UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 8:25-cv-01793-FWS-JDE Date: October 24, 2025
Title: Alexandra Grant *et al.* v. Concordia University Irvine

Present: **HONORABLE FRED W. SLAUGHTER, UNITED STATES DISTRICT JUDGE**

Rolls Royce Paschal	N/A
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiffs:	Attorneys Present for Defendant:
Not Present	Not Present

PROCEEDINGS: ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION [47]

In this case, Plaintiffs[1]—members of Defendant Concordia University Irvine's ("CUI") former women's swim & dive and tennis teams—allege that CUI's May 2025 decision to terminate its men's and women's swim & dive and tennis programs violates Title IX. (Dkt. 1 (Complaint, "Compl.") ¶ 1.) Before the court is Plaintiffs' Motion for Preliminary Injunction, in which Plaintiffs seek an order preserving CUI's women's varsity programs, including the terminated swim & dive and tennis programs, pending resolution of this case. (Dkt. 47 ("Motion" or "Mot.").) CUI opposes the Motion. (Dkt. 48 ("Opposition" or "Opp.").) Plaintiff filed a reply in support of the Motion. (Dkt. 50 ("Reply").) At the court's request, the parties filed supplements to their positions on the Motion. (Dkt. 58 ("D. Supp."); Dkt. 59 ("P. Supp.").) The court held a hearing on the Motion on October 23, 2025. (Dkt. 60.) Based on the record, as applied to the relevant law, the Motion is **GRANTED.**

[1] Plaintiffs are Alexandra Grant (swim & dive), Mikayla Barre (swim & dive), Jessica Bear (tennis), Kiera Gutierrez (swim & dive), Bryn Johnson (tennis), Alexandra Leland (swim & dive), Ruby McCullough (swim & dive), Aliyah Treadwell (swim & dive), and Carissa Ward (swim & dive). (*See* Dkts. 5-5–13 (Plaintiffs' Declarations).)

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I. Background

For the 2024-25 academic year, CUI "sponsored 14 sports: Baseball (Men's), Basketball (Women's and Men's), Beach Volleyball (Women's), Cross Country (Women's and Men's), Lacrosse (Men's and Women's), Soccer (Men's and Women's), Softball (Women's), Stunt (Women's), Swim & Dive (Men's and Women's), Tennis (Men's and Women's), Track & Field Indoor (Men's and Women's), Track & Field Outdoor (Men's and Women's), Volleyball (Men's and Women's), and Water Polo (Men's and Women's)." (Dkt. 48-2 (Declaration of Crystal Rosenthal, "Rosenthal Decl.") ¶ 6.)

On May 20, 2025, after the spring semester concluded, CUI announced its decision to eliminate the men's and women's swim & dive and tennis programs for the 2025-26 season due to budget constraints. (Compl. ¶¶ 2, 108-111; *see* Dkts. 47-8, 5-3, Ex. 1 ("Announcement").) The decision was memorialized in a Board of Regents Resolution titled "Reductions in Force, Position Closures, and Program Closures Resulting from Decreases in Student Enrollment," which also detailed faculty and staff reductions in force and closing of open positions, and discontinuance of certain academic programs. (Rosenthal Decl., Ex. A.) CUI contends that the decision was made "[a]fter serious and thoughtful consideration including a Title IX analysis[2]," and "consider[ing], for example, that [CUI] did not own and operate adequate facilities for swimming and tennis, which increased costs for the two sports." (Rosenthal Decl. ¶ 10; *see* Announcement at 1 ("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.").) According to CUI, "[t]he

[2] Rosenthal testified that the Title IX analysis she referred to in her declaration was done by "only [her]self." (Dkt. 56-1 at 117.) When asked "[a]t the end of the day when it was decided swimming, diving, and tennis were going to be eliminated" from among all of the teams considered for elimination, "did you do any formal Title IX analysis?," Rosenthal testified, "No." (*Id.* at 125.) She answered the follow up question, "Okay. So just sort of your back-of-the-envelope analysis based on your understanding of the numbers?" with "Yeah -- yes." (*Id.*)

elimination of these teams will reduce CUI's annual operational costs by approximately $550,000.00." (Rosenthal Decl. ¶ 15.) In contrast, Plaintiffs allege CUI's decision was "in violation of Title IX" and "sadly, consistent with CUI's history of sex discrimination in its intercollegiate athletic program" which has persisted "[s]ince at least 2004." (Compl. ¶¶ 6, 133.)

Following CUI's decision, "[a]ll of the affected student-athletes" were "offered the same choice: remain at CUI and keep their scholarship, or transfer to another institution with the full support of CUI." (Rosenthal Decl. ¶ 11; *see also* Announcement at 1-2 ("[S]tudent-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."); Dkt. 47-15 (May 20, 2025 email from Rosenthal to affected athletes, "If you're considering staying at Concordia University Irvine, we will honor your current athletic and academic aid.").) According to Plaintiffs, "for practical purposes and many athletes, it was too little and much too late" because "by late May, most teams at other schools had already set their full rosters and allocated their scholarships for the Fall of 2025." (Compl. ¶ 113; *see, e.g.*, Dkt. 5-5 (Declaration of Alexandra Grant, "Grant Decl.") ¶ 13 ("After the announcement, I immediately entered the transfer portal to preserve all options to continue swimming competitively on a varsity team. Our coach called several teams from similar schools to see if they had roster spots open as well as any scholarship money available. It was so late in the year that most of the roster spots and scholarship money were already allocated and were not available.").) However, "[m]any of the female student-athletes" who were on the affected teams "found new opportunities at other universities and transferred out of CUI. Only 13 prior women's swim and dive team athletes are currently enrolled, including 2 who are studying abroad. Only 3 of the prior women's tennis players are currently enrolled. In fact, two of the Plaintiffs themselves withdrew from CUI."[3] (Rosenthal Decl. ¶ 17; Grant Decl. ¶ 13 ("Several

[3] "Plaintiff Gutierrez withdrew from CUI, but would like to return to the women's swimming & diving team if it is continued. Plaintiff McCullough transferred to California State University,

of my teammates also entered the transfer portal, and some have already transferred for this coming school year.").)

On August 13, 2025, five days before the 2025-26 school year began and approximately six weeks before the start of swim & dive and tennis seasons, Plaintiffs filed this case alleging that "CUI fails to provide female students with an equal opportunity to participate in varsity intercollegiate athletics in violation of Title IX and 34 C.F.R § 106.41(c)(1)," and has failed to do so "[s]ince at least 2004." (Compl. ¶¶ 133, 178.) "Plaintiffs seek to prohibit CUI from eliminating its women's varsity swimming & diving and tennis teams—and all other women's varsity teams—unless and until CUI is and will be providing women with the equal opportunities to participate in varsity intercollegiate athletics that Title IX requires." (Compl. ¶ 13.)

On August 27, 2025, the court denied Plaintiffs' *Ex Parte* Application for Temporary Restraining Order, filed concurrently with the Complaint, because the court determined Plaintiffs had not adequately demonstrated that the relief they sought on an *ex parte* basis was warranted. (Dkt. 34.)

On September 23, 2025, Plaintiffs filed this Motion.

On October 2, 2025, CUI's Board of Regents passed a resolution to discontinue CUI's men's indoor track & field program effective for the 2026-2027 season. (Rosenthal Decl. ¶ 31, Ex. B.) CUI is also "in the process of securing a conference for Women's Lacrosse." (*Id.* ¶ 6.)

To date (weeks into the 2025-26 school year), no plans for a 2025-26 season of CUI swim & dive or tennis have been made; for example, no reservations for pools have been made for practices, no plans have been made for competition participation, and coaches have not been retained. (*See* Rosenthal Decl. ¶¶ 16-30.)

Bakersfield to continue her swimming career and would like to swim for CUI if possible." (Mot. at 7 n.1.)

II. Legal Standard

The analysis for granting a preliminary injunction is "substantially identical" to that for granting a TRO. *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n. 7 (9th Cir. 2001). Either "is an extraordinary remedy that may be awarded only if the plaintiff clearly shows entitlement to such relief." *See Am. Beverage Ass'n v. City & Cnty. of San Francisco*, 916 F.3d 749, 754 (9th Cir. 2019) (en banc) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)).

Plaintiffs seeking a preliminary injunction must demonstrate (1) they are "likely to succeed on the merits"; (2) they are "likely to suffer irreparable harm in the absence of preliminary relief"; (3) that "the balance of equities tips in [their] favor"; and (4) that "an injunction is in the public interest." *Id.* (quoting *Winter*, 555 U.S. at 20). Courts in the Ninth Circuit "also employ an alternative serious questions standard, also known as the sliding scale variant of the *Winter* standard." *Fraihat v. U.S. Immigr. & Customs Enf't*, 16 F.4th 613, 635 (9th Cir. 2021) (citation modified). Under that approach, "'serious questions going to the merits' and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the *Winter* test are also met." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011). A party seeking preliminary injunctive relief must make a "certain threshold showing" on "each [*Winter*] factor." *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011). "The most important among these factors is the likelihood of success on the merits." *Junior Sports Mags. Inc. v. Bonta*, 80 F.4th 1109, 1115 (9th Cir. 2023).

III. Discussion

The court evaluates (1) whether the relief Plaintiffs seek is prohibitory or mandatory in nature, and (2) Plaintiffs' showing on the *Winter* factors.

A. Mandatory or Prohibitory

The court's "first task is to determine whether [Plaintiffs] request[] a prohibitory injunction or a mandatory injunction." *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1320 (9th Cir. 1994). "A prohibitory injunction preserves the status quo," *id.*, usually by ordering the defendant to refrain from certain acts, *Hernandez v. Sessions*, 872 F.3d 976, 998 (9th Cir. 2017). A mandatory injunction, on the other hand, "require[s]" the defendant "to take affirmative action." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). "A mandatory injunction goes well beyond simply maintaining the status quo *pendente lite* and is particularly disfavored." *Stanley*, 13 F.3d at 1320 (citation modified) (quoting *Anderson v. United States,* 612 F.2d 1112, 1114 (9th Cir. 1979)). When a plaintiff "seeks a mandatory injunction, she must establish that the law and facts *clearly favor* her position, not simply that she is likely to succeed." *Garcia*, 786 F.3d at 740.

Here, Plaintiffs move for a preliminary injunction ordering CUI "to preserve its women's swimming & diving team, its women's tennis team, and all other women's varsity teams at CUI while this case is pending or until further order of this Court" and "to take all appropriate actions to continue the 2025-26 seasons of its women's swimming & diving team and women's tennis teams as soon as possible." (Dkt. 47-3 (Proposed Order).) CUI argues that "Plaintiffs seek a mandatory injunction to require CUI to revive two women's teams." (Opp. at 5.) As a practical matter, that contention is not entirely unpersuasive. In the four months between CUI's announcement and the filing of the Motion, members of the former swim & dive and tennis teams transferred elsewhere or chose to study abroad, coaching staff was not retained, and plans were not made for a 2025-26 season, including registering for competitions or securing training facilities. (*See* Rosenthal Decl. ¶¶ 9-30.) Accordingly, the practical effect of the relief Plaintiffs seek would be to compel CUI to take action: to schedule competitions, reserve training and practice facilities, retain coaching staff, and possibly recruit new team members and acquire equipment and uniforms. (*See id.*)

However, the Ninth Circuit recently reiterated that courts "determine the status quo based on the legally relevant relationship between the parties before the controversy arose, that is, before the action challenged in the complaint occurred." *Youth 71Five Ministries v. Williams*,

153 F.4th 704, 717 (9th Cir. 2025) (citation modified); *see also Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 684 (9th Cir. 2023) ("In applying the heightened standard applicable to mandatory injunctions, the district court abused its discretion by determining that the status quo was one in which FCA clubs were unrecognized in District schools. While there is no bright line rule for when a controversy arises, the district court's reasoning that the controversy arose at the time of the lawsuit is contrary to our caselaw" holding that "the status quo is the legally relevant relationship between the parties before the controversy arose.") (citation modified).

Here, the "action challenged in the complaint" is CUI's decision to end its swim & dive and tennis programs. (*See* Compl. ¶ 1); *Youth 71Five Ministries*, 153 F.4th at 717. Before that, the swim & dive and tennis programs existed, and an order prohibiting CUI from eliminating those programs would be considered prohibitory. *See Youth 71Five Ministries*, 153 F.4th at 717. Accordingly, the court will treat this as a prohibitory injunction and not require Plaintiffs to make a heightened showing. *See id.*; *see also Ohlensehlen v. Univ. of Iowa*, 509 F. Supp. 3d 1085, 1104 (S.D. Iowa 2020) (rejecting a similar argument that an injunction to reinstate a terminated team was mandatory, explaining, "In so arguing, Defendants confuse the status quo. The point of prohibitive injunctive relief is to preserve the last uncontested status between the parties which preceded the controversy. To be sure, it is sometimes necessary to require a party who has recently disturbed the status quo to reverse its actions but such an injunction restores, rather than disturbs, the status quo ante. Here, that is reinstatement of the women's swimming and diving team.") (citations and quotations omitted).

B. The *Winter* Factors

The court assesses Plaintiffs' showing on (1) likelihood of success on the merits, (2) irreparable injury, (3) the balance of the equities, and (4) the public interest. *Winter*, 555 U.S. at 20.

1. Likelihood of Success

Title IX provides that "[n]o 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." 20 U.S.C. § 1681(a). According to the implementing regulations, this includes that "[n]o person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis." 34 C.F.R. § 106.41.

Therefore, "[a] recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes." 34 C.F.R. § 106.41(c). Factors relevant to "determining whether equal opportunities are available" include:

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

Id. "In 1979, the Office of Civil Rights of the Department of Health, Education, and Welfare—the precursor to today's Department of Health & Human Services and Department of Education—published a 'Policy Interpretation' of Title IX setting a three-part test to determine

whether an institution is complying with the 'effective accommodation' requirement" in (c)(1) above. *Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 854 (9th Cir. 2014). "This provision . . . has come to be known as the 'Three-Part Test.'" *Equity in Athletics, Inc. v. U.S. Dep't of Educ.*, 291 F. App'x 517, 520 (4th Cir. 2008). Under the Three-Part Test, "an athletics program complies with Title IX if it satisfies any one of the" following three "conditions":

> (1) Whether ... 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 ... 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 ... 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.

Ollier, 768 F.3d at 854.[4]

[4] CUI spends eight pages of its Opposition arguing that the court should not apply the Three-Part Test. (Opp. at 9-17.) But the Ninth Circuit "ha[s] adopted this three-part test." *Ollier*, 768 F.3d at 854. CUI's arguments that the Three-Part Test is "a counterintuitive interpretation of the regulations," that *Chevron* and *Auer* deference do not apply, and that the court should "look no further than the plain meaning of Title IX and the Regulation to evaluate Plaintiffs' Title IX claims" or alternatively "apply the analysis for equal protection claims under Title VI of the Civil Rights Act of 1964," are arguments for the Ninth Circuit, not this court. (Opp. at 10-19.)

The heart of the dispute in this case concerns the first condition—substantial proportionality.[5] "In 1996, the Department of Education clarified that [courts'] analysis under the first prong of the Title IX 'effective accommodation' test—that is, [courts'] analysis of whether 'participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments,' 44 Fed.Reg. at 71,418—'begins with a determination of the number of participation opportunities afforded to male and female athletes'"—that is, the number of "actual athletes." *Ollier*, 768 F.3d at 855-56. "The second step of [courts'] analysis under the first prong of the three-prong test is to consider whether the number of participation opportunities—*i.e.,* athletes—is substantially proportionate to each sex's enrollment." *Id.* at 856.

To meet their burden to show that they are likely to succeed on the merits of their claim that CUI is not in compliance with Title IX, Plaintiffs submit a series of reports from proffered expert Donna Lopiano, Ph.D. (Dkts. 5-4, Ex. 1; 47-17 ("August 5 Lopiano Report"); Dkts. 15-1, Ex. 2; 47-20 ("August 17 Lopiano Report"); Dkt. 50-9 ("October 9 Lopiano Report"); Dkt. 59-6 ("October 21 Lopiano Report").) In the 31-page August 5 Lopiano Report, Dr. Lopiano examined each condition of the Three-Part Test and provided evidence supporting her opinion that CUI does not meet these conditions. (Aug. 5 Lopiano Rep. at 18-25.) Regarding condition one, whether "participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments," *see Ollier*, 768 F.3d at 854, Dr. Lopiano included a detailed table titled "CUI 2004-05 Through 2024-25 Computation of Variance from Exact Proportionality Expressed as Percentages and Number of Athletics Participants (Female Participation Gap)." (Aug. 5 Lopiano Rep. at 19, Table 2.) That table "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." (*Id.* at 20.) The later

[5] Plaintiffs submit evidence that CUI does not meet any condition of the Three-Part Test. (*See* Dkt. 47-17 at 18-25.) And CUI does not apply the second or third conditions to the facts of this case in their briefing or in their expert report. (*See generally* Opp.; Dkt. 49.)

Lopiano reports responded to enrollment numbers CUI provided that were different than the publicly-available numbers. Although Dr. Lopiano expressed concern regarding the accuracy of CUI's revised numbers, in each report she reached the same conclusion: that the female athlete participation gap would be larger than the size of the women's swimming & diving and tennis teams and therefore CUI was in violation of Title IX. (Aug. 17 Lopiano Rep. at 5, Ex. A (Revised Table 2) ("Based on the new data provided, 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 in 2025-26 would be 61, a gap much greater than the size of the women's swimming & diving and tennis teams"); Oct. 9 Lopiano Rep. at 7 ("I have not changed my opinion that there is and will be a female participation gap at CUI larger than the women's swimming & diving and tennis teams."); Oct. 21 Lopiano Rep. at 5 ("This new information on the estimated 25%/75% male/female composition of the enrollment reductions offered by CUI has not changed my opinion that the enrollment reduction is improper and there is and will be a female participation gap at CUI larger than the women's swimming & diving and tennis teams at least through 2026-27.").) The court finds that Dr. Lopiano's reports, which are detailed and based on publicly-available enrollment data CUI reported to the federal government, provide persuasive evidence that Plaintiffs are likely to succeed on their claim that CUI has been and continues to be violating Title IX.

The court turns to CUI's arguments in response. CUI contends that the publicly-available enrollment figures Plaintiffs used "included an entire program that CUI does not consider to be customary undergraduate students—its Accelerated Bachelor of Science in Nursing (ABSN) Program," and that not including ABSN students makes "the female participation gap [] half that about which Plaintiffs' complain—4%." (Opp. at 20-21.) CUI argues that ABSN students—which again, were included in the enrollment numbers CUI reported to the Department of Education through the Equity in Athletics Data Analysis Portal and Integrated Post Secondary Education Data System for at least the 2023-24 and 2024-25 school years—should actually not be considered in undergraduate enrollment numbers because the ABSN "program is not a traditional full-time undergraduate program," for reasons including that students must have over 65 credits to apply and "[a]pproximately 80% of ABSN program participants hold undergraduate degrees prior to starting the program." (D. Supp. at 2; Rosenthal Depo. at 32-36, 53.) The August 17 Lopiano Report noted that CUI did not provide

precise data about how many students are in the ABSN program, or how many of those students are female and male, and also explained Dr. Lopiano's position that those numbers may have been appropriately included in undergraduate enrollment numbers. (*See* Opp. at 21; Aug. 17 Lopiano Rep. at 7.) Dr. Lopiano again raised that issue in the October 9 Lopiano Report, stating: "I remain concerned that CUI is not providing the breakdown by sex of participants in the ABSN program, while claiming that they are 'almost all female.'" (Oct. 9 Lopiano Rep. at 3.) Nevertheless, CUI did not provide those numbers, for example in Opposition to the Motion.

For this and other reasons, Plaintiffs filed requests under Central District of California Local Rule 7-8 to cross-examine two individuals who submitted declarations in support of CUI's Opposition, CUI's Vice President of Athletics, Crystal Rosenthal, and CUI's proffered expert, Timothy J. O'Brien. (Dkts. 50-2, 50-3.) Observing that "the Rosenthal Declaration and O'Brien Declaration do not make clear the precise nature or source of CUI's proffered numbers, including with relation to the ABSN program and certain other changes CUI is making to team rosters," and finding that "the cross-examination Plaintiffs request would be helpful to the court's determination of whether Plaintiffs have made an adequate showing that they are likely to succeed on the merits on their claim that CUI is not in compliance with Title IX," the court granted Plaintiffs' request to cross-examine Rosenthal and O'Brien, and directed that the cross-examination be done by deposition under Local Rule 7-8. (Dkt. 55 at 6-7.) Plaintiffs conducted the depositions as ordered and lodged transcripts of the depositions of Rosenthal and O'Brien. (Dkt. 56 (Crystal Rosenthal Deposition Transcript, "Rosenthal Depo."); Dkt. 57 (Timothy O'Brien Deposition Transcript, "O'Brien Depo.").) Unfortunately, neither Rosenthal nor O'Brien had those numbers at deposition. (*See* P. Supp. at 5.) To date, then, CUI has never provided enrollment numbers for the ABSN program or a breakdown of how many of those enrolled are male and female, (*see id.*), even though CUI strenuously argues that not including ABSN students in their enrollment numbers brings them closer to compliance with Title IX. (*See, e.g.*, Opp. at 20-21.)

The court finds that CUI's arguments regarding the ABSN program do not undermine the court's finding that Plaintiffs have sufficiently demonstrated a likelihood of success on their Title IX claim. First, Plaintiffs have presented evidence that including the ABSN students in CUI's undergraduate enrollment calculation—which again, CUI chose to include in its publicly-

available enrollment data, which was reported to the federal government—appears consistent with the Department of Education's Integrated Postsecondary Education Data System ("IPEDS") instructions for reporting undergraduate enrollment. (Aug. 17 Lopiano Rep. at 6-7; *see also* Oct. 9 Lopiano Rep. at 3 (explaining that she believes not including ABSN students to be inappropriate based on "the National Center for Education Statistics (NCES), the Department of Education's annual IPEDS (Integrated Postsecondary Education Data System) instructions that CUI was required to follow in preparing the report, CUI's own description of its ABSN Program as a bachelor's degree program, and the fact that NCAA eligibility rules do not prevent graduate students who have not exhausted their five-year clock from participating once they earn their undergraduate degree, as CUI claims").) Indeed, the IPEDS reporting instructions, introduced as an exhibit during the Rosenthal Deposition, define "[u]ndergraduate student" as "[a] student who is taking courses at the baccalaureate or below the baccalaureate level. These students may or may not be enrolled in undergraduate programs." (Dkt. 56-11 at 29.) Rosenthal acknowledged that students enrolled in the ABSN program were taking 100 to 400 level courses in pursuit of a bachelor's degree, thereby seeming to meet this definition, and did not have information regarding why CUI's data governance department took the position that such numbers were not properly included in CUI's undergraduate enrollment calculation. (*See* Rosenthal Depo. at 74-76; *see* Dkt. 56-8 (ABSN degree requirements).) Accordingly, the court is not persuaded at this stage by CUI's contention that ABSN students were not properly included in enrollment numbers.[6]

In addition, the court finds Plaintiffs submit sufficient evidence to show at this stage of the proceedings that even taking ABSN students out of the undergraduate enrollment figures,

[6] Though not directly relevant to this substantial proportionality analysis, it is worth noting that CUI has recently taken steps to prohibit ABSN students from participating in athletics and other extracurricular activities at CUI. (P. Supp. at 6 (collecting citations to Rosenthal and O'Brien Depositions); 9-10 (arguing that "CUI's recent action serves primarily as disturbing proof that CUI will violate Title IX by depriving even more women of equal opportunities to participate if given the opportunity"); D. Supp. at 2-3 ("For over ten (10) years, the ABSN program at CUI has advised participants against extracurricular activities, a policy now memorialized in writing, due to the rigorous nature of the course and timeframe it is completed in.").)

CUI is still not in compliance with Title IX. (*See* P. Supp. at 7 ("Again assuming *arguendo* that the ABSN and the other unidentified students should be excluded from undergraduate enrollment, there is a substantial participation gap of 57 in existence for the current academic year.").) In the August 17 Lopiano Report, Dr. Lopiano opined with reference to evidence that even removing ABSN students from enrollment numbers, the female athlete participation gap would still "be 61, a gap much greater than the size of the women's swimming & diving and tennis teams." (August 17 Lopiano Report at 5, Ex. A (Revised Table 2).) Again, CUI has never provided the number of students in the ABSN program or how many are male and female, but Rosenthal testified at her deposition that of the "[a]pproximately 200" students in the program, "[a]pproximately 75 percent" were female. (Rosenthal Depo. at 32.) "This new information on the estimated 25%/75% male/female composition of the enrollment reductions offered by CUI has not changed [Dr. Lopiano's] opinion that the enrollment reduction is improper and there is and will be a female participation gap at CUI larger than the women's swimming & diving and tennis teams at least through 2026-27." (Oct. 21 Lopiano Rep. at 5.)

Aside from the ABSN students issue, the other main piece of evidence and argument CUI submits to rebut Plaintiffs' showing is the testimony of its expert, Timothy J. O'Brien. (Dkt. 49 (Corrected Declaration of Timothy J. O'Brien, "O'Brien Decl.").) O'Brien accepted and used the numbers in the Rosenthal Declaration—which did not include ABSN students and certain other students—without verification or other analysis. (O'Brien Decl. at 8 nn.6-7; *see* O'Brien Depo. at 21-22, 25.) Using these numbers, O'Brien determined that CUI was not in compliance with Title IX in the 2024-25 academic year (before the team eliminations that are the subject of this lawsuit), calculating a female athlete participation gap of 68 participation opportunities. (O'Brien Decl. ¶¶ 19-20.) Then, O'Brien factored in the team eliminations challenged in this lawsuit and other not-specifically-identified "slight changes that were made by the University to the participant numbers on the other teams," to calculate a female athlete participation gap for the 2025-26 academic year of 57 participation opportunities. (*Id.* ¶¶ 21-22.) Then, O'Brien considered the fact that CUI has announced elimination of the Men's Indoor Track & Field team for the 2026-27 school year. (*Id.* ¶ 23.) Applying that change to the numbers for the 2025-26 academic year (before the change takes effect), O'Brien stated that the participation gap became 11 participation opportunities. (*Id.* ¶ 24.) O'Brien also mentioned "the University intends to engage in other roster management efforts for the next academic year (2026-2027) as

a continuation of their plan for Title IX compliance under OCR's guidance," which would bring the participation gap down to 5 participation opportunities. (*Id.* ¶¶ 25-26.)

The court finds the O'Brien Declaration is also not sufficient to undermine the court's finding that Plaintiffs have adequately demonstrated that they are likely to succeed on the merits of their Title IX claim. At the most basic level, the O'Brien Declaration confirms that CUI has not been, and is not currently, in compliance with Title IX.[7] (*See* O'Brien Decl. ¶¶ 19-20.) Moreover, during O'Brien's deposition, O'Brien elaborated that in rendering his opinions, he used a methodology involving an *average* team size that is different from the *viable* team size standard the Ninth Circuit set forth in *Ollier*. (O'Brien Depo. at 32-36, 61.) Finally, the court finds the plan O'Brien describes for CUI to come into compliance with Title IX is too speculative—both in terms of whether it will occur and whether it will be successful in bringing CUI into compliance with Title IX[8]—to make relief unwarranted.

The court recognizes O'Brien's opinion that CUI has attempted to enact "a good faith approach and conscientious thought process around Title IX." (O'Brien Depo. at 59.) But the court finds that Plaintiffs have presented sufficient evidence at this stage of the proceedings to demonstrate that CUI's approach has failed, and that Plaintiffs are likely to succeed on the merits of their claim that CUI has not been, and is not currently, in compliance with Title IX.[9] *See Winter*, 555 U.S. at 20.

[7] It is also worth noting that O'Brien's analysis identified an error in the way CUI has been calculating the female athlete participation gap since at least 2016. (O'Brien Depo. at 16-18; Rosenthal Depo. at 100-01.)

[8] For example, Rosenthal testified that CUI's plan to come into compliance involves enrollment numbers without ABSN students, such that if the court found ABSN students were properly included in those numbers, the plan would need to be adjusted. (Rosenthal Depo. at 68-70.)

[9] The court notes that even if the requested preliminary injunction were considered mandatory, *see* Section III.A., *supra*, such that Plaintiffs were required to show "that the law and facts

2. Irreparable Harm

The court turns to the second factor, whether Plaintiffs are likely to suffer irreparable harm in the absence of preliminary relief. *See Winter*, 555 U.S. at 20. Plaintiffs maintain they "are being deprived of equal opportunities to participate in varsity athletics on the basis of their sex, a serious harm that prompted them to file suit"; "are being deprived of the chance to continue as student-athletes during the short time that opportunity would be available to them"; "are suffering a deterioration of their athletic skills and will not be able to train, practice, receive coaching, or compete if an injunction is not granted"; are experiencing harms to their "individual development," "mental and academic harms," and emotional distress; among other harms. (Mot. at 13-14, 23 (collecting citations to Plaintiffs' declarations).)

The court finds Plaintiffs adequately demonstrate irreparable harm. "Courts have consistently held that, given the fleeting nature of college athletics, plaintiffs will suffer irreparable harm by losing the opportunity to participate in their sport of choice on a continuous and uninterrupted basis." *Navarro v. Fla. Inst. of Tech., Inc.*, 2023 WL 2078264, at *6 (M.D. Fla. Feb. 17, 2023) (collecting cases); *Biediger v. Quinnipiac Univ.*, 616 F. Supp. 2d 277, 291 (D. Conn. 2009) (same). Similarly, when plaintiffs make an adequate showing regarding their likelihood of success on the merits, "courts have found that the elimination of a women's team" and "Plaintiffs' expectation that they may be treated unequally in violation of Title IX's terms qualifies as an injury that is irreparable." *Mayerova v. E. Michigan Univ.*, 346 F. Supp. 3d 983, 997 (E.D. Mich. 2018) (collecting cases); *Ohlensehlen*, 509 F. Supp. 3d at 1103 (citation modified).

Courts have also credited the other forms of irreparable harm Plaintiffs describe.[10] *See, e.g.*, *Cohen v. Brown Univ.*, 991 F.2d 888, 904 (1st Cir. 1993) (recognizing that irreparable

clearly favor [their] position, not simply that [they are] likely to succeed," the court would find based on the present record that Plaintiffs meet that higher burden. *Garcia*, 786 F.3d at 740.

[10] And as Plaintiffs point out, CUI recognized the difficulty termination of the teams might cause; in Rosenthal's email to affected students the day of the announcement, she wrote, "We

harm from cancelled programs may include "competitive posture, recruitment, and loss of coaching"); *Stanley*, 13 F.3d at 1324 n.5 (finding "legal support for the [district] court's conclusion" that "[t]he allegations of intentional sex discrimination, prospective loss of reputation, business opportunity, and serious emotional distress, the court reasoned, could not be remedied by money damages"); *Favia v. Indiana Univ. of Pennsylvania*, 812 F. Supp. 578, 583 (W.D. Pa.), *aff'd*, 7 F.3d 332 (3d Cir. 1993) ("By cutting the women's gymnastics and field hockey teams, IUP has denied plaintiffs the benefits to women athletes who compete interscholastically: they develop skill, self-confidence, learn team cohesion and a sense of accomplishment, increase their physical and mental well-being, and develop a lifelong healthy attitude. The opportunity to compete in undergraduate interscholastic athletics vanishes quickly, but the benefits do not. We believe that the harm emanating from lost opportunities for the plaintiffs are likely to be irreparable."); *Choike v. Slippery Rock Univ. of Pennsylvania of State Sys. of Higher Educ.*, 2006 WL 2060576, at *9 (W.D. Pa. July 21, 2006) ("[B]y cutting the women's water polo and swim teams, SRU has denied the Student Plaintiffs the benefits accorded to women athletes who compete interscholastically: they develop skill, self-confidence, learn team cohesion and sense of accomplishment, increase their physical and mental well-being, and develop a lifelong healthy attitude. The harm emanating from lost opportunities for the Student Plaintiffs is irreparable."); *Ohlensehlen*, 509 F. Supp. 3d at 1102 ("Stated plainly, the harm to Plaintiffs should Defendants be allowed to eliminate the women's and diving team before a full trial is held is not only irreparable—it is existential.").

CUI argues that "courts have found irreparable harm lacking where athletes maintain their scholarships or are permitted to transfer." (Opp. at 22 (citing *Equity in Athletics v. U.S. Dept. of Educ.*, 291 Fed. Appx. 517 (4th Cir. 2008); *Miller v. Univ. of Cincinnati*, 2007 WL 2783674 (S.D. Ohio Sept 21, 2007); and *Gonyo v. Drake Univ.*, 837 F.Supp. 989 (S.D. Iowa 1993)).) Some courts have indeed found this. But the court disagrees with their reasoning and does not find that Plaintiffs' ability to maintain their scholarships or transfer undermines the irreparable harm they would experience absent an injunction. Participation in college sports is

understand this news can be incredibly upsetting. Our counseling services are available to support you emotionally and mentally," and included instructions to schedule an appointment. (Reply at 18; Dkt. 47-15 at 3.)

not a fungible good that Plaintiffs can simply substitute on a whim. To begin, "[t]he interruption in competition and the need to break into new programs with new coaches and established rosters will necessarily stunt the plaintiffs' development as [swim & dive athletes and tennis] players at the highest level of amateur competition." *Biediger*, 616 F. Supp. 2d at 292; *Ohlensehlen*, 509 F. Supp. 3d at 1102 (reasoning similarly and citing *Biediger*). "Moreover, to transfer Plaintiffs must leave behind the professors, friends, and campuses they are familiar with to start all over again," causing "emotional harm." *Ohlensehlen*, 509 F. Supp. 3d at 1102. Indeed, as Plaintiffs point out in reply, CUI mentions several times in its papers that CUI "is a religious institution with specific values and whose coaches serve both educational and ministerial functions"—a quality some Plaintiffs valued in choosing CUI and which not all institutions share. (Reply at 17.) In short, "[t]he Hobson's choice callously presented by [CUI] is cold comfort to students like Plaintiffs who have poured much of their lives into swimming and diving [and tennis] and have loyally chosen to call [CUI] their collegiate home." *Ohlensehlen*, 509 F. Supp. 3d at 1103.

Gonyo, one of the cases CUI cites for the proposition that the ability to maintain scholarships or transfer undermines irreparable harm, reasoned that irreparable harm was not present because "Plaintiffs' desire to complete their college education and intercollegiate wrestling at Drake, the school of their choice, is understandable, but Title IX does not establish a right to participate in any particular sport in one's college and there is no constitutional right to participate in intercollegiate or high school athletics." 837 F. Supp. at 994; *see* Opp. at 21 (citing other authority to downplay Plaintiffs' argument "that they will be denied the intangible benefits of intercollegiate competition" because "there is no constitutional right to participate in collegiate athletics"). Indeed, there is no such right. But just because Plaintiffs do not have a constitutional or statutory *right* to participate in CUI sports does not mean Plaintiffs are not irreparably harmed when their ability to do so is taken away; irreparable harm is about whether the harm can be compensated with money damages, and "the harm the plaintiffs will suffer is not primarily monetary, so the continuation of their scholarships cannot cure or prevent it." *Biediger*, 616 F. Supp. 2d at 292; *see id.* (discussing *Gonyo* and similar cases, "I believe that those cases give insufficient consideration to the unique circumstances college athletes face, making short shrift of the brief time-span in which they are permitted to compete and failing to consider the loss that even a year of competition would have on the skills and competitiveness

of elite Division I athletes such as the student plaintiffs in this case."); *Ohlensehlen*, 509 F. Supp. 3d at 1103 (describing this reasoning from *Biediger* and agreeing with it); *see id.* at 1102-03 ("Of course, Plaintiffs can take the money and quit competitive swimming and diving altogether. Such a choice, however, would require Plaintiffs to give up a sport that has been a defining part of their identity since their early childhood. For many, the grit and confidence and determination gained through athletic competition helps them excel academically; removing that from their experience is likely to have negative consequences on their education and development as young women. *It makes sense, then, that for Plaintiffs, this is not about the money at all.*") (emphasis added).

Miller, another case CUI cites on this point, reasoned that there was an insufficient showing of irreparable harm because the female rower plaintiffs were so impressive that, with the university's commitment to continue their scholarships and release them under NCAA rules, "it seems unlikely that any of the disciplined, competitively and academically successful women in this program would have difficulty finding a place in the rowing program of another college which offers comparable academic programs to the University of Cincinnati." 2007 WL 2783674, at *11. But the court finds this analysis ignores, among other nuance, the practical reality of how difficult transfer would be under the circumstances present here and the losses Plaintiffs would sustain even if they transferred, including reasons Plaintiffs chose CUI. For example, with the announcement coming at the end of the academic year, most roster spots and scholarship money for the following season were already allocated. (*See, e.g.*, Grant Decl. ¶ 13; Reply at 17-18); *see Biediger*, 616 F. Supp. 2d at 291 ("The decision to eliminate the team at the end of the year limits their chances of transferring to another school for the 2009–2010 academic year, requires them to sit out a season of competitive volleyball, and negatively affects their skills and marketability in the Division I volleyball recruiting market. The fact that the student plaintiffs have the ability to transfer to other Division I schools after next year and that Quinnipiac has agreed to honor their scholarships despite the volleyball team's elimination does not protect the plaintiffs from irreparable harm."). Indeed, the email Rosenthal sent to affected athletes the day the programs were cut recognized that the usual transfer window had closed by emphasizing that Plaintiffs could be recruited under a "discontinued sport exception." (Dkt. 47-15 at 2.) Moreover, Plaintiffs describe losses they would suffer even if they were able to transfer, including the opportunity to swim for CUI with their teammates and maintain credit

for certain religious classes taken at CUI. (*See, e.g.*, Grant Decl. ¶¶ 14, 18 ("I would prefer to continue swimming competitively on the swimming & diving team at the school I love, because I have given so much of my time, effort, sweat, and tears to this sport at CUI. . . I love this team so much. It felt like a family and helped me to adjust easily to college. I feel as though my friends and family are being taken away from me. . . . Also, CUI has very specific core classes for our general education and most of my academic credits would not transfer if I changed school."); Dkt. 5-7 (Bear Declaration) ¶ 11 ("I will be a senior and I am working to get my teaching credential this year, so transferring is not an option for me. . . Also, CUI is a Lutheran university and many of the core classes have either a religious focus or aspect to them. These credits will not transfer to most schools."); *id.* ¶ 16 ("It also breaks my heart because my tennis team is like my family. I now feel as though our family is being ripped apart.").)

Finally, in each of the cases CUI cites to support its contention that Plaintiffs fail to show irreparable harm because they can maintain their scholarships or transfer, "the court found that the plaintiffs were unlikely to succeed on the merits of their Title IX claim. The calculus is different when, as in this case, the plaintiffs have demonstrated that their right to be free from discrimination under Title IX has likely been violated. Indeed, there is a presumption of an irreparable injury when a plaintiff has shown a violation of a civil rights statute." *Mayerova*, 346 F. Supp. 3d at 997; *see, e.g.*, *Gonyo*, 837 F. Supp. at 994 ("Academic freedom, of course, does not immunize defendants from civil liability, including injunctive relief, for any violations of the law, but courts should be very cautious about overriding, even temporarily, a school's decisions in these areas, *especially absent a showing that plaintiffs are likely to ultimately prevail*.") (emphasis added).

"For these reasons, the court determines that Plaintiffs have established irreparable harm. This conclusion is not altered by Defendants' argument regarding delay." *Mayerova*, 346 F. Supp. 3d at 998; (Opp. at 19-20 (arguing that the delay indicates an absence of irreparable harm and causes harm to CUI in implementing the injunction); D. Supp. at 8-9 ("The record demonstrates that reinstatement poses a substantial and undue burden on CUI. This burden has been increased by Plaintiffs' delay in waiting to seek judicial intervention until the beginning of this school year.")). CUI announced the decision to cut the swim & dive and tennis programs on May 20, 2025. After attempting to resolve the matter short of litigation and conducting

thorough investigation, Plaintiffs filed their Complaint and TRO application on August 13, 2025. (Dkts. 1, 5.) After the court denied the TRO application, Plaintiffs filed this Motion on September 23, 2025. "Under the circumstances, the court does not find this relatively short delay to be unreasonable or to undercut Plaintiffs' showing of irreparable harm." *Mayerova*, 346 F. Supp. 3d at 998.

Accordingly, the court finds Plaintiffs have adequately demonstrated they are likely to suffer irreparable harm in the absence of preliminary relief. *See Winter*, 555 U.S. at 20.

3. Balance of the Equities

Before issuing preliminary injunctive relief, courts "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Winter*, 555 U.S. at 24. The court has just described the irreparable injury Plaintiffs have shown they will suffer if the court does not grant preliminary injunctive relief.

The court also recognizes that "[o]n the other side of the scale," there is not insignificant "harm to [CUI] of not having control over which athletic programs it offer[s] and the administrative difficulty and the cost to [CUI] of having to reinstate the eliminated programs," especially when the elimination occurred months ago and some former team members have transferred, coaches are no longer employed, practice facilities have not been reserved, and competitions have not been scheduled. *Equity in Athletics, Inc.*, 291 F. App'x at 521-22 (where program cuts publicized on September 29, 2006, and before the motion for a preliminary injunction was filed on June 15, 2007, "coaches had already been terminated, competitions had been cancelled, and $350,000 in funding had been reallocated to other athletic programs"); *see also Stanley*, 13 F.3d at 1325 (recognizing that "[t]he district court drew a logical inference of hardship from" evidence that "[t]he summer months are critical for recruiting of student athletes," and "it is essential that the head coach be in place by the time the students arrive for the Fall term . . . because the coach is responsible for providing general supervision of and counselling to the student athletes in their academic and personal lives" and "practices commence soon after the Fall term begins in preparation for pre-season games")). According to CUI, "[r]equiring CUI to reinstate the women's swim and dive and tennis teams would result in

a financial expense of approximately $1.8 million annually." (Rosenthal Decl. ¶ 25; *see* Opp. at 22 ("[F]inancial harm to CUI is relevant and the imposition of a preliminary injunction would result in significant financial harm.").) "The court recognizes this financial burden, as the cost to reinstate the teams is not insignificant." *Mayerova*, 346 F. Supp. 3d at 998; (*cf.* Opp. at 23 ("This financial burden cannot be overlooked no matter how ardently Plaintiffs try to minimize it.")). Put differently, the balance of harms is certainly not "one-sided." *Equity in Athletics, Inc.*, 291 F. App'x at 521.

Nevertheless, "the court finds that the financial burden on [CUI] is outweighed by the harm to Plaintiffs if the teams are not reinstated. Indeed, financial hardship is not a defense to a Title IX violation." *Mayerova*, 346 F. Supp. 3d at 998; *see Ohlensehlen*, 509 F. Supp. 3d at 1104 ("[A]s [Plaintiffs] have made a fair chance of showing, [the university's] decision [to cut the swimming and diving team] is likely to continue a trend of gender inequality in intercollegiate athletics at the University of Iowa. By contrast, the administrative burden of reprogramming the University's athletics department to comply with Title IX dictates serves an admirable purpose at a much lower cost."); *Choike*, 2006 WL 2060576, at *9 ("In [] finding . . . . SRU's arguments that it would suffer substantial harm if injunctive relief is granted to be unpersuasive . . . , I do not mean to minimize SRU's valid concern of judicial interference with its independence in deciding how to allocate its limited financial resources."); *Navarro*, 2023 WL 2078264, at *8 ("[T]he harm associated with a Title IX violation is serious and financial concerns alone cannot justify gender discrimination."). "Although it is mindful of and sympathetic to [CUI's] need to cut costs, the court concludes that the balance of equities favors Plaintiffs." *Mayerova*, 346 F. Supp. 3d at 998; *see also Navarro*, 2023 WL 2078264, at *8 ("In short, the balance of harm favors Plaintiffs."); *Choike*, 2006 WL 2060576, at *10 ("[T]he harm to SRU in maintaining these programs for the 2006-2007 academic year (estimated at approximately $65,000.00) is minimal as compared to the harm Student Plaintiffs would suffer if injunctive relief is denied."); *Ohlensehlen*, 509 F. Supp. 3d at 1104 ("The University faces budgetary setbacks, to be sure; but those setbacks do not outweigh the harm to Plaintiffs have shown after demonstrating a fair chance their rights under Title IX have been infringed.").

4. Public Interest

Finally, in considering motions for preliminary injunction, courts "pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Winter*, 555 U.S. at 24. There is no question that there is a strong public interest in safeguarding the guarantees of Title IX. *See Navarro*, 2023 WL 2078264, at *8 ("The public has a compelling interest in eradicating gender discrimination and promoting compliance with Title IX."); *Barrett v. W. Chester Univ. of Pennsylvania of State Sys. of Higher Educ.*, 2003 WL 22803477, at *15 (E.D. Pa. Nov. 12, 2003) ("Promoting compliance with Title IX serves the public interest.").

It is true that the public interest also favors CUI's "ability to chart its own course in providing athletic opportunities without judicial interference or oversight, absent a clear showing that it is in violation of the law." *Equity in Athletics, Inc.*, 291 F. App'x at 524. However, as described in the preceding sections, Plaintiffs have adequately demonstrated that they are likely to succeed on their claim that CUI is violating Title IX, that they are likely to suffer irreparable harm absent preliminary relief, and the balance of the equities tips in their favor. *See Mayerova*, 346 F. Supp. 3d at 999 ("The court acknowledges that the public interest is generally served by allowing public universities to determine how to allocate financial resources, but, as stated above, there is a clear showing that Defendants are in violation of Title IX."). "Especially because Plaintiffs established a likelihood of succeeding on the merits of their Title IX claim," the court finds "the public's interest weighs in favor of a preliminary injunction." *Navarro*, 2023 WL 2078264, at *8; *see Ohlensehlen*, 509 F. Supp. 3d at, 1105 ("Especially considering that Plaintiffs have established a fair chance of succeeding on the merits of their Title IX complaint for equal participation in intercollegiate athletics, the public interest weighs in favor of a preliminary injunction."); *Barrett*, 2003 WL 22803477, at *15 ("Defendants contend that the public interest is served by allowing WCU, a public university, the financial autonomy to decide both which intercollegiate sports best meet the needs and interests of its own students, and how to allocate resources during a difficult economic time. We do not disagree. However, the public interest demands that WCU comply with federal law and in this instance that means compliance with Title IX."); *Favia*, 812 F. Supp. at 585 ("In summary, the women plaintiffs merely seek what the law requires, equal athletic opportunities. We understand the fiscal constraints placed on IUP's Athletic Department, but new monies or

reallocation of funds to reinstate these teams is the least the Athletic Department can do in light of its legal violations."); *Choike*, 2006 WL 2060576, at *10 ("For these reasons, I find that the public interest is best served by ensuring compliance with Title IX.").[11]

C. The Appropriate Remedy

In summary, the court finds Plaintiffs have adequately demonstrated that they are likely to succeed on the merits of their claim that CUI is violating Title IX; that they are likely to suffer irreparable harm if the court does not issue preliminary injunctive relief; that the balance of harms tips in Plaintiffs' favor; and that the public interest is best served by issuing a preliminary injunction. The court has spent significant time considering the appropriate preliminary injunction to issue based on these findings. In particular, the court has struggled with the fact that if Plaintiffs win this case, a final judgment would give CUI discretion in how to come into compliance with Title IX, yet in the short term Plaintiffs seek reinstatement of particular teams that CUI has already disbanded, which CUI would not necessarily have to reinstate to comply with Title IX, and where reinstatement alone would not cure the alleged Title IX violations. The court referenced aspects of this struggle in denying Plaintiffs' TRO application when the court noted that it was "not persuaded based on the record before it on this expedited timeline that the particular relief Plaintiffs seek—reinstating the women's swim &

[11] *See also Gonyo*, 837 F. Supp. at 996 ("If the public interest weighs on one side of the scales or the other in this case, I believe it weighs in favor of permitting colleges and universities to chart their own course in providing athletic opportunities without judicial interference or oversight, *absent a clear showing that they are in violation of the law*.") (emphasis added); *Miller*, 2007 WL 2783674, at *11 ("An injunction would interfere with the University's ability to manage its own athletic program, but not for an extended period of time, since trial is set for early next year."); *Stanley*, 13 F.3d at 1325 (noting that the argument "that the strong public interest in preventing intentional sex discrimination and discriminatory employment practices weighs in favor of granting the preliminary injunction . . . would be quite persuasive had [Coach] Stanley come forward with some evidence that her termination was the result of sex discrimination and that she was reasonably likely to prevail on the merits of her discrimination claim") (alteration in original).

dive and tennis programs—is appropriate." (Dkt. 34 at 5.) In support of that statement, the court cited *Cohen v. Brown University*, in which the First Circuit stated, "The district court has noted, we believe appropriately, that if it ultimately finds Brown's athletic program to violate Title IX, it will initially require the University to propose a compliance plan rather than mandate the creation or deletion of particular athletic teams." 991 F.2d at 906. CUI seized on this language in Opposition, arguing that reinstatement is not appropriate because "if CUI is found to be noncompliant it retains the choice of remedy." (Opp. at 23-24 (heading).)

A fuller description of *Cohen*'s analysis is now warranted. The district court in *Cohen* issued "a preliminary injunction ordering Brown to reinstate its women's gymnastics and volleyball programs to full intercollegiate varsity status pending the resolution of a Title IX claim." 991 F.2d at 891. The First Circuit affirmed that decision. The First Circuit noted Brown's argument "that such specific relief is inappropriate because it intrudes on Brown's discretion." *Id.* at 906. It even found that "[t]he point has some cogency," as "[w]e are a society that cherishes academic freedom and recognizes that universities deserve great leeway in their operations" and "Title IX does not require institutions to fund any particular number or type of athletic opportunities—only that they provide those opportunities in a nondiscriminatory fashion if they wish to receive federal funds." *Id.* However, the First Circuit ultimately recognized that "the district court has broad discretionary power to take provisional steps restoring the status quo pending the conclusion of a trial." *Id.* And it determined that "requiring Brown to maintain the women's volleyball and gymnastics teams in varsity status for the time being [was] a remedial choice within the district court's discretion." *Id.* The First Circuit reached this conclusion even acknowledging that it was not necessarily true "that the same remedy will be suitable at trial's end if the Title IX charges prove out against Brown." *Id.* On that point, the First Circuit approved the district court's note "that if it ultimately finds Brown's athletic program to violate Title IX, it will initially require the University to propose a compliance plan rather than mandate the creation or deletion of particular athletic teams." *Id.* In short, *Cohen* reaffirms a district court's discretion to issue interim preliminary injunctive relief that temporarily conflicts with a university's discretion to decide how to come into compliance with Title IX.

After thoroughly reviewing the caselaw cited by both sides, the court is persuaded that the weight of authority supports the court issuing a preliminary injunction that directs CUI to reinstate the relevant teams pending trial. Indeed, as the court now describes in more detail, courts balancing similar difficulties, including situations where teams have already been disbanded, still issue preliminary injunctions. And the cases where courts decline to issue preliminary injunctions do so because they find the *Winter* factors inadequately established; courts do not determine that plaintiffs are likely to show an institution is violating Title IX but then decline to issue a remedy because the institution has discretion in how to fix the violation—and indeed, doing so would make little sense.

Take *Mayerova* for example. 346 F. Supp. 3d 983. In that case, as in this case, the university argued "that a preliminary injunction is disfavored here because the softball and tennis teams have already been eliminated and plaintiffs seek to modify the status quo rather than preserve it." *Id.* at 999. The court stated that it had "closely scrutinized Plaintiffs' request and has recognized the burden on [the university's] budget and autonomy, but has nonetheless determined that a careful balancing of the preliminary injunction factors favors granting Plaintiffs' requested relief." *Id.* In making this determination, the court cited the *Cohen* district court's statement that reinstatement "is the only effective tool available to this Court to prevent irreparable harm." *Id.* (citing *Cohen v. Brown Univ.*, 809 F. Supp. 978, 1000 (D.R.I. 1992), *aff'd,* 991 F.2d 888 (1st Cir. 1993)).

Navarro reasoned similarly, explaining that "the award of individual relief to private litigants who have brought their own suit is not only sensible but is also fully consistent with—and in some cases even necessary to—the orderly enforcement of Title IX." 2023 WL 2078264, at *9 (citation modified). While recognizing the university's argument regarding its discretion in how to comply with Title IX, the court decided that because the university's "violation of Title IX in these circumstances has resulted in particularized irreparable harm to these specific Plaintiffs, [] the Court exercises its broad discretion to "protect against irreparable injury and preserve the status quo until the Court renders a meaningful decision on the merits." *Id.* (citation modified).

Likewise, an Iowa district court issued a preliminary injunction requiring reinstatement of a swim and dive team even when, following the announcement of the team's elimination, "several of its coaches ha[d] left the school, and 15 of its 35 members ha[d] put in to transfer and swim elsewhere." *Ohlensehlen*, 509 F. Supp. 3d at 1102. The court noted that "[c]ivil cases ordinarily take many months—more often than not, years—to reach final judgment in federal court," so if the university were "not enjoined from eliminating the team in the interim, there will not be a team to reinstate for many years." *Id.* It further recognized that "[a]lready, the team will suffer years of setback as recruiting efforts have ground to a halt. With one coach to assist the team for the remainder of this season, the current women on the team stand in a far less favorable position to train and prepare for major meets that are the peak of their athletic careers. Indeed, the damage to the women's swimming and diving team is already being felt." *Id.* None of these concerns prevented the court from issuing preliminary injunctive relief.

Nor in *Choike*, where the court ordered that the university was "preliminarily enjoined from eliminating the women's varsity swimming and the women's varsity water polo teams for the 2006-2007 academic year," and "[t]o the extent that those teams have been eliminated, [the university] should reinstate them, provide the teams with funding, staffing and all other benefits commensurate with their status as intercollegiate teams." 2006 WL 2060576, at *10.

Accordingly, the court will order CUI to reinstate the swim & dive and tennis programs pending resolution of this case. CUI has repeatedly represented that reinstating the teams would be "impossible." (Opp. at 1, 4, 20; *see* D. Supp. at 8-9 (describing the "burden" of reinstating the teams at this stage).) According to CUI, "[m]ultiple factors make fielding these teams in 2025-26 impossible," including that "[r]ecruiting new team members would be nearly impossible to do in the midst of the semester" such that "it is speculative that there would be sufficient participants to fill the roster and compete"; "it is likely not possible to find competitions for these teams"; getting coaches would be difficult because coaches need not only "the experience and training to coach athletes of Division II caliber, but also must align with the school's religious mission." (Rosenthal Decl. ¶¶ 16-30.) But Plaintiffs provide persuasive evidence that reinstating the teams is not necessarily impossible, and that the 2025-26 season could be salvageable for both sports. Tennis, for example, is a spring sport; there are tennis courts on CUI's campus; and last season's tennis coaches are graduate students still enrolled

and another former tennis coach is still a professor at CUI; and Plaintiffs have also investigated pool availability and other factors regarding the feasibility of reinstating swim & dive. (*See* Mot. at 14-15; Reply at 14-16; *see generally* Dkt. 47-4 (Declaration of David Mullins); Dkt. 47-6 (Declaration of Carissa Ward) ¶¶ 5-14; Dkt. 50-4 (Supplemental Johnson Decl.) ¶¶ 5-7; Dkt. 50-5 (Declaration of Arthur H. Bryant) ¶¶ 3-4, Exs. 1-2; Dkt. 50-6 (CUI Facebook post from November 12, 2024, stating, "NCAA DII school Concordia University Irvine in California (located 40 minutes from LA) is looking for one more last minute addition to the WOMEN'S tennis roster for this upcoming SPRING. Great scholarships available for 8-9 UTR players with a good GPA."); Rosenthal Depo. at 133-46.)

The court emphasizes that just because the court now orders CUI to reinstate the swim & dive and tennis teams does not mean that CUI must sponsor these teams in the long term. *See Barrett*, 2003 WL 22803477, at *16 ("I do not mean to suggest that SRU must renovate the Morrow Field House pool or even that SRU must sponsor women's varsity swimming and women's varsity water polo into the distant future."). If before trial CUI presents evidence that cutting men's indoor track and field, adding women's lacrosse, or other roster management efforts O'Brien references bring CUI into current compliance with Title IX, then the court may revisit this Order and CUI may be entitled to eliminate the women's swim & dive and tennis programs. *See, e.g.*, *id.* ("If going forward, SRU can demonstrate that the roster management approach actually works, and that the allocation of athletic participation opportunities to its female students is meaningful, then SRU may be entitled to eliminate the programs at issue."); *Choike*, 2006 WL 2060576, at *10 (issuing preliminary injunction requiring team reinstatement but noting "that should SRU be able to demonstrate that its roster management approach to Title IX compliance has actually succeeded, I will consider a modification of this Order"); (D. Supp. at 4 ("CUI is in the process of changes to the Athletic Department to decrease the overall percentage of its undergraduate student body that is made up of athletes. Rosenthal Dep. 18:7-18. This endeavor over the past ten years has involved addition of women's teams, lowering men's rosters and will bring the department within 1% proportionality of its undergraduate full-time enrollment figures in the next ten (10) months.")). Unless and until that happens, the court determines that the appropriate course is to order reinstatement of the teams pending resolution of this case.

D. Bond

"The court may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). However, "Rule 65(c) invests the district court with discretion as to the amount of security required, if any." *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003).

"Plaintiffs request that the Court exercise its discretion to require no security at all." (Mot. at 26.) CUI does not address the bond or security requirement. (*See generally* Opp.; D. Supp.) "Because this lawsuit is a form of public interest litigation, the Court will exercise discretion in this case and elect to require no security at all." *Navarro*, 2023 WL 2078264, at *8; *see also Biediger*, 616 F. Supp. 2d at 298 ("This injunction shall issue without bond."). *But see Ohlensehlen*, 509 F. Supp. 3d at 1106 ("After considering the costs anticipated by Defendants and the harm suffered by Plaintiffs, the Court finds $360,000 to be a reasonable figure for security. Plaintiffs are welcome to request the Court to reconsider the amount of security at a later date. For now, Plaintiffs shall post bond in the amount of $360,000 within 14 days of the date of this Order.").

IV. Disposition

For the foregoing reasons, the Motion is **GRANTED**.

The court **ORDERS** that CUI is **PRELIMINARILY ENJOINED** from eliminating its women's swimming & diving team, its women's tennis team, and all other women's varsity teams at CUI for the 2025-26 academic year, and for the duration of this case or until further order of this court. To the extent that those teams have already been eliminated, CUI shall immediately reinstate them, and provide the teams with funding, staffing, and all other benefits commensurate with their status as varsity intercollegiate teams. *See Navarro*, 2023 WL 2078264, at *9; *Choike*, 2006 WL 2060576, at *10; *Ohlensehlen*, 509 F. Supp. 3d at 1106.