million in a construction project on top of the \$8 million invested
6 in the outdoor sports fields.

7 12. Throughout my time at CUI, I have consistently felt like the swimming
8 & diving program was unsupported and overlooked. This is demonstrated by the letter
9 sent by Ms. Rosenthal noting the millions of dollars being spent on other sports while
10 our announcing CUI's intention to discontinue our team. Also, the men's baseball
11 team gets to travel to places like Hawai'i, while our team does not travel outside of
12 California. In fact, our team never travelled more than a two-hour drive from CUI.
13 We have always been treated as an afterthought by the athletic department, so, while
14 the announcement did not shock me, it was deeply disheartening and incredibly
15 unfair.

16 13. After the announcement, I immediately entered the transfer portal to
17 preserve all options to continue swimming competitively on a varsity team. Our coach
18 called several teams from similar schools to see if they had roster spots open as well
19 as any scholarship money available. It was so late in the year that most of the roster
20 spots and scholarship money were already allocated and were not available. Several
21 of my teammates also entered the transfer portal, and some have already transferred
22 for this coming school year.

23 14. I would prefer to continue swimming competitively on the swimming
24 & diving team at the school I love, because I have given so much of my time, effort,
25 sweat, and tears to this sport at CUI. When I committed to CUI, I envisioned
26 swimming for all four years. I would continue swimming in a heartbeat if the team is
27 preserved. Also, CUI has very specific core classes for our general education and
28 most of my academic credits would not transfer if I changed school.

1 15. CUI's announcement of its intention to discontinue the women's
2 swimming & diving team at CUI has been difficult for me. It is causing and will cause
3 me irreparable injury unless the Court intervenes. Losing swimming feels like losing
4 a part of my identity because I envisioned swimming for my entire collegiate career
5 at CUI. Further, I am hurt because CUI gave very inconsistent reasons behind its
6 intention to discontinue the team. CUI claimed it was to save money, but just
7 announced it is spending over \$17 million dollars on a new athletic facility as well as
8 an additional \$8 million on outdoor fields. I also feel like I'm missing out on an
9 important chapter of my life, as I always thought I would be swimming for my entire
10 collegiate career at CUI, and now it has ended. I am now forced to be at a crossroads
11 of continuing my education at CUI or transferring to continue swimming.

12 16. Fighting for basic rights as a female student-athlete takes a significant
13 emotional toll, especially while trying to maintain good grades and prepare for a
14 career in physical therapy.

15 17. Swimming competitively has helped me to become the person I am
16 today, and I cannot imagine my life or my college experience without it. Swimming
17 has taught me how to communicate with teammates, how to push through challenges,
18 and how to trust myself even when things get hard. It saddens me that, unless my
19 team is preserved, no other women will get to experience the incredible program our
20 swimming & diving team has developed.

21 18. CUI's announcement of its intention to discontinue this program means
22 that all current team members must transfer schools if they want to continue their
23 swimming careers or give up those dreams altogether. This is extremely disappointing
24 because I love this team so much. It felt like a family and helped me to adjust easily
25 to college. I feel as though my friends and family are being taken away from me. I
26 am very sad that I may not see many of my teammates after this year due to being
27 forced to either stay and give up swimming or transferring in order to continue
28 swimming competitively. This has been very hard on me mentally.

1 19. The announcement to discontinue the swimming & diving team also
2 came after the end of the school year, making it more difficult to transfer to a school
3 that has open roster spots, available scholarship money, as well as to arrange housing
4 for the upcoming school year. Transferring also carries the risk that all my academic
5 credits will not transfer to a new school. This has been very stressful on me. I would
6 not have to face any of these issues if CUI continues its swimming & diving team.
7 Even my family members are affected, as my father is very involved in club
8 swimming and has been there for me my entire swimming career. He is heartbroken
9 to learn of CUI's intention to discontinue the team in this way and that my collegiate
10 swimming career may be over. Beyond that, if our team is not preserved soon, there
11 is less chance of a women's team next season, due to the lack of recruiting, equipment,
12 training, and meet schedules.

13 20. My teammates and I are also harmed as we will be unable to train,
14 practice, or receive coaching unless the swimming & diving team is continued.
15 Physical conditioning is very important in swimming, if you do not continue to train
16 your conditioning goes away very quickly, I have to swim year-round to keep it up.
17 It is very important to continue training and stay in shape, which is harmed by CUI's
18 intention to discontinue the team.

19 21. We and the women's tennis team members are also harmed because
20 CUI's intention to discontinue our teams is clear and intentional sex discrimination
21 in violation of Title IX. CUI is supposed to provide women and men with equal
22 opportunities to participate in varsity sports. I don't believe it has ever done so and I
23 know it is not doing so now. It needs to increase opportunities for women, not
24 eliminate them. It should not be permitted to eliminate our teams.

25 22. I respectfully request that this Court preserve the women's swimming &
26 diving and tennis teams so this discrimination and any further irreparable harm to me
27 and the other women athletes does not take place.

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I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: 08/08/2025

ALEXANDRA GRANT

Alexandra Grant

EXHIBIT A

5:09

83



Decision to Cut Sports Teams Today

Inbox



me May 20



to crystal.rosenthal, andrea.riche, michael.thomas...

Dear Athletic Director, Staff and President Thomas,

The decision made this week to cut swimming & diving and tennis was beyond wrong. I just finished my freshman year as a part of the swim team. My heart is broken and I am in disbelief. I had an amazing time on the team. The coaches were great, the athletes were great, and we had so much fun. We succeeded at PCSC Championships with both the men and womens teams placing well this season. Our team is the second largest team at CUI and is very successful. Our athletes and coaches at every meet strongly represent the Concordia Golden Eagle spirit and are recognized for that by many other schools and peers. I see no reason why our team should have been cut.

After swimming for the past 12 years my life has completely changed today after this news and definitely not for the better. While swimming & diving was successful, so was our tennis team even without a full time coach. They made it all the way to Division II championships. Instead of you supporting and being proud of them you cut their team 2 hours after they played. This feels very, very disrespectful and wrong in all ways. You decided to tell us in a 10 minute zoom meeting that was announced only 3 hours in advance and while on summer break. We deserve much more than that. Many of us could not attend because this was so last minute and our days were already planned out. This alone was disrespectful because it seemed as if our team didn't deserve much from you. We were sent emails that were not comforting at all. Immediately sending us the transfer portal didn't make it better.

Reply

Forward



5:10

83



Cutting the team with no notice so late in the year is beyond terrible. It is almost impossible for us to transfer at this time. Knowing that the finances were an issue well before today, we as the athletes should have been notified way in advance so we could have been given the time we needed to make changes. Now that we are already on summer break we no longer have the opportunity to say goodbye or enjoy our last minutes together as a team. CUI is so big on community and strong relationships, however eliminating our team did the opposite of that. It seems as if you do not care about us and we are just a budget item and not a team of Golden Eagles. If the school was struggling with budget cuts let the students and families know. This school always asks for donations and where is all that money going? If only parents and families knew that the school was struggling with budget they would possibly be able to contribute and avoid this whole situation. I don't understand why the school had to cut 4 athletic teams when many other teams go out of the state every year multiple times and are less successful. Maybe consider changing that and support all of your sports teams and not cut any sports team. Cut back on some events that the school has like Mr. CUI, Concordia Ninja Warrior, WOW week, and other dorm related events. Cutting sports teams is not the solution. If the budget for these teams were such an issue why continue building a new athletic center? That just doesn't add up. Again notifying parents and athletes would have helped because I guarantee we could have done something to prevent this. Us athletes feel like we got our life destroyed and we don't respect the way we were treated. Coming from a Christian school I was expecting more of an effort or thought towards us student athletes. We were not even provided a reason why swimming & diving and tennis were the ones to be cut. It seems like there is no logical reason why our two teams would have been the ones to go first. It almost seems like you are not disclosing the full truth. Did anyone even try to save our sports? College sports are endangered and I was hoping this school wouldn't fall into the tracks of many others but unfortunately it did. Me and the athletes feel deeply betrayed and hurt. I hope you think real hard about this decision and be sure it is worth the consequences that will follow.

← Reply

→ Forward

1 **UNITED STATES DISTRICT COURT**
2 **CENTRAL DISTRICT OF CALIFORNIA**
3 **SOUTHERN DIVISION**

4 ALEXANDRA GRANT, MIKAYLA
5 BARRE, JESSICA BEAR, KIERA
6 GUTIERREZ, BRYN JOHNSON,
7 ALEXANDRA LELAND, RUBY
8 MCCULLOUGH, ALIYAH
9 TREADWELL, CARISSA WARD,
10 individually and on behalf of all
11 others similarly situated,

12 Plaintiffs,

13 v.

14 CONCORDIA UNIVERSITY
15 IRVINE,

16 Defendant.

Case No. 8:25-CV-01793

CLASS ACTION

**DECLARATION OF PLAINTIFF
MIKAYLA BARRE**

17 I, Mikayla Barre, am over 18 years of age and competent to make the following
18 declaration. All of the statements below are based on my personal knowledge.

19 1. I am currently enrolled at Concordia University Irvine (“CUI”). I am
20 entering my sophomore year and majoring in art with an emphasis on graphic design,
21 and I am also minoring in business. I expect to graduate in 2028.

22 2. I am a member of the women’s swimming & diving team at CUI and I
23 have three years of athletic eligibility left.

24 3. I make this declaration in support of this Court preserving the women’s
25 varsity swimming & diving team at CUI. Preserving our team is necessary to prevent
26
27
28

1 continuing injury to me and my teammates and to ensure future equal opportunities
2 for female athletes at CUI.

3
4 4. I am originally from Lake Forest, California. I have been swimming
5 competitively since the seventh grade. That is when I began swimming club, which
6 is year-round. At my high school, I had a record top-ten time in the 100-yard
7 breaststroke. I also had the most points for the team that year. I also won the Spirit of
8 Christ award, which is for living up to the example set by Christ and demonstrating
9 good citizenship for both the team and on campus.
10

11
12 5. I committed to CUI when I was seventeen years old. When I visited the
13 campus, they gave me a campus tour that was specific for incoming freshman that
14 were considering swimming for CUI. I had been considering CUI since I was a
15 freshman in high school. The visit cemented my decision. CUI had everything I was
16 looking for, it was the right size, offered the right major, and offered me a chance to
17 swim competitively at a Division II school I felt I could excel at. I felt it was similar
18 to my high school and it would be the right experience for me. I felt that the
19 environment and class size would be small, which is what I was looking for. I also
20 loved how the surrounding community supported student-athletes. In addition, CUI
21 gave me a strong foundation to pursue my dream of working in graphic design. CUI
22 was a place I thought I could grow as a student, an athlete, and a person. I chose to
23 attend CUI even though I had opportunities to swim at a different school, Chapman
24 University.
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1 6. During my time as a member of the CUI swimming & diving team, we
2 competed in the Pacific Collegiate Swim and Dive Conference (“PCSC”). I swam
3 breaststroke and distance free-style events. In freestyle, I swam events up to 1,000
4 yards. In breaststroke, I swam both the 100-yard and 200-yard events.
5

6 7. Since I joined the CUI swimming & diving team, I have never felt
7 supported by the athletic department. This disregard was even more apparent in the
8 school’s manner of announcing its intention to discontinue our team. Andrea Riche,
9 the Associate Athletic Director – Compliance, sent out a mass email at 11:00 a.m. on
10 May 20, 2025. The email stated that there would be a Zoom meeting that afternoon
11 at 2:30 p.m. where she would provide an “athletics update.” The email also provided
12 the Zoom meeting instructions.
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16 8. I attended this meeting. Zoom showed the number of people in
17 attendance. There were approximately 32 people on Zoom for the meeting. For CUI,
18 President Michael A. Thomas, Associate Vice President of Athletics Crystal
19 Rosenthal, and Ms. Riche were in attendance. I and other members of our team met
20 with them for approximately fifteen minutes. President Thomas spoke first and told
21 us it was CUI’s intention to discontinue the team and it came down to a budget deficit
22 and that there wasn’t anything we could do to reverse it. I started crying after hearing
23 this. Later that afternoon, I received an email from Ms. Rosenthal, the Associate Vice
24 President of Athletics, providing advice on transferring to a different school,
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1 academic advising and course planning, counseling and mental health support, and
2 scholarship and financial aid. I was stunned as it came so quickly after the meeting.

3
4 9. That same day, CUI publicly announced its intention to discontinue the
5 women's swimming & diving team, the men's swimming & diving team, the
6 women's tennis team, and the men's tennis team.

7
8 10. I later learned that, only days after the May 20, 2025 Zoom meeting,
9 Ms. Rosenthal – who is also the Head Softball Coach – sent an email to the members
10 of the teams that were not being eliminated, bragging that CUI was “in the midst of a
11 major \$17.5 million construction project that includes a new 19,000-square-foot
12 facility featuring a state-of-the-art weight room, locker rooms, and modern training
13 room space. This facility represents our belief in the future of our athletic programs
14 and our student-athletes.” The email also noted that CUI has invested “over \$8 million
15 in upgrades to our baseball, softball, and soccer/track/lacrosse facilities ...” I found
16 this letter to be very hurtful as the school was spending millions of dollars on other
17 facilities while at the same time announcing its intention to discontinue the women's
18 swimming & diving team. It was also particularly demeaning because CUI was
19 saying that it intended to discontinue our team because of a budget deficit, yet the
20 school was spending \$17.5 million for a new construction project on top of the \$8
21 million invested in the outdoor sports fields.

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26 11. Throughout my time at CUI, I have consistently felt like the swimming
27 & diving program was unsupported and overlooked. This is demonstrated by the letter
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1 sent by Ms. Rosenthal noting the millions of dollars being spent on other sports while
2 announcing the intention to discontinue our team. Also, the men's baseball team gets
3 to travel to places like Hawai'i, while we do not. Our team only travels locally. The
4 furthest we traveled was Malibu, which is approximately a two-hour drive from CUI
5 depending on traffic. We have always been treated as an afterthought by the athletic
6 department. It was deeply disheartening and incredibly unfair to learn of CUI's
7 intention to discontinue our team.
8
9

10 12. I would prefer to continue swimming competitively on the swimming
11 & diving team at the school I love, because I have given so much of my time, effort,
12 sweat, and tears to this sport at CUI. If I entered the transfer portal, there is a danger
13 that not all of my credits would transfer. CUI is a Lutheran university that includes
14 religious education as part of its general education requirements. I would lose a lot
15 credits for my core classes if I transferred.
16
17

18 13. CUI's announcement of its intention to discontinue the women's
19 swimming & diving team has been difficult for me. It is causing and will cause me
20 serious, irreparable injury unless the Court intervenes. Losing swimming feels like
21 losing a part of my identity since I have been swimming competitively year-round
22 since I was in seventh grade. I had planned on swimming here my entire collegiate
23 career. It was a devastating change in my life to learn of CUI's intention to
24 discontinue our team. Also, I feel like I'm missing out on an opportunity to continue
25 setting records at a college level similar to what I did in high school. I am missing out
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1 on an important chapter of my life due to CUI intending to discontinue the swimming
2 and diving team.

3
4 14. Fighting for basic rights as a female student-athlete takes a significant
5 emotional toll, especially while trying to maintain good grades and prepare for a
6 career in graphic art.

7
8 15. Swimming competitively has helped me to become the person I am
9 today, and I cannot imagine my life or my college experience without it. I swim many
10 distance events. Swimming taught me how to continually push myself through
11 challenging moments and also that hard work pays off. I can see the results of training
12 and working hard as they are reflected in my times. Swimming also taught me to
13 communicate with my teammates and work as a team to encourage one another
14 through adversity. It saddens me that, unless my team is preserved, no other women
15 will get to experience the incredible program our swimming & diving team has
16 developed.

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19
20 16. CUI's announcement of its intention to discontinue the team means that
21 all current team members must transfer schools if they want to continue their
22 swimming careers or give up those dreams altogether. This has been very hard on me
23 mentally. CUI broke my trust to just suddenly give up and announce its intention to
24 discontinue the team after the end of the school year with no notice. I thought I would
25 be safe at CUI and have an opportunity to swim here for my entire career. It hurts me
26 knowing that the school intends to do such a thing to a successful program. I also will
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1 no longer be able to see many of my teammates who are transferring. Many of these
2 teammates were close friends. It breaks my heart that I will not be seeing them
3 anymore.
4

5 17. CUI's announcement of its intention to discontinue the swimming &
6 diving team also came after the end of the school year, making it more difficult to
7 make a decision on what to do next. Transferring would mean starting my college life
8 from scratch all over again. Since the announcement of the intention to discontinue
9 the team came after the school year was over, I had already my plans for my housing
10 for the following year as well as envisioned what my college life would be like at
11 CUI. Transferring carries the risk that all my academic credits will not transfer to a
12 new school. This has been very stressful on me. I would not have to face any of these
13 issues if CUI continued its swimming & diving team. Even my family members are
14 affected as my parents have seen me train and compete since I was in the seventh
15 grade, and now my dreams of swimming competitively in college have been
16 shattered. Beyond that, if our team is not preserved soon, there is less chance of a
17 women's team next season, due to the lack of recruiting, equipment, training, and
18 game schedules.
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24 18. My teammates and I are also harmed as we will be unable to train,
25 practice, or receive coaching unless the swimming & diving team is continued. It is
26 important to stay in good physical condition for swimming, particularly as I swim
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1 distance events. It is very important to continue training and stay in shape, which is
2 harmed by CUI's announcement of its intention to discontinue the team.

3
4 19. Finally, my teammates and I, and the members of the women's tennis
5 team, are being harmed because CUI intends to discontinue our team when it is
6 already depriving women of anything close to equal opportunities to participate in
7 varsity sports. That is sex discrimination. CUI should not be subjecting any of us to
8 this.

9
10 20. I respectfully request that this Court preserve the women's swimming &
11 diving team so that this discrimination and any further irreparable harm to me and my
12 teammates can be averted.

13
14 I declare under penalty of perjury of the laws of the United States that the
15 foregoing is true and correct.

16
17 Dated: 8/10/2025

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19 **MIKAYLA BARRE**

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1 **UNITED STATES DISTRICT COURT**
2 **CENTRAL DISTRICT OF CALIFORNIA**
3 **SOUTHERN DIVISION**

4 ALEXANDRA GRANT, MIKAYLA
5 BARRE, JESSICA BEAR, KIERA
6 GUTIERREZ, BRYN JOHNSON,
7 ALEXANDRA LELAND, RUBY
8 MCCULLOUGH, ALIYAH
9 TREADWELL, CARISSA WARD,
10 individually and on behalf of all
11 others similarly situated,

12 Plaintiffs,

13 v.

14 CONCORDIA UNIVERSITY
15 IRVINE,

16 Defendant.

Case No. 8:25-CV-01793

CLASS ACTION

**DECLARATION OF PLAINTIFF
JESSICA BEAR**

17 I, Jessica Bear, am over 18 years of age and competent to make the following
18 declaration. All of the statements below are based on my personal knowledge.

19 1. I am currently enrolled at Concordia University Irvine (“CUI”). I am
20 entering my senior year and majoring in liberal studies with a focus on elementary
21 education and minoring in Spanish. I expect to graduate in Spring 2026.

22 2. I am a member of the women’s tennis team at CUI and I have one year
23 of athletic eligibility left.

24 3. I make this declaration in support of this Court preserving the women’s
25 varsity tennis team and swimming & diving team at CUI. Preserving these teams is
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1 necessary to prevent continuing injury to me and the team members and to ensure
2 future equal opportunities for female athletes at CUI.

3
4 4. I was born in Connecticut, but I have been raised for most of my life in
5 Carlsbad, California. I have been playing tennis competitively for approximately
6 eleven years now. I began competing when I was twelve years old and have continued
7 since then. I can't imagine my life without it.

8
9 5. I committed to CUI when I was seventeen years old. Before I
10 committed, I attended a match at CUI and I got to meet many women on the team.
11 They showed me around campus and I immediately felt like I fit in. I also got to meet
12 Coach Jonathan Sanchez and I was impressed. The campus is beautiful and I really
13 enjoyed the surrounding community in Irvine. In addition, CUI gave me a strong
14 foundation to pursue my dream of being a teacher. CUI was a place I thought I could
15 grow as a student, an athlete, and a person. I chose to attend CUI even though I had
16 opportunities to play tennis at other schools, including Biola University, California
17 Lutheran University, and California State University – Northridge.

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21 6. During my time as a member of the CUI tennis team, we competed in
22 the PacWest Conference ("PacWest"). The tennis team ranked in the top four in the
23 PacWest during my three years. The women's team also had their best record in their
24 NCAA history in the 2022-23 season. In my junior year, I ranked in the top 50
25 women's tennis players in all of Division II.
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1 7. Since I joined the CUI tennis team, I have never felt supported by the
2 athletic department. This disregard was even more apparent in the school's manner
3 of announcing its intention to discontinue our team. Andrea Riche, the Associate
4 Athletic Director – Compliance, sent out a mass email at 11:00 a.m. on May 20, 2025.
5 The email stated that there would be a Zoom meeting that afternoon at 2:30 p.m.
6 where she would provide an “athletics update.” The email also provided the Zoom
7 meeting instructions.
8

9
10 8. I attended this meeting. Members of both the women's swimming &
11 diving team and tennis team were in attendance on the Zoom conference. For CUI,
12 President Michael A. Thomas, Associate Vice President of Athletics Crystal
13 Rosenthal, and Ms. Riche were in attendance. President Thomas spoke first and told
14 us it was CUI's intention to discontinue the teams, it came down to a \$6.5 million
15 budget deficit, and there was nothing we could do to reverse it. Ms. Rosenthal and
16 Ms. Riche spoke and reiterated what President Thomas said. Ms. Riche also said that
17 we would still receive our athletic scholarships. Later that afternoon, I received an
18 email from CUI providing advice on transferring to a different school, academic
19 advising and course planning, counseling and mental health support, and scholarship
20 and financial aid. I was in shock because I always thought I would play tennis all four
21 years at CUI. I never imagined that CUI would announce its intention to discontinue
22 the tennis team.
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1 9. I later learned that, only days after the May 20, 2025, Zoom meeting,
2 Ms. Rosenthal – who is also the Head Softball Coach – sent an email to other teams
3 that were not included in the announcement, bragging that CUI was “in the midst of
4 a major \$17.5 million construction project that includes a new 19,000-square-foot
5 facility featuring a state-of-the-art weight room, locker rooms, and modern training
6 room space. This facility represents our belief in the future of our athletic programs
7 and our student-athletes.” The email also noted that CUI has invested “over \$8 million
8 in upgrades to our baseball, softball, and soccer/track/lacrosse facilities ...” I found
9 this letter to be very hurtful, as the school was spending millions of dollars on other
10 teams’ facilities while announcing CUI’s intention to discontinue the women’s tennis
11 team. It was also particularly demeaning as we were told by CUI that it intends to
12 discontinue our team because of a budget deficit, yet the school was spending \$17.5
13 million in a construction project on top of the \$8 million invested in the outdoor sports
14 fields.
15

16 10. Throughout my time at CUI, I have consistently felt like the tennis
17 program was unsupported and overlooked. This is demonstrated by the letter sent by
18 Ms. Rosenthal, noting the millions of dollars being spent on other sports while
19 announcing CUI’s intention to discontinue our team. The men’s baseball team got to
20 travel to Hawai’i, while our trip was cancelled. I was promised during my recruiting
21 that our tennis team could go to Hawai’i every two years, but CUI broke that promise.
22 The men’s teams had more access to strength coaches and athletic trainers. Also, the
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1 tennis coaches left after my sophomore year and CUI did not bother to replace them.
2 Instead, it had graduate students stand-in as our coaches. We have always been treated
3 as an afterthought by the athletic department.
4

5 11. The announcement of CUI's intention to discontinue the women's
6 tennis team has been very harmful to me as I do not even have the chance to transfer.
7 I will be a senior and I am working to get my teaching credential this year, so
8 transferring is not an option for me. It would set me back too far both academically
9 and professionally. Also, CUI is a Lutheran university and many of the core classes
10 have either a religious focus or aspect to them. These credits will not transfer to most
11 schools. If I transferred, I would lose too many academic credits and would have to
12 go to school beyond four years. Several of my teammates entered the transfer portal,
13 and some have already transferred for this school year. Further, there are many
14 international students on the team. Many of them have to return to their home
15 countries.
16

17 12. I would prefer to continue playing competitively on the tennis team at
18 the school I love, because I have given so much of my time, effort, sweat, and tears
19 to this sport at CUI. I am a senior and am getting my teaching credential this year, I
20 cannot afford to set back my academic progress. If the tennis team is continued at
21 CUI, I plan to use my final year of eligibility to compete for one last season.
22

23 13. CUI's announcement of its intention to discontinue the women's tennis
24 team at CUI has been difficult for me. It is causing me a serious, irreparable harm and
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1 will continue to do so unless the Court intervenes. Losing tennis feels like losing a
2 part of my identity because I have been a student-athlete for most of my life and now
3 that is gone. Also, my teammates are my best friends. I feel like I am losing much of
4 my support system, as many of them have to transfer to continue competing. I also
5 feel like I'm missing out on a final chance to make my mark. I was ranked in the top
6 50 out of all Division II women's tennis players last year, I wanted the opportunity to
7 improve my ranking even further in my senior year.

10 14. Fighting for basic rights as a female student-athlete takes a significant
11 emotional toll, especially while trying to maintain good grades and prepare for
12 teaching career.

14 15. Playing tennis competitively has helped me to become the person I am
15 today, and I cannot imagine my life or my college experience without it. Through
16 having teammates, tennis has taught me a lot about how to deal with people, including
17 a lot about both patience and selflessness. Tennis has also taught me that, if I set goals
18 and work hard, I can achieve them. When I first started competing at twelve years
19 old, it was my dream to play tennis in college. I achieved most of that dream, except
20 that I never imagined that I would not play all four years. Tennis has also taught me
21 how to push through challenges. I have played numerous matches in over 100 degrees
22 heat and played through being nauseous, all to help my team win. It saddens me that,
23 unless my team is preserved, no other women will get to experience the incredible
24 program our tennis team has developed.

1 16. CUI's announcement of its intention to discontinue the women's tennis
2 team means that all current team members must transfer schools if they want to
3 continue their tennis careers or give up those dreams altogether. I am devastated
4 because I am forced to give up my dream of playing tennis since I am a senior and
5 cannot afford to transfer. I cannot lose my academic credits and I already have
6 planned on getting my teaching credential this year. It also breaks my heart because
7 my tennis team is like my family. I now feel as though our family is being ripped
8 apart. It is devastating that I may not see them after this year, due to my being forced
9 to stay and give up tennis, while many of my teammates are having to transfer and
10 many of my international teammates have to go back to their home countries. This
11 has been very hard on me mentally.

12 17. The announcement of the intention to discontinue the women's tennis
13 team has been very stressful on me. Due to CUI making the announcement after the
14 end of the school year, I had already made plans to get my teaching credential. If I
15 were to transfer, I would face a massive setback educationally and have to delay
16 getting my credential. Further, many of my academic credits would not have
17 transferred to a new school. I would not have to deal with these issues if CUI
18 continues its women's tennis team. Even my family members are affected, as my
19 parents have seen me sacrifice and work hard to further my dreams of playing tennis
20 competitively in college. They will be shattered by CUI announcing its intention to
21 discontinue the team. My mother was particularly affected. She even emailed Ms.
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1 Rosenthal after the announcement, but never received a response. Both of my parents
2 were at all of my home matches. They are disappointed that they will not get to watch
3 me my senior year. Beyond that, if our team is not preserved soon, there is less chance
4 of a women's team next season, due to the lack of recruiting, equipment, training, and
5 game schedules.

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7
8 18. My teammates and I are also harmed as we will be unable to train,
9 practice, or receive coaching unless the tennis team is continued. Physical
10 conditioning and skill training is very important in tennis. It is important to keep up
11 your physical conditioning and work on your skills, otherwise both deteriorate
12 quickly. It is very important to continue training and stay in shape, which is harmed
13 by CUI's announcement of its intention to discontinue the team.

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16 19. Finally, I and the other women athletes are being harmed because the
17 intention to discontinue our teams is blatant and intentional sex discrimination. Title
18 IX requires CUI to provide women and men with equal opportunities to participate in
19 varsity athletics. CUI was already depriving women of anything near that. Instead of
20 deciding to address and correct this unlawful sex discrimination, CUI will increase it
21 by its intention to discontinue the women's tennis and swimming & diving teams.
22 That is illegal and needs to be stopped.

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25 20. I respectfully request that this Court preserve the women's tennis and
26 swimming & diving teams so this sex discrimination and any further irreparable harm
27 to me and the women's team members is prevented.
28

1 I declare under penalty of perjury of the laws of the United States that the
2 foregoing is true and correct.

3
4 Dated: August 9, 2025

5
6 **JESSICA BEAR**

7
8  _____

1 **UNITED STATES DISTRICT COURT**
2 **CENTRAL DISTRICT OF CALIFORNIA**
3 **SOUTHERN DIVISION**

4 ALEXANDRA GRANT, MIKAYLA
5 BARRE, JESSICA BEAR, KIERA
6 GUTIERREZ, BRYN JOHNSON,
7 ALEXANDRA LELAND, RUBY
8 MCCULLOUGH, ALIYAH
9 TREADWELL, CARISSA WARD,
10 individually and on behalf of all
11 others similarly situated,

12 Plaintiffs,

13 v.

14 CONCORDIA UNIVERSITY
15 IRVINE,

16 Defendant.

Case No. 8:25-CV-01793

CLASS ACTION

**DECLARATION OF PLAINTIFF
KIERA GUTIERREZ**

17 I, KIERA GUTIERREZ, am over 18 years of age and competent to make the
18 following declaration. All of the statements below are based on my personal
19 knowledge.
20

21 1. I have been enrolled at Concordia University Irvine (“CUI”) and a
22 member of the women’s swimming & diving team. I am an incoming junior majoring
23 in Business Finance and Business Accounting. I expect to graduate in 2027.
24

25 2. I am a member of the women’s swimming & diving team at CUI and I
26 have three years of athletic eligibility left due to missing a year because of an injury.
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1 3. I make this declaration in support of this Court preserving the women's
2 varsity swimming & diving team at CUI. Preserving our team is necessary to prevent
3 continuing injury to me and my teammates and to ensure future equal opportunities
4 for female athletes at CUI.
5

6 4. I am originally from El Paso, Texas. I have been swimming
7 competitively since I was in the second grade. I have been swimming my entire life.
8 Swimming is not only a passion, but also an outlet for me. I cannot imagine my life
9 without it.
10

11 5. I committed to CUI when I was 18 years old. I chose CUI because of its
12 athletic program. I was also especially drawn by the university's emphasis on its
13 Christian foundation and religious values. I believed I was joining a university that
14 cared deeply for its students both on and off the field of competition. In addition, CUI
15 gave me a strong foundation to pursue my dream of a career in finance and
16 accounting. The area is a hub for financial and accounting companies, such as J.P.
17 Morgan and KPMG. CUI was a place I thought I could grow as a student, an athlete,
18 and a person, and help me meet my career goals. I chose to attend to be a walk-on
19 athlete at CUI even though I had opportunities to receive athletic scholarships from
20 other schools such as Fresno Pacific University.
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25 6. During my time as a member of the CUI swimming & diving team, we
26 competed in the Pacific Collegiate Swim and Dive Conference ("PCSC"). I specialize
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1 in sprint freestyle and butterfly events. Unfortunately, I got injured before the season
2 and was recovering.

3
4 7. Since I joined the CUI swimming & diving team, I have never felt
5 supported by the athletic department. This disregard was even more apparent in the
6 school's manner of announcing its intention to discontinue our team. Andrea Riche,
7 the Associate Athletic Director - Compliance, sent out a mass email at 11:00 a.m. on
8 May 20, 2025. The email stated that there would be a Zoom meeting that afternoon
9 at 2:30 p.m. where she would provide an "athletics update." The email also provided
10 the Zoom meeting instructions. We had so many compliance meetings that I thought
11 this would just be a routine meeting.
12

13
14 8. I attended this meeting. For CUI, President Michael A. Thomas, the
15 Associate Vice President of Athletics Crystal Rosenthal, Senior Women's
16 Administrator and Deputy Title IX Coordinator Brittany Pereda, and Ms. Riche were
17 in attendance. I and other members of our team met with them for approximately
18 fifteen minutes. They told us CUI's intended to discontinue our team, it came down
19 to a budget deficit, and that there wasn't anything we could do to reverse the decision.
20
21 Soon after the meeting ended, I received an email from Ms. Rosenthal providing
22 advice on transferring to a different school, academic advising and course planning,
23 counseling and mental health support, and scholarship and financial aid. I was
24 stunned as it came so quickly after the meeting.
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1 9. After the meeting, I communicated with my head coach Bert Bergen. I
2 was still stunned at the announcement, but I thanked him for all the hard work he did
3 as our coach and giving me the opportunity to swim for CUI. I also voiced frustration
4 at how unfair the announcement was.
5

6 10. I later learned that, only days after the May 20, 2025 Zoom meeting,
7 Ms. Rosenthal – who is also the Head Softball Coach – sent an email to other teams
8 that were not included in the announcement, bragging that CUI was “in the midst of
9 a major \$17.5 million construction project that includes a new 19,000-square-foot
10 facility featuring a state-of-the-art weight room, locker rooms, and modern training
11 room space. This facility represents our belief in the future of our athletic programs
12 and our student-athletes.” The email also noted that CUI has invested “over \$8 million
13 in upgrades to our baseball, softball, and soccer/track/lacrosse facilities ...” I found
14 this email to be very hurtful as the school was spending millions of dollars on other
15 teams’ facilities while announcing CUI’s intention to discontinue the women’s
16 swimming & diving team. It was also particularly demeaning as we were told by CUI
17 that it intends to discontinue our team because of a budget deficit, yet the school was
18 spending \$17.5 million in a construction project on top of the \$8 million invested in
19 the outdoor sports fields.
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25 11. Throughout my time at CUI, I have consistently felt like the swimming
26 & diving program was unsupported and overlooked. This is demonstrated by the letter
27 sent by Ms. Rosenthal noting the millions of dollars being spent on other sports while
28

1 announcing its intention to discontinue our team. Additionally, we were not given the
2 same access to trainers. The men's volleyball team can walk in and all the attention
3 from the training staff goes to them. This was particularly noticeable to me because I
4 was injured during the season. The athletes on my team had their pain downplayed
5 and we did not get nearly as much treatment. Also, other men's sports had their own
6 trainers specific to their team, while our team did not. For example, the men's baseball
7 team took the head athletic trainer with the team to Hawai'i and there would be a
8 trainer shortage back at CUI for the other sports. The men's soccer and lacrosse teams
9 also had specific trainers assigned to them and their players could walk in after every
10 practice and get treatment, while members of my team had to make an appointment.
11 Their teams also had a trainer at the field for them for their events, while we did not.
12 We have always been treated as an afterthought by the athletic department. It was
13 deeply disheartening and incredibly unfair that CUI announced its decision to
14 discontinue our team.
15

16
17 12. After the announcement, I immediately entered the transfer portal to
18 preserve all options to continue swimming competitively on a varsity team. However,
19 it was too late because of the timing of the announcement. The majority of the
20 potential schools to transfer to had already filled their roster spots and there was no
21 scholarship money left.
22

23
24 13. I would prefer to continue swimming competitively on the swimming
25 & diving team at the school I love because I have given so much of my time, effort,
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1 sweat, and tears to this sport at CUI. If the team is continued, I would continue
2 swimming there in heartbeat.

3
4 14. CUI's announcement of its intention to discontinue the women's
5 swimming & diving team at CUI has been difficult for me. It is causing and will cause
6 me serious harm unless the Court intervenes. Losing swimming has strongly affected
7 me because it is not only a passion of mine, but also an outlet. It also feels like losing
8 part of my identity and support system and that a part of me was stolen. I identify as
9 a student-athlete and sacrificed a lot to attend CUI to swim. Now it feels as though
10 that sacrifice was for nothing. I feel like I'm missing out on an important chapter of
11 growth and the chance to leave a lasting mark on the program and my teammates.
12

13
14 15. Fighting for basic rights as a female student-athlete takes a significant
15 emotional toll, especially while trying to maintain good grades and prepare for a
16 career in finance and accounting.
17

18 16. Swimming competitively has helped me to become the person I am
19 today and I cannot imagine my life or my college experience without it. I have always
20 identified as a student-athlete and the announcement of the intention to discontinue
21 my team has been very difficult on me. Swimming taught me self-discipline,
22 commitment, and grit. It also taught me teamwork and how to communicate with
23 teammates. It saddens me that, unless my team is preserved, no other women will get
24 to experience the incredible program our swimming & diving team has developed.
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1 17. CUI's announcement of its intention to discontinue this team means that
2 all current team members must transfer schools if they want to continue their
3 swimming careers or give up those dreams altogether. This is extremely disappointing
4 because we must give up a life we created at CUI, including making friends with both
5 our teammates and classmates, as well as adjusting to college life. Additionally, all of
6 my roommates this year were transfers in the graduating class of 2026. We are all on
7 the swimming & diving team and assigned housing together. One of my teammates
8 and roommates, Bree Henderson, is supposed to be the women's team captain this
9 year. If the team is not continued, she will remain at CUI without ever receiving that
10 title. My teammates in the class of 2026 will graduate without being recognized as
11 college athletes, even though they committed to swimming all four years. This has
12 been very hard on me mentally. Also, it is devastating that I may not see many of my
13 teammates after this year due to being forced to either stay and give up swimming or
14 transferring in order to attempt to continue swimming competitively.
15

16 18. The announcement of the intention to discontinue the swimming &
17 diving team also came after the end of the school year, making it more difficult to
18 transfer to a school that has open roster spots, as well as making it more difficult to
19 arrange housing for the upcoming school year. Transferring also carries the risk that
20 all my academic credits will not transfer to a new school. I also am faced with the
21 decision as to whether staying at CUI is worth it if there no swimming due to the
22 expense of the school. I would not have to face any of these issues if CUI continued
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1 its swimming & diving team. Even my family members are affected as my parents
2 have seen me sacrifice and work hard to further my dreams of swimming
3 competitively in college be shattered by CUI announcing its decision to discontinue
4 the team. My mom is devastated as she even donated to the program. Now the
5 program is gone. Beyond that, if our team is not preserved soon, there is less chance
6 of a women's team next season, due to the lack of recruiting, equipment, training, and
7 meet schedules.

10 19. My teammates and I are also harmed as we will be unable to train,
11 practice, or receive coaching unless the swimming & diving team is continued.
12 Physical conditioning is very important in swimming, it is important to keep it up,
13 otherwise it deteriorates quickly. It is very important to continue training and stay in
14 shape, which is harmed by CUI's announcement of its decision to discontinue the
15 team.

18 20. I feel deeply disappointed and disrespected by the decision-making
19 process surrounding the announcement of the intention to discontinue our team. There
20 was no transparency, no warning, and no effort made to include the athletes who are
21 directly affected. The entire process felt rushed and impersonal, as if the years we
22 dedicated to the program meant nothing. We were informed through a last-minute
23 email about a same-day Zoom meeting, which was combined with another team. I
24 had trusted CUI to value its students, especially in times of hardship, but the way this
25 was handled made me feel overlooked and disposable. The process lacked the care,
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1 communication, and integrity from a university that claims to be rooted in Christian
2 values.

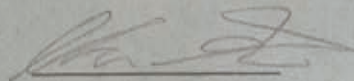
3
4 21. The intention to discontinue our teams also discriminates against me and
5 the other women athletes. CUI has long been depriving women of equal opportunities
6 to participate in varsity sports. It needs to add opportunities for women, not eliminate
7 them.
8

9 22. I respectfully request that this Court preserve the women's swimming &
10 diving team so that this discrimination any further irreparable harm to me and CUI's
11 women athletes can be prevented.
12

13 I declare under penalty of perjury of the laws of the United States that the
14 foregoing is true and correct.
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16 Dated: 8/11/2025

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18 **KIERA GUTIERREZ**

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1 **UNITED STATES DISTRICT COURT**
2 **CENTRAL DISTRICT OF CALIFORNIA**
3 **SOUTHERN DIVISION**

4 ALEXANDRA GRANT, MIKAYLA
5 BARRE, JESSICA BEAR, KIERA
6 GUTIERREZ, BRYN JOHNSON,
7 ALEXANDRA LELAND, RUBY
8 MCCULLOUGH, ALIYAH
9 TREADWELL, CARISSA WARD,
10 individually and on behalf of all
11 others similarly situated,

12 Plaintiffs,

13 v.

14 CONCORDIA UNIVERSITY
15 IRVINE,

16 Defendant.

Case No. 8:25-CV-01793

CLASS ACTION

**DECLARATION OF PLAINTIFF
BRYN JOHNSON**

17 I, BRYN JOHNSON, am over 18 years of age and competent to make the
18 following declaration. All of the statements below are based on my personal
19 knowledge.
20

21 1. I have been enrolled at Concordia University Irvine (“CUI”). I am an
22 incoming junior majoring in engineering. However, I have taken enough credits to
23 potentially meet my degree requirements by June of 2026, so I could potentially
24 graduate that year.
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1 2. I am a member of the women's tennis team at CUI and I have two years
2 of athletic eligibility left. I am also the Student Athlete Advisory Committee
3 ("SAAC") representative for the women's tennis team.
4

5 3. I make this declaration in support of this Court preserving the women's
6 varsity tennis team at CUI. Preserving our team is necessary to prevent continuing
7 injury to me and my teammates and to ensure future equal opportunities for female
8 athletes at CUI.
9

10 4. I am originally from Exeter, California. I have been playing tennis since
11 I was three years old. I believe I played my first tennis tournament when I was only
12 four or five years old. I do not really know what it is like to live life without playing
13 tennis. It is a blessing.
14

15 5. I committed to CUI when I was nineteen years old. I graduated early
16 from high school; however, I took a brief break to play tennis professionally before I
17 went to college. I chose CUI because it offered me an athletic scholarship, as well as
18 an academic and music scholarship. I also met with the coach and another player
19 when I visited the campus. I thought it a very welcoming program and I was
20 impressed by the coach, as well as the beauty of the campus. In addition, CUI gave
21 me a strong foundation to pursue my dream of having a career as an officer in the
22 United States Marine Corps. CUI was a place I thought I could grow as a student, an
23 athlete, and a person. This was my first time attending a religious affiliated school. I
24 enjoyed learning more about the Christian faith and I also felt that attending a
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1 religious affiliated school exposed me to different types of people that I had never
2 met before. I truly felt welcomed by the student body as a whole. I chose to attend
3 CUI even though I had an opportunity to play tennis at another school, Fresno Pacific
4 University.
5

6 6. During my time as a member of the CUI tennis team, we competed in
7 the PacWest Conference (“PacWest”). I received numerous honors during my tennis
8 career at CUI. I was named third-team doubles in the 2024 season. In the 2025 season,
9 I was named Player of the Week, as well as first-team doubles and third-team singles.
10 My team also made the conference tournament, placing in the top-five both my
11 freshman and sophomore years. We also made it to regionals last year. Last year, my
12 team was named to the Academic All-American team, a prestigious honor that was
13 achieved because our team grade point average was above a 3.2. Further, in both my
14 freshman and sophomore years, I was recognized as a Scholar- Athlete, which is an
15 honor awarded for academic achievement.
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20 7. Since I joined the CUI tennis team, I have never felt supported by the
21 athletic department. This disregard was even more apparent in the school’s manner
22 of announcing its intention to discontinue our team. Andrea Riche, the Associate
23 Athletic Director - Compliance, sent out a mass email at 11:00 a.m. on May 20, 2025.
24 The email stated that there would be a Zoom meeting that afternoon at 2:30 p.m.
25 where she would provide an “athletics update.” The email also provided the Zoom
26 meeting instructions.
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1 8. I could not attend the meeting because I was at Officer Candidate School
2 for the United States Marines Corps in Quantico, Virginia. It makes me so angry that
3 CUI delayed announcing its intention to discontinue our team until after the school
4 year was over, through a meeting that I and many of my fellow athletes did not attend.
5 At the Officer Candidate School, we were not allowed to check our cellular
6 telephones or our emails. In fact, we were required to hand over our cellular
7 telephones at Officer Candidate School so there is no way to check our phones or
8 emails. I did not find out about the announcement of CUI's intention to discontinue
9 the tennis team until sometime in the beginning of June. I was very angry that the
10 news was not communicated to me in a better manner. It was disrespectful that CUI
11 did not inform us earlier in the school year.

12 9. I later learned that, only days after the May 20, 2025, Zoom meeting,
13 Ms. Rosenthal – who is also the Head Softball Coach – sent an email to other teams
14 that were not included in the announcement, bragging that CUI was making a major
15 \$17.5 million dollar investment into a new athletic facility. I found this to be very
16 hurtful, as the school was spending millions of dollars on other facilities while at the
17 same time announcing CUI's intention to discontinue the women's tennis team. It
18 was also particularly demeaning as we were told by CUI that it intends to discontinue
19 our team because of a budget deficit.

20 10. Throughout my time at CUI, I have consistently felt like the tennis
21 program was unsupported and overlooked. This is demonstrated by Ms. Rosenthal
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1 bragging about millions of dollars being spent by CUI on other sports while
2 announcing its intention to discontinue our team. It is also demonstrated by the fact
3 that our coaches, including our head coach, switched to other schools this past season
4 and CUI did not replace them. In 2025, the coaches left and CUI promoted the first-
5 year graduate assistants to interim coaches. We did not have a real full-time head
6 coach. CUI also spent millions of dollars to set up lights on the outdoor fields, but not
7 the tennis courts. I was also told when I was recruited that we would get to travel to
8 Hawai'i, but we never got to go. Other teams, like the men's baseball team, got to
9 travel to Hawai'i, but we did not. CUI also provided the men's lacrosse team an
10 advantage in training by hiring an additional trainer that worked just for the team. We
11 have always been treated as an afterthought by the athletic department, so while the
12 announcement of CUI's intention to discontinue our program did not shock me, it
13 was deeply disheartening and incredibly unfair.

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18 11. After the announcement, I could not enter the transfer portal because I
19 was at Officer Candidate School for the Marine Corps when the announcement was
20 made. It was too late. Some of my other teammates entered the transfer portal and
21 some have already transferred.

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24 12. I would prefer to continue playing tennis competitively on the tennis
25 team at the school I love, because I have given so much of my time, effort, sweat, and
26 tears to this sport at CUI. I am an incoming second semester junior with additional
27 academic credits that place me ahead of my class. As I am planning on being an
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1 Officer in the United States Marine Corps, I cannot afford to set back my academic
2 progress. If the women's tennis team is continued, I plan to play this upcoming year.
3

4 13. CUI's announcement of its intention to discontinue the women's tennis
5 team at CUI has been difficult for me. It is causing me serious, irreparable injury and
6 will continue to do so unless the Court intervenes. Losing tennis hurts me because it
7 feels like I lost my best friend. It also has had a negative effect on my social circle as
8 my teammates are transferring to different schools. We no longer communicate, as
9 we are all very hurt by CUI's announcement of its intention to discontinue the team.
10 I also feel like I'm missing out on an important chapter of growth and the chance to
11 leave a lasting mark on the program. I was expected to be a co-captain this coming
12 season, in addition to being number one in both singles and doubles. I wanted to help
13 influence the team culture in a positive manner for my teammates and particularly for
14 the incoming freshman joining the team. I also was looking forward to developing
15 my skill set as a leader, particularly as I will be joining the Marines in a leadership
16 role as an officer. I also made a personal goal of making the nationals pre-season
17 tournament, which determines both my pre-season ranking and helps our team
18 ranking.
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20 14. Fighting for basic rights as a female student-athlete takes a significant
21 emotional toll, especially while trying to maintain good grades and prepare for a
22 career in the Marines.
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1 15. Playing tennis competitively has helped me to become the person I am
2 today, and I cannot imagine my life or my college experience without it. Playing
3 tennis has taught me how to communicate with teammates, how to push through
4 challenges, and how to trust myself, even when things get hard. I also learned
5 important leadership skills as a SAAC representative for the women's tennis team. It
6 saddens me that, unless my team is preserved, no other women will get to experience
7 the incredible program our tennis team has developed.

10 16. CUI's announcement of its intention to discontinue the tennis team
11 means that all current team members must transfer schools if they want to continue
12 their tennis careers or give up those dreams altogether. This is devastating, as it is
13 breaking up a tight-knit team. It is also extremely disappointing, because we must
14 give up the life we created at CUI, including making friends with both our teammates
15 and classmates, as well as adjusting to college life. It is devastating to me that I may
16 not see many of my teammates after this year due to being forced to either stay and
17 give up tennis or transferring in order to continue playing tennis competitively. This
18 has been very hard on me mentally.

22 17. CUI's announcement of the intention to discontinue the tennis team also
23 came after the end of the school year. This made it more difficult for my teammates
24 to transfer to a school that has open roster spots, as well as making it more difficult to
25 arrange housing for the upcoming school year. For them, transferring also carries the
26 risk that all of their academic credits will not transfer to a new school.

1 18. For me, due to CUI announcing its intention to discontinue the team
2 after the school year was out and while I was at Officer Candidate School, it made it
3 very difficult to transfer and I may have missed out on multiple scholarship
4 opportunities. The University of California, Riverside (“UC Riverside”), reached out
5 through a CUI professor, Dr. John Norton, who was the CUI tennis coach
6 approximately 15 years ago. Dr. Norton emailed me about the opportunity to transfer
7 to UC Riverside and that there were athletic scholarships available. Dr. Norton also
8 told me that they were specifically interested in me. I could not check this email
9 because I was at Officer Candidate School and was not allowed to check my
10 telephone or email. By the time I could check my telephone and email, it was too late.
11 The scholarship opportunity was no longer available.

12 19. I may have also missed out on the opportunity to transfer to Biola
13 University (“Biola”). David Goodman, the head coach at Biola reached out to Glory
14 Fung, CUI’s Assistant Athletic Director of Health and Student-Athlete-Well-Being.
15 This occurred while I was at Officer Candidate School. Mr. Goodman told Mr. Fung
16 that they had scholarship money available and that Mr. Goodman thought it would be
17 worth my while to consider. I did not know about this because I was training with the
18 Marines. When I got back from Officer Candidate School, I saw a text from Mr. Fung
19 that a coach was interested in speaking with me. In late July, I spoke with Mr. Fung
20 and he let me know it was Mr. Goodman, the coach of Biola. I have reached out to
21 Mr. Goodman, and I just recently heard back from him. He said that the vast majority

1 of scholarship money was already allocated, so I am not considering. I also am
2 already on track to graduate early, if I went to Biola many of my academic credits
3 would not transfer and it would force me to go to school longer than I have planned.
4

5 20. This has been very stressful on me. I would not have to face any of these
6 issues if CUI continues its tennis team.
7

8 21. Even my family members are affected. This has devastated my parents.
9 They were expecting to be able to see me play this forthcoming season at CUI. My
10 father had made plans to take time off of work to watch me play. He was unable to
11 do this the prior years and thought he had more time. He is devastated that he now
12 does not have the opportunity to watch me play, unless CUI continues the team.
13 Beyond that, if our team is not preserved soon, there is less chance of a women's team
14 next season, due to the lack of recruiting, equipment, training, and game schedules.
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16 22. My teammates and I also are harmed as we will be unable to train,
17 practice, or receive coaching unless the tennis team is continued. Physical
18 conditioning and drilling are both very important in tennis. It is important to keep up
19 our conditioning and skills. Otherwise, they both deteriorate quickly. It is very
20 important to continue training and stay in shape, which is harmed by CUI's
21 announcement of its intention to discontinue the team.
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23 23. Finally, it is particularly galling and upsetting that CUI intends to
24 discontinue the women's tennis and swimming & diving teams when it is already
25 depriving women of anything close to equal opportunities to participate in its varsity
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1 intercollegiate athletic program. I am dedicated to this country and the values for
2 which it stands. That is a huge part of why I want to be a United States Marine. Sex
3 discrimination, however, is contrary to those values. And it violates the law: in this
4 case, Title IX. That is why the women's teams need to be preserved. CUI needs to
5 provide women and men with the equal opportunities the law requires.
6

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8 24. I respectfully request that this Court preserve the women's tennis and
9 swimming & diving teams so this sex discrimination and any further irreparable harm
10 to me and the women's team members ends.
11

12 I declare under penalty of perjury of the laws of the United States that the
13 foregoing is true and correct.
14

15 Dated: 08/13/25
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17 **BRYN JOHNSON**

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1 **UNITED STATES DISTRICT COURT**
2 **CENTRAL DISTRICT OF CALIFORNIA**
3 **SOUTHERN DIVISION**

4 ALEXANDRA GRANT, MIKAYLA
5 BARRE, JESSICA BEAR, KIERA
6 GUTIERREZ, BRYN JOHNSON,
7 ALEXANDRA LELAND, RUBY
8 MCCULLOUGH, , ALIYAH
9 TREADWELL, CARISSA WARD,
10 individually and on behalf of all
11 others similarly situated,

12 Plaintiffs,

13 v.

14 CONCORDIA UNIVERSITY
15 IRVINE,

16 Defendant.

Case No. 8:25-CV-01793

CLASS ACTION

**DECLARATION OF PLAINTIFF
ALEXANDRA LELAND**

17 I, Alexandra Leland, am over 18 years of age and competent to make the
18 following declaration. All of the statements below are based on my personal
19 knowledge.
20

21 1. I am currently enrolled at Concordia University Irvine (“CUI”). I am
22 an incoming senior majoring in business management. I expect to graduate in spring
23 2026.
24

25 2. I am a member of the women’s swimming & diving team at CUI and I
26 have one year of athletic eligibility left.
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1 3. I make this declaration in support of this Court preserving the women's
2 varsity swimming & diving team at CUI. Preserving our team is necessary to prevent
3 continuing injury to me and my teammates and to ensure future equal opportunities
4 for female athletes at CUI.
5

6 4. I am originally from Fort Collins, Colorado. I have been swimming
7 competitively since I was about four years old. I can't imagine my life without it.
8

9 5. I committed to CUI when I was seventeen. I did a campus visit with
10 other swimmers who were being recruited by CUI. I liked my teammates and I
11 immediately felt like I fit in. I also met Coach Bert Bergen. He was very welcoming
12 and made it feel like the team would be a family. Coach Bergen recruited me out of
13 high school. I got very sick in high school and he always checked in on me and never
14 gave up on me. I also liked the campus. It is beautiful and feels very safe. I also loved
15 the surrounding area of Irvine. In addition, CUI gave me a strong foundation to pursue
16 my dream of being an entrepreneur in the athletic swimwear industry. CUI was a
17 place I thought I could grow as a student, an athlete, and a person. I chose to attend
18 CUI even though I had opportunities to swim at other schools, including University
19 of Northern Iowa, University of Wisconsin – Green Bay, and Colorado State
20 University.
21

22 6. During my time as a member of the CUI swimming & diving team, we
23 competed in the Pacific Collegiate Swim and Dive Conference ("PCSC"). I swim the
24 100-yard and 200-yard breaststroke, and the 50-yard and 100-yard freestyle. I
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1 received numerous awards while swimming for CUI. I was named Freshman of the
2 Week my first year, and have also been named Swimmer of the Week twice. I and
3 my teammates set school records for the best time in school history in the 200-medley
4 relay, 200-yard freestyle relay, and the 400-yard freestyle relay. We broke the all-
5 time school record for two of these events twice. I also received the team high point,
6 which means I scored the most points for the women's team for all the events
7 combined throughout the season.

10 7. Since I joined the CUI swimming & diving team, I have never felt
11 supported by the athletic department. This disregard was even more apparent in the
12 school's manner of announcing its intention to discontinue our team. Andrea Riche,
13 the Associate Athletic Director – Compliance, sent out a mass email at 11:00 a.m. on
14 May 20, 2025. The email stated that there would be a Zoom meeting that afternoon
15 at 2:30 p.m. where she would provide an “athletics update.” The email also provided
16 the Zoom meeting instructions.

19 8. I did not attend this meeting because school was already out of session
20 and I was at work that day. I did not even see the email until after the meeting was
21 already over. When I finished work, I checked my email on my iPhone and saw that
22 I received an email from Crystal Rosenthal, the Associate Vice President of Athletics.
23 The email provided advice on transferring to a different school, academic advising
24 and course planning, counseling and mental health support, and scholarship and
25 financial aid. I learned of CUI's intention to discontinue the team through this email
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1 and it stunned me. It came out of nowhere and I did not think it was real. I was totally
2 blindsided. There was never any discussion previously of the intention to discontinue
3 our team. Also, there were no meetings in person. CUI made its announcement after
4 the school year had ended and we were all gone. Right after I read the email, some of
5 my former teammates who already graduated FaceTimed me on my iPhone. They
6 asked me if I was on the Zoom meeting when CUI announced its intention to
7 discontinue the team. I told them I missed the meeting and just saw it when I opened
8 my email. I was still in shock and felt that CUI had no remorse. It announced its
9 intention after school had ended for the year so it could wash its hands of us.
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13 9. I later learned that, only days after the Zoom meeting, Ms. Rosenthal –
14 who is also the Head Softball Coach – sent an email to other teams that were not
15 included in the announcement - bragging that CUI was “in the midst of a major \$17.5
16 million construction project that includes a new 19,000-square-foot facility featuring
17 a state-of-the-art weight room, locker rooms, and modern training room space. This
18 facility represents our belief in the future of our athletic programs and our student-
19 athletes.” The email also noted that CUI has invested “over \$8 million in upgrades to
20 our baseball, softball, and soccer/track/lacrosse facilities ...” I found this letter to be
21 very hurtful as the school was spending millions of dollars on other facilities while
22 announcing CUI’s intention to discontinue the women’s swimming & diving team. It
23 was also particularly demeaning as we were told by CUI that it intends to discontinue
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1 our team because of a budget deficit, yet the school was spending \$17.5 million on a
2 construction project on top of the \$8 million invested in the outdoor sports fields.

3
4 10. Throughout my time at CUI, I have consistently felt like the swimming
5 & diving program was unsupported and overlooked. This is demonstrated by the letter
6 sent by Ms. Rosenthal noting the millions of dollars being spent on other sports while
7 announcing CUI's intention to discontinue our team. The men's baseball, volleyball,
8 and basketball teams get to travel to Hawai'i, while our team never got to leave the
9 state. Most of our meets are in the Los Angeles area and are within an approximate
10 two-hour drive from CUI. The furthest meet we ever went to was in Santa Cruz,
11 California, but we went there once and never went again. The men also get priority
12 with the athletic trainers. We did not even have a trainer assigned to us, but other
13 sports like men's lacrosse and volleyball had their own trainer that would travel with
14 them. Also, when we made an appointment with the training staff, I felt that we would
15 be pushed aside, as the trainers only wanted to work with members of their assigned
16 teams. There is even an issue with how nice the locker rooms are on campus for other
17 sports. While we compete off campus, there are locker rooms for other sports on
18 campus. The men's locker rooms are nicer. For example the men's volleyball locker
19 room is much nicer than the women's volleyball team locker room. We have always
20 been treated as an afterthought by the athletic department.

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22 11. After the announcement, many of my teammates entered the transfer
23 portal to preserve all options to continue swimming competitively on a varsity team.
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1 Some have already transferred for this school year. However, that is not an option for
2 me. I am entering my senior year and cannot afford any academic set-backs. CUI is a
3 Lutheran university, and many of our core classes have a religious focus or aspect to
4 them. Credits for these classes will not transfer to many schools.
5

6 12. I would prefer to continue swimming competitively on the swimming
7 & diving team at the school I love, because I have given so much of my time, effort,
8 sweat, and tears to this sport at CUI. If the swimming & diving team is continued at
9 CUI, I plan to use my final year of eligibility to compete for one last season.
10
11

12 13. CUI's announcement of its intention to discontinue women's
13 swimming & diving team at CUI has been difficult for me. It is causing and will cause
14 me serious harm unless the Court intervenes. It feels like CUI has taken everything
15 from me because swimming is all that I have worked for my whole life. The way CUI
16 communicated its intention to discontinue the program has been emotionally
17 damaging. I am also very upset that I will no longer be a student-athlete and miss out
18 on my senior year athletically. Also, I have devoted so many of my years of my life
19 that swimming feels like it is my job. I have focused and sacrificed so many parts of
20 my life for swimming, but I no longer get to finish my career because of CUI. I also
21 believe it hurts my future job opportunities because I cannot list on my resume that I
22 swam all four-years in college.
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26 14. CUI's announcement that it is intends to eliminate the women's
27 swimming & diving and tennis teams is also particularly harmful because it
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1 discriminates against the women athletes on the basis of their sex. CUI is already
2 providing women with far fewer opportunities to participate in varsity athletics than
3 men. CUI's intention to discontinue our teams makes things worse. Fighting for basic
4 rights as a female student-athlete takes a significant emotional toll, especially while
5 trying to maintain good grades and prepare for a career in business.
6

7
8 15. Swimming competitively has helped me to become the person I am
9 today, and I cannot imagine my life nor my college experience without it. Being on a
10 swim team with teammates has taught me how to collaborate with various
11 personalities for the greater good of the team. Swimming has also taught me resilience
12 and that, if I set goals and work hard, I can achieve my goals. It is readily apparent in
13 my sport, as I could see my hard work pay off year after year with improvements in
14 my times. It saddens me that, unless my team is preserved, no other women will get
15 to experience the incredible program our swimming & diving team has developed.
16

17
18 16. The announcement of the intention to discontinue this team means that
19 all current team members must transfer schools if they want to continue their
20 swimming careers or give up those dreams altogether. This is not an option for me.
21 As I described above, I am forced to stay at CUI because I am a senior and cannot
22 afford to be set back academically. I am also forced to see many of my good friends
23 on the team have to transfer to continue their careers. My teammates are my family
24 and my support system at school. It is devastating that I may not see them after this
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1 year due to me being forced to stay while many of them have to transfer in order to
2 continue swimming competitively. This has been very hard on me.

3
4 17. CUI's announcement of the intention to discontinue the swimming &
5 diving team also came after the end of the school year. This made it hard for my
6 teammates to transfer to a school that has open roster spots, as well as made it more
7 difficult for them to arrange housing for the upcoming school year. For me,
8 transferring was not an option because I would be set back too far academically
9 because not all of my credits will transfer. This has been very stressful on me. I would
10 not have to face any of these issues if CUI continues its swimming & diving team.
11 Even my family members are affected as my parents have invested so much time and
12 money into my athletic career. It is not only me that is missing out on my last season;
13 my parents do not get a last season as well. Also, CUI often asked for donations to
14 support the swimming & diving team and the school, and my parents would always
15 give generously. They feel betrayed because CUI asked them for all this money but
16 still announced its intention to discontinue the team with no notice!! Beyond that, if
17 our team is not preserved soon, there is less chance of a women's team next season,
18 due to the lack of recruiting, equipment, training, and meet schedules.

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20
21 18. My teammates and I are also harmed as we will be unable to train,
22 practice, or receive coaching unless the swimming & diving team is continued.
23 Physical conditioning is very important to keep up in swimming, otherwise it

1 deteriorates quickly. It is very important to continue training and to stay in shape,
2 which is harmed by CUI's intention to discontinue the team.

3
4 19. Finally, my teammates and I, and the members of the women's tennis
5 team, are being harmed because CUI intends to discontinue our team when it is
6 already depriving women of anything close to equal opportunities to participate in
7 varsity sports. That is sex discrimination. CUI should not be subjecting any of us to
8 this.

9
10 20. I respectfully request that this Court preserve the women's swimming &
11 diving team so that this discrimination against women and any further irreparable
12 harm to me and my teammates can be stopped.

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14 I declare under penalty of perjury of the laws of the United States that the
15 foregoing is true and correct.

16
17 Dated: 08/10/2025

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19 ALEXANDRA LELAND

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1 **UNITED STATES DISTRICT COURT**
2 **CENTRAL DISTRICT OF CALIFORNIA**
3 **SOUTHERN DIVISION**

4 ALEXANDRA GRANT, MIKAYLA
5 BARRE, JESSICA BEAR, KIERA
6 GUTIERREZ, BRYN JOHNSON,
7 ALEXANDRA LELAND, RUBY
8 MCCULLOUGH, ALIYAH
9 TREADWELL, CARISSA WARD,
10 individually and on behalf of all
11 others similarly situated,

12 Plaintiffs,

13 v.

14 CONCORDIA UNIVERSITY
15 IRVINE,

16 Defendant.

Case No. 8:25-CV-01793

CLASS ACTION

**DECLARATION OF PLAINTIFF
RUBY MCCULLOUGH**

17 I, Ruby McCullough, am over 18 years of age and competent to make the
18 following declaration. All of the statements below are based on my personal
19 knowledge.
20

21 1. I have been enrolled at Concordia University Irvine (“CUI”). I am an
22 incoming sophomore majoring in psychology. I expect to graduate in 2028.

23 2. I am a member of the women’s swimming & diving team at CUI and I
24 have three years of athletic eligibility left.
25

26 3. I make this declaration in support of this Court preserving the women’s
27 varsity swimming & diving and tennis teams at CUI. Preserving these teams is
28

1 necessary to prevent continuing injury to me and the team members and to ensure
2 future equal opportunities for female athletes at CUI.

3
4 4. I am originally from Meridian, Idaho. I have been swimming
5 competitively since I was six years old. I cannot imagine my life without it. I have
6 had numerous knee injuries and had to stop playing other sports like soccer and
7 basketball. Being on a swim team allows me to fuel my competitive spirit and I also
8 really love being on a team.

9
10 5. I committed to CUI when I was seventeen years old. I did a campus visit
11 and I got to meet Head Coach Bert Bergen and Assistant Coach Paige Tattersall. I
12 thought they were very nice and welcoming. I also got to meet other members of the
13 women's swimming & diving team. They were very excited to meet me and it made
14 me feel welcomed and that I belonged on the team. The campus is also very beautiful,
15 as well as close to the beach. The area also has great weather. It is much different
16 from where I grew up in Idaho. In addition, CUI gave me a strong foundation to
17 pursue my dream of being a sports psychologist. CUI was a place I thought I could
18 grow as a student, an athlete, and a person. I chose to attend CUI even though I had
19 opportunities to swim at other schools, including Pacific Lutheran University, Adams
20 State University, and Azusa Pacific University.

21
22 6. During my time as a member of the CUI swimming & diving team, we
23 competed in the Pacific Collegiate Swim and Dive Conference ("PCSC"). I specialize
24 in sprint freestyle and butterfly. I swim the 50-yard and 100-yard freestyle, as well as
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1 the 100-yard butterfly. I received an athletic scholarship at CUI, as well as received
2 an award for Most Improved Swimmer for the 2024/2025 season.

3
4 7. Since I joined the CUI swimming & diving team, I have never felt
5 supported by the athletic department. This disregard was even more apparent in the
6 school's manner of announcing its intention to discontinue our team.. Andrea Riche,
7 the Associate Athletic Director – Compliance, sent out a mass email at 11:00 a.m. on
8 May 20, 2025. The email stated that there would be a Zoom meeting that afternoon
9 at 2:30 p.m. where she would provide an “athletics update.” The email also provided
10 the Zoom meeting instructions.
11

12
13 8. I could not attend that meeting because I already had two doctor
14 appointments scheduled for that afternoon. School was already out for the summer at
15 this point. The email came at the last minute, only a few hours before the meeting,
16 and I could not alter my schedule by then. The email about the meeting did not
17 indicate its importance. I thought it the meeting would be a general update about all
18 of the athletics at the school.
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20

21 9. While waiting for the doctor at one of my appointments, my phone
22 started blowing up with text messages. My teammates texted me that I should join
23 the meeting “asap,” but I could not because I was at the doctor. My teammates then
24 let me know CUI announced its intention to discontinue the team and said it was due
25 to budget reasons. At first I was confused and thought CUI was reducing the roster,
26 but then I found out that CUI announced its intention to discontinue the entire team.
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1 I then started panicking because school was already out and it was the summer. My
2 initial thoughts were that I did not know what to do next, including whether I should
3 transfer or stay at CUI. Later that afternoon, I received an email from Crystal
4 Rosenthal, the Associate Vice President of Athletics, providing advice on transferring
5 to a different school, academic advising and course planning, counseling and mental
6 health support, and scholarship and financial aid.
7

8
9 10. I later learned that, only days after the May 20, 2025, Zoom meeting,
10 Ms. Rosenthal – who is also the Head Softball Coach – sent an email to other teams
11 that were not included in the announcement, bragging that CUI was “in the midst of
12 a major \$17.5 million construction project that includes a new 19,000-square-foot
13 facility featuring a state-of-the-art weight room, locker rooms, and modern training
14 room space. This facility represents our belief in the future of our athletic programs
15 and our student-athletes.” The email also noted that CUI has invested “over \$8 million
16 in upgrades to our baseball, softball, and soccer/track/lacrosse facilities ...” I found
17 this email to be very hurtful, as the school was spending millions of dollars on other
18 teams’ facilities while announcing CUI’s intention to discontinue the women’s
19 swimming & diving team. It was also particularly demeaning, as we were told by CUI
20 that it intended to discontinue our team because of a budget deficit, yet the school was
21 spending \$17.5 million in a construction project on top of the \$8 million invested in
22 the outdoor sports fields.
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1 11. Throughout my time at CUI, I have consistently felt like the swimming
2 & diving program was unsupported and overlooked. This is demonstrated by the
3 email sent by Ms. Rosenthal, noting the millions of dollars being spent on other sports
4 while announcing CUI's intention to discontinue our team. Also, the men's baseball
5 team gets to travel to places like Hawai'i, while we do not. Our team never travelled
6 out of state. Our furthest meet was in Malibu, California, which is about a two-hour
7 drive depending on traffic. In fact, all of our meets are in the Los Angeles and Orange
8 County areas. We have always been treated as an afterthought by the athletic
9 department.

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13 12. After the announcement, I immediately entered the transfer portal to
14 preserve all options to continue swimming competitively on a varsity team. However,
15 since the school year had already ended, most of the schools no longer had roster
16 spots and there no longer was any athletic scholarship money available. I had thought
17 about transferring back to my home state to swim at the University of Idaho, but there
18 were no spots available. I do have the opportunity to transfer and swim at California
19 State University, Bakersfield ("Cal. State Bakersfield"), and am doing so unless the
20 team is continued, but I would prefer to continue swimming at CUI because I love
21 my friends and the area. Several of my teammates also entered the transfer portal, and
22 some have already transferred for this school year.

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26 13. I would prefer to continue swimming competitively on the swimming
27 & diving team at the school I love because I have given so much of my time, effort,
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1 sweat, and tears to this sport at CUI. If the swimming & diving team is continued at
2 CUI, I would love to come back and continue swimming there.

3
4 14. CUI's announcement of its intention to discontinue the women's
5 swimming & diving team has been difficult for me, and is causing me serious,
6 irreparable harm. I now have to transfer to Cal. State Bakersfield to continue
7 swimming, unless CUI continues its team. I had an athletic scholarship at CUI for
8 \$8,000 a year. Cal. State Bakersfield did not have any athletic scholarship money left
9 because it was so late in the year. I am also concerned that many of my academic
10 credits will not transfer, including four classes at CUI that had a religious focus. I
11 believe that approximately 12 to 14 credits will not transfer, which is basically a
12 semester. I will be talking to an advisor at Cal. State Bakersfield to find out. I am
13 concerned that I may have to go to summer school or attend school beyond four years
14 to make these credits up. If CUI preserves the swim team, I would not have to deal
15 these issues and would like to continue swimming at CUI.

16
17 15. Fighting for basic rights as a female student-athlete takes a significant
18 emotional toll, especially while trying to maintain good grades and prepare for a
19 career in sports psychology.

20
21 16. Swimming competitively has helped me to become the person I am
22 today, and I cannot imagine my life or my college experience without it. Swimming
23 has opened doors for me because I have been able to meet teammates who have far
24 different upbringings from my own. I was raised in Idaho and, through swimming, I

1 have been able to meet teammates from Hawai'i, Alaska, and even England.
2 Swimming has also taught me a lot about discipline, time management, and how to
3 balance my schedule with school and athletics. I believe that learning time
4 management through swimming has helped me academically. Swimming also taught
5 me that I can set goals and then, if I work hard, I can achieve them. In swimming, the
6 payoff for hard work is very apparent. I could see it through improvements in my
7 times week after week. Swimming has also given me the opportunity to fuel my
8 competitive spirit as I have had multiple knee injuries and can no longer play contact
9 sports, but I can continue to swim. It allows me to continue to be active, which is a
10 very important part of my life. It saddens me that, unless my team is preserved, no
11 other women will get to experience the incredible program our swimming & diving
12 team has developed.

17 17. CUI's announcement of its intention to discontinue the team means that
18 all current team members must transfer schools if they want to continue their
19 swimming careers or give up those dreams altogether. This is extremely disappointing
20 because I made a life for myself at CUI during my freshman year, which I do not
21 want to give up. Now, I basically have to transfer to Cal. State Bakersfield in order to
22 continue my swimming career. I have to restart my college life from scratch,
23 including making new friends. It is also hard to join a new team as a transfer student.
24 I will have to work to fit into an existing team where most of the women on the team
25 already know each other. I am also sad that I will not get to say goodbye in person
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1 everyone at CUI; including my friends, my team mates, and my coaches. I may not
2 see many of them ever again. This has been very hard on me mentally.

3
4 18. CUI's announcement of its intention to discontinue the swimming &
5 diving team came after the end of the school year, making it more difficult to transfer
6 to a school that has open roster spots. In my case, I wanted to transfer to the University
7 of Idaho, but it was too late because they no longer had roster spots. As mentioned
8 above, I will also have to give up my athletic scholarship at CUI in order to continue
9 my swimming career at Cal. State Bakersfield, which did not have any athletic
10 scholarship money left because it was so late in the year. The timing of the
11 announcement also made it more difficult to arrange housing for the upcoming school
12 year as most students already had their housing plans in place. Transferring also
13 carries the risk that not all of my academic credits will transfer to a new school. CUI
14 is a Lutheran school and many of the core classes have a religious focus or aspect to
15 them. As mentioned above, I am concerned that many of my academic credits from
16 CUI will not transfer and I will either have to do summer school or go to school
17 beyond four years to make them up. This has been very stressful on me. I would not
18 have to face any of these issues if CUI continues its swimming & diving team. This
19 level of betrayal by a Christian college has been devastating. Even my family
20 members are affected, as my parents have seen me sacrifice and work hard to further
21 my dreams of swimming competitively in college, only to see CUI announce that it
22 intends to discontinue the team, which as forced me to scramble and find a way to
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1 continue my collegiate swimming career. Beyond that, if our team is not preserved
2 soon, there is less chance of a women's team next season, due to the lack of recruiting,
3 equipment, training, and meet schedules.
4

5 19. I was also harmed because I could not focus on training during the
6 summer as I had to scramble to find a way to continue my swimming career. Finding
7 a different school where I could continue swimming competitively was
8 extraordinarily time consuming and took away from being able to keep in shape. I
9 was also recovering from a knee injury. CUI's intention of discontinuing the team
10 greatly negatively impacted my ability to keep up my physical conditioning and
11 training. Physical conditioning is paramount in swimming. If you do not keep it up,
12 it deteriorates quickly. It is very important to continue training and stay in shape,
13 which is harmed by CUI's announcement of its intention to discontinue the team.
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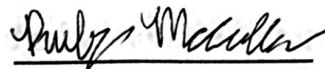
17 20. Finally, my teammates and I, and the members of the women's tennis
18 team, are being harmed because CUI intends to discontinue our teams when it is
19 already depriving women of anything close to equal opportunities to participate in
20 varsity sports. That is sex discrimination. CUI should not be subjecting any of us to
21 this.
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23

24 21. I respectfully request that this Court preserve the women's swimming &
25 diving and tennis teams so that this discrimination and any further irreparable harm
26 to me and the team members is ended.
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1 I declare under penalty of perjury of the laws of the United States that the
2 foregoing is true and correct.

3
4 Dated: 8/11/2025

5
6 **RUBY MCCULLOUGH**

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1 **UNITED STATES DISTRICT COURT**
2 **CENTRAL DISTRICT OF CALIFORNIA**
3 **SOUTHERN DIVISION**

4 ALEXANDRA GRANT, MIKAYLA
5 BARRE, JESSICA BEAR, KIERA
6 GUTIERREZ, BRYN JOHNSON,
7 ALEXANDRA LELAND, RUBY
8 MCCULLOUGH, , ALIYAH
9 TREADWELL, CARISSA WARD,
10 individually and on behalf of all
11 others similarly situated,

12 Plaintiffs,

13 v.

14 CONCORDIA UNIVERSITY
15 IRVINE,

16 Defendant.

Case No. 8:25-CV-01793

CLASS ACTION

**DECLARATION OF PLAINTIFF
ALIYAH TREADWELL**

17 I, ALIYAH TREADWELL, am over 18 years of age and competent to make
18 the following declaration. All of the statements below are based on my personal
19 knowledge.
20

21 1. I am currently enrolled at Concordia University Irvine (“CUI”). I am
22 an incoming senior majoring in psychology. I expect to graduate in 2026.

23 2. I am a member of the women’s swimming & diving team at CUI and I
24 have one year of athletic eligibility left.
25

26 3. I make this declaration in support of this Court preserving the women’s
27 varsity swimming & diving and tennis teams at CUI. Preserving our teams is
28

1 necessary to prevent continuing injury to me and the teams' members and to ensure
2 future equal opportunities for female athletes at CUI.

3
4 4. I am originally from Roseville, California. I have been swimming
5 competitively since I was eight years old. I love my sport, not only to train and see
6 my results, but also for the connections and friendships.

7
8 5. I committed to CUI when I was seventeen years old. I chose CUI
9 because of the people. I loved the feeling I got when I visited the campus regarding
10 the community, the location, the coaching staff, and the team dynamic. I did a campus
11 visit with other incoming swimmers. I quickly became best friends with one of the
12 women on the visit and we both decided to formally commit to CUI. It felt great and
13 I felt like I immediately fit in. I also met with the coaches and I was very impressed
14 by them. I also thought the campus was beautiful. I loved the surrounding community.
15 In addition, CUI gave me a strong foundation to pursue my dream of pursuing a career
16 of working at the public defender's office. CUI was a place I thought I could grow as
17 a student, an athlete, and a person. I chose to attend CUI even though I had
18 opportunities to swim at other schools, including College of Idaho, Fresno Pacific
19 University, University of Redlands, and other smaller schools.

20
21 6. During my time as a member of the CUI swimming & diving team, we
22 competed in the Pacific Collegiate Swim and Dive Conference ("PCSC"). I swam the
23 100-yard and 200-yard backstroke, as well as 200-yard and 500-yard freestyle. I was
24 on the scoring roster for two years, which means I was among the top 18 women on

1 my team that were chosen by my coach to swim at the conference finals. Also, my
2 team placed third in conference my freshman year.

3
4 7. Since I joined the CUI swimming & diving team, I have never felt
5 supported by the athletic department. This disregard was even more apparent in the
6 school's manner of announcing its intention to discontinue our team. Andrea Riche,
7 the Associate Athletic Director – Compliance, sent out a mass email at 11:00 a.m. on
8 May 20, 2025. The email stated that there would be a Zoom meeting that afternoon
9 at 2:30 p.m. where she would provide an “athletics update.” The email also provided
10 the Zoom meeting instructions.
11

12
13 8. I attended this meeting. For CUI, President Michael A. Thomas,
14 Associate Vice President of Athletics Crystal Rosenthal, and Ms. Riche were in
15 attendance. I and other members of our team met with them for a short meeting that
16 lasted approximately fifteen minutes. Some members of the women's tennis team
17 were also in attendance on the Zoom meeting. President Thomas spoke at first and
18 told us that it was CUI's intention to discontinue the teams. He said the intention to
19 discontinue our programs came down to a \$6.5 million school budget deficit and that
20 there was not anything we could do to reverse it. Then Ms. Rosenthal talked and
21 reiterated what President Thomas said. Then Ms. Riche also spoke about next steps
22 and said she would send out an email. Also, at the beginning of the meeting, President
23 Thomas said there would be a Q&A session at the end of the meeting, but they did
24 not even do that. I also received an email from Ms. Rosenthal, providing advice on
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1 transferring to a different school, academic advising and course planning, counseling
2 and mental health support, and scholarship and financial aid. I believe she sent this
3 email to me while the meeting was still going.
4

5 9. After the meeting, I was with my teammate Carissa Ward. We called
6 our Assistant Coach, Ryan Martinez, and voiced our frustration. I also telephoned my
7 mother, who has been a swim coach since I can remember, and let her know the news.
8 She was also extremely upset at how the announcement was handled.
9

10 10. I later learned that, only days after the May 20, 2025, Zoom meeting,
11 Ms. Rosenthal – who is also the Head Softball Coach – sent an email to the athletes
12 on teams that were not being eliminated, telling them that CUI was “in the midst of a
13 major \$17.5 million construction project that includes a new 19,000-square-foot
14 facility featuring a state-of-the-art weight room, locker rooms, and modern training
15 room space. This facility represents our belief in the future of our athletic programs
16 and our student-athletes.” The email also noted that CUI has invested “over \$8 million
17 in upgrades to our baseball, softball, and soccer/track/lacrosse facilities ...” I found
18 this letter to be very hurtful as the school was spending millions of dollars on other
19 facilities while announcing CUI’s intention to discontinue the women’s swimming &
20 diving team. It was also particularly demeaning, since we were told CUI intended to
21 discontinue our team because of a budget deficit, yet the school was spending \$17.5
22 million in a construction project on top of the \$8 million invested in the outdoor sports
23 fields.
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1 11. Throughout my time at CUI, I have consistently felt like the swimming
2 & diving program was unsupported and overlooked. This is demonstrated by the letter
3 sent by Ms. Rosenthal, noting the millions of dollars being spent on other sports while
4 announcing CUI's intention to discontinue our team. The men also get priority with
5 the athletic trainers. Many of the trainers will travel with a specific men's team for
6 their events, but we did not have a trainer for our team. For example, the men's
7 lacrosse and basketball teams had a trainer that traveled with them, while we did not.
8 Since the trainers were traveling, we would have a shortage of trainers at the school
9 and would have to make an appointment for when they were available. Even if I had
10 an appointment, the trainers would make me wait so they could treat people from the
11 men's lacrosse team. Also, the other teams got to travel to Hawai'i while our team
12 never got to travel out-of-state. We have always been treated as an afterthought by
13 the athletic department.

14 12. After the announcement, I immediately entered the transfer portal to
15 preserve all options to continue swimming competitively on a varsity team. However,
16 since CUI announced its intention to discontinue our program after the school year
17 ended, many of the roster spots were filled and there was no athletic scholarship
18 money left. The schools with roster spots were at smaller schools that are out-of-state
19 that I had never even heard of. They also would be a step-down athletically. I also
20 cannot transfer because many of my academic credits will not transfer with me to a
21 new school. CUI is a Lutheran university and many of the classes have a religious
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1 aspect to them, including our required core classes. Credits for these classes will not
2 transfer to most other schools. I would not graduate on time if I transferred.

3
4 13. I would prefer to continue swimming competitively on the swimming
5 & diving team at the school I love, because I have given so much of my time, effort,
6 sweat, and tears to this sport at CUI. I am a senior and plan on a career in criminal
7 justice. I cannot afford to set back my academic progress and not graduate on time. If
8 the swimming & diving team is continued at CUI, I plan to use my final year of
9 eligibility to compete for one last season.
10

11
12 14. CUI's announcement of its intention to discontinue our team has been
13 difficult for me. It is causing and will cause me serious harm unless the Court
14 intervenes. I am going to be a senior and I cannot transfer because I will lose many
15 of my academic credits. It is not really a choice for me. I am stuck here. Further,
16 losing swimming feels like losing a part of my identity, as I will not be considered a
17 student-athlete anymore. I will also miss my teammates who have to transfer to
18 continue their swimming careers. I did not even get to say goodbye in person to many
19 of them because CUI announced its intention to discontinue the team after the school
20 year had ended. I have lost my sense of community and the sport that has helped me
21 through everything. I also feel like I'm missing out on an important chapter of growth
22 and the chance to leave a lasting mark on the program and my teammates. I am
23 entering my final year and I was looking forward to finishing my collegiate
24 swimming career at CUI.
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1 15. Fighting for basic rights as a female student-athlete takes a significant
2 emotional toll, especially while trying to maintain good grades and prepare for a
3 career in criminal justice.
4

5 16. Swimming competitively has helped me to become the person I am
6 today, and I cannot imagine my life nor my college experience without it. Swimming
7 has taught me how to respect my teammates who I am not necessarily best friends
8 with, but to still respect them and listen to their concerns and needs. Swimming also
9 taught me perseverance and determination. It is a physically demanding sport with
10 practice five to six days a week, including one double-day. With my added
11 responsibilities of being on a sports team, I had to learn how to be organized in a
12 timely manner, as well as to plan out my week. This skill has also helped me
13 academically. It saddens me that, unless my team is preserved, no other women will
14 get to experience the incredible program our swimming & diving team has
15 developed.
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20 17. CUI's announcement of its intention to discontinue this program means
21 that all current team members must transfer schools if they want to continue their
22 swimming careers or give up those dreams altogether. For me, I am forced to retire
23 athletically when I had envisioned swimming all four years. Also, I am extremely
24 hurt by the announcement because my teammates are very close to me and my
25 community. My college life at CUI will not be the same since so many of my
26 teammates will not be here next season. This has been very hard on me mentally.
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1 18. The announcement also came after the end of the school year, making
2 it more difficult to transfer to a school that has open roster spots, as well as making it
3 more difficult to arrange housing for the upcoming school year. Many of my
4 academic credits will not transfer to most schools since CUI is a Lutheran school and
5 many of the core classes have a religious focus or aspect to them. I cannot afford to
6 transfer for my final year and lose these credits because I would not graduate on time.
7 I would not have to face any of these issues if CUI continued its women's swimming
8 & diving team. Even my family members are affected, as my parents have seen me
9 sacrifice and work hard to further my dreams of swimming competitively in college
10 shattered by CUI eliminating the team. My parents always make a point to watch me
11 swim in our larger conference meets. They would travel from the Sacramento area to
12 come see me swim in Southern California. My mom was particularly hurt as she has
13 been a swim coach for most of her life. She was devastated with how the
14 announcement was made because it left me without any good option to continue my
15 swimming career. Beyond that, if our team is not preserved soon, there is less chance
16 of a women's team next season, due to the lack of recruiting, equipment, training, and
17 game schedules.

18 19. My teammates and I are also harmed as we will be unable to train,
19 practice, or receive coaching unless the swimming & diving team is continued.
20 Physical conditioning is very important in swimming, it is important to keep it up,
21 otherwise it deteriorates quickly. It is very important to continue training and stay in

1 shape, which is harmed by CUI's announcement of its intention to discontinue the
2 team.


3
4 20. Finally, CUI's intention to discontinue the women's swimming &
5 diving and tennis teams is particularly wrong and hurtful because it discriminates
6 against me and the other women athletes on the basis of our sex, in violation of Title
7 IX. CUI is supposed to be providing women and men with equal opportunities to
8 participate in intercollegiate athletics. It isn't. It is giving women far fewer
9 opportunities than they should have and men far more. CUI should be increasing
10 opportunities for women, not decreasing them. But the school has announced it
11 intends to discontinue two women's teams. That is hurtful and wrong. It should not
12 be allowed.

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16 21. I respectfully request that this Court preserve the women's swimming &
17 diving and tennis teams so this discrimination and any further irreparable harm to me
18 and my teammates is prevented.

19
20 I declare under penalty of perjury of the laws of the United States that the
21 foregoing is true and correct.

22 Dated: Aug 11, 2025

23
24 **ALIYAH TREADWELL**

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1 **UNITED STATES DISTRICT COURT**
2 **CENTRAL DISTRICT OF CALIFORNIA**
3 **SOUTHERN DIVISION**

4 ALEXANDRA GRANT, MIKAYLA
5 BARRE, JESSICA BEAR, KIERA
6 GUTIERREZ, BRYN JOHNSON,
7 ALEXANDRA LELAND, RUBY
8 MCCULLOUGH, ALIYAH
9 TREADWELL, CARISSA WARD,
10 individually and on behalf of all
11 others similarly situated,

12 Plaintiffs,

13 v.

14 CONCORDIA UNIVERSITY
15 IRVINE,

16 Defendant.

Case No. 8:25-CV-01793

CLASS ACTION

**DECLARATION OF PLAINTIFF
CARISSA WARD**

17 I, Carissa Ward, am over 18 years of age and competent to make the following
18 declaration. All of the statements below are based on my personal knowledge.

19 1. I am currently enrolled at Concordia University Irvine (“CUI”). I am
20 an incoming junior majoring in psychology. I expect to graduate in 2027.

21 2. I am a member of the women’s swimming & diving team at CUI and I
22 have two years of athletic eligibility left.

23 3. I make this declaration in support of this Court preserving the women’s
24 varsity swimming & diving and tennis teams at CUI. Preserving these teams is
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1 necessary to prevent continuing injury to me and the team members and to ensure
2 future equal opportunities for female athletes at CUI.

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4 4. I am originally from Austin, Texas. I have been swimming
5 competitively since I was seven years old. I can't imagine my life without it. I love
6 having a team that I can train and compete with, and value the social aspect of having
7 teammates that I can discuss life with. I also enjoy the aspect of swimming being an
8 individual sport. I enjoy the feeling of all of my hard work paying off. I can see an
9 immediate payoff for my hard work through the improvement of my event times.
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12 5. I committed to CUI when I was seventeen years old. I chose CUI
13 because of the people and I also loved the location. When I visited the campus, I
14 immediately felt like I fit in. I toured the school with my coach Bert Bergen. I was
15 immediately impressed with Coach Bergen. He was very easy to talk to and I could
16 tell that he cared a lot about the team and my future at CUI. I also toured the
17 immediate surroundings of the school and I loved the area. In addition, CUI gave me
18 a strong foundation to pursue my dream of being a psychologist. CUI was a place I
19 thought I could grow as a student, an athlete, and a person. I chose to attend CUI even
20 though I had opportunities to swim at other schools, including University of North
21 Florida and Florida Southern College.
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24 6. During my time as a member of the CUI swimming & diving team, we
25 competed in the Pacific Collegiate Swim and Dive Conference ("PCSC"). I received
26 an athletic scholarship to swim at CUI. I was also top-eight five times in conference
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1 finals, which they refer to as being an A-finalist. I have multiple top-10 school records
2 at CUI.

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4 7. Since I joined the CUI swimming & diving team, I have never felt
5 supported by the athletic department. This disregard was even more apparent in the
6 school's manner of announcing its intention to discontinue our team. Andrea Riche,
7 the Associate Athletic Director - Compliance, sent out a mass email at 11:00 a.m. on
8 May 20, 2025. The email stated that there would be a Zoom meeting that afternoon
9 at 2:30 p.m. where she would provide an "athletics update." The email also provided
10 the Zoom meeting instructions.
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13 8. I attended this meeting. For CUI, President Michael A. Thomas,
14 Associate Vice President of Athletics Crystal Rosenthal, and Ms. Riche were in
15 attendance. I and other members of our team met with them for approximately fifteen
16 minutes. Mr. Thomas spoke first and told us it was CUI's intention to discontinue the
17 team. He said that the CUI's board had met, there was a \$6.5 million deficit, and, as
18 a result, CUI was announcing its intention to discontinue the team. Ms. Rosenthal and
19 Ms. Riche also spoke and reiterated that the announcement came down to a budget
20 deficit. Later that afternoon, I received an email from Ms. Rosenthal providing advice
21 on transferring to a different school, academic advising and course planning,
22 counseling and mental health support, and scholarship and financial aid. I was
23 stunned as it came so quickly after the meeting, I received it approximately 10
24 minutes after the meeting ended.
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1 9. After the meeting, I telephoned my assistant coach, Ryan Martinez.
2 Coach Martinez told me that they were informed of the intention to discontinue the
3 team that morning and he asked how CUI communicated the announcement to me.
4 He also told me that it was his understanding that the announcement of the intention
5 to discontinue the team would not be reversed.
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8 10. I later learned that, only days after the May 20, 2025, Zoom meeting,
9 Ms. Rosenthal – who is also the Head Softball Coach – sent an email to the athletes
10 on teams CUI was not eliminating, saying that CUI was “in the midst of a major \$17.5
11 million construction project that includes a new 19,000-square-foot facility featuring
12 a state-of-the-art weight room, locker rooms, and modern training room space. This
13 facility represents our belief in the future of our athletic programs and our student-
14 athletes.” The email also noted that CUI has invested “over \$8 million in upgrades to
15 our baseball, softball, and soccer/track/lacrosse facilities ...” This email was very
16 hurtful. The school was telling all of the other athletes it was spending millions of
17 dollars on their facilities while it was telling us that it intended to eliminate the
18 women’s swimming & diving and tennis teams. It was also particularly demeaning
19 as we were told by CUI that it intended to discontinue our teams because of a budget
20 deficit, yet the school was spending \$17.5 million in a construction project on top of
21 the \$8 million invested in the outdoor sports fields.
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24 11. Throughout my time at CUI, I have consistently felt like the swimming
25 & diving program was unsupported and overlooked. This is demonstrated by the letter
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1 sent by Ms. Rosenthal noting the millions of dollars being spent on other sports while
2 announcing their intention to discontinue our team. The men also get priority with the
3 athletic trainers. Many of the men's teams have a trainer that travels with them for
4 their events and is basically assigned to their team. We did not have a trainer assigned
5 to our team. That meant that the men could easily see a trainer while the women had
6 to make an appointment to see one. Further, if we saw a trainer they would downplay
7 our needs and tell us to go stretch so they could spend more time with the men's team.
8 We have always been treated as an afterthought by the athletic department, so while
9 the announcement of the intention to discontinue our program did not shock me, it
10 was deeply disheartening and incredibly unfair.
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14 12. After the announcement, I immediately entered the transfer portal to
15 preserve all options to continue swimming competitively on a varsity team. Roster
16 spots had already been filled and athletic scholarship money was no longer available
17 because it was already assigned. The two schools that I had an interest in, Pepperdine
18 and USD, already filled their roster spots. Several of my teammates also entered the
19 transfer portal, and some have already transferred for this upcoming school year.
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22 13. I would prefer to continue swimming competitively on the swimming
23 & diving team at the school I love, because I have given so much of my time, effort,
24 sweat, and tears to this sport at CUI. I am an incoming junior and I could not afford
25 to transfer and start my college life over. Further, I could not afford to set back my
26 academic progress.
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1 14. CUI's announcement of its intention to discontinue the women's
2 swimming & diving team at CUI has been difficult for me. It is causing and will cause
3 me serious harm unless the Court intervenes. It is hard to get closure with the
4 announcement because it happened so suddenly after the school year ended. It was
5 not even in-person. It was on a remote Zoom video conference. I also feel for the
6 seniors who did not get to have a Senior Day. I will also miss out on that as well. I
7 feel like I am losing part of my identity because I have always been recognized as a
8 student-athlete. It's also hard to balance losing swimming while having to go back to
9 school to pursue academics and my future goals. I also feel like I'm missing out on
10 an important chapter of growth and the chance to leave a lasting mark on the program
11 and my teammates. I have received numerous awards including top-10 records at
12 CUI. I wanted to continue pushing myself to even bigger and better successes in my
13 collegiate swim career. My goal was to set even more records, I was close to setting
14 the number one record at CUI for two different events. I was also in top four in
15 conference in one of my events and I wanted to continue competing and get first
16 place. I also wanted to have another opportunity to qualify for the NCAA Division II
17 nationals.
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24 15. Fighting for basic rights as a female student-athlete takes a significant
25 emotional toll, especially while trying to maintain good grades and prepare for a
26 career in psychology.
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1 16. Swimming competitively has helped me become the person I am today,
2 and I cannot imagine my life or my college experience without it. Swimming taught
3 me that I can set a goal and that, if I work hard, that goal can be achieved. It also
4 taught me how to communicate with teammates and socialize with many different
5 types of people who had very different upbringings from me. Some of my teammates
6 are from different states like Alaska and Hawai'i and I was able to meet people from
7 a very diverse set of backgrounds. It saddens me that, unless my team is preserved,
8 no other women will get to experience the incredible program our swimming &
9 diving team has developed.

13 17. The announcement of the intention to discontinue our program means
14 that all current team members must transfer schools if they want to continue their
15 swimming careers or give up those dreams altogether. As an incoming junior, I
16 already spent two years at CUI. It is very disappointing that I must now make the
17 choice to either stay at CUI with a life I have already made, or suddenly completely
18 change my life to transfer schools in order to continue my swimming career. My
19 teammates are my family and it is devastating that I may not see them after this year
20 due to being forced to either stay and give up swimming or transferring in order to
21 continue swimming competitively. This has been very hard on me mentally.

25 18. CUI's announcement of its intention to discontinue the swimming &
26 diving team also came after the end of the school year, making it more difficult to
27 transfer to a school that has open roster spots, as well as making it more difficult to
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1 arrange housing for the upcoming school year if I was to transfer. Further, I know that
2 many of my academic credits would not transfer. CUI is a Lutheran university and
3 many of the core classes have either a religious aspect or focus. Credits for these core
4 classes would not transfer to many schools that have a more generalized curriculum.
5 I would not have to face any of these issues if CUI continues its swimming & diving
6 team. Even my family members are affected, as my parents live in Texas and it is
7 difficult for them travel to California to see me swim. They were unable to see any of
8 my meets at CUI. However, they made it a point that they were going to travel to see
9 me this year. Now, that is not an option unless our team is continued. They are very
10 saddened that they will not have the opportunity to see me swim in college. Beyond
11 that, if our team is not preserved soon, there is less chance of a women's team next
12 season, due to the lack of recruiting, equipment, training, and game schedules.

13 19. My teammates and I are also harmed as we will be unable to train,
14 practice, or receive coaching unless the swimming & diving team is continued.
15 Physical conditioning is paramount in swimming. If a swimmer does not keep her
16 conditioning up, it will deteriorate quickly and she will fall behind. It is very important
17 to continue training and stay in shape, which is harmed by CUI's announcement of
18 its decision to discontinue the team.

19 20. All of this is made far more harmful and disturbing because CUI's
20 announcement of its intention to discontinue women's teams was a straightforward,
21 intentional act of sex discrimination in violation of Title IX. Under Title IX, CUI is
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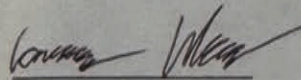
1 supposed to be providing women and men with equal opportunities to participate. It
2 is not doing so and, as I understand things, never has. Yet, instead of adding
3 opportunities for women, which it needs to do, CUI intends to discontinue
4 opportunities for women. This is discriminatory and wrong. It should not be allowed
5 to stand.
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8 21. I respectfully request that this Court preserve the women's swimming &
9 diving and tennis teams so this discrimination and any further irreparable harm to me
10 and the other women's team members does not continue.
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12 I declare under penalty of perjury of the laws of the United States that the
13 foregoing is true and correct.
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16 Dated: 08/09/2025

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18 **CARISSA WARD**

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