

THOUGHTFUL COUNSEL

Education  
& Sports  
Law Group

# **Title IX: Gender Equity in Athletics**

## **Annual Training for Campbell High School**

**December 2023 & January 2024**

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# Agenda

- Settlement Agreement & Role of Independent Evaluator
  - ✓ Conduct annual training re: gender equity in athletics
  - ✓ Conduct annual gender equity review and report out
  - ✓ Conduct interest and ability survey in partnership with Campbell High
  - ✓ Meet with interested students/parents re: interests and abilities
- Gender equity analysis under Title IX
  - ✓ Participation Opportunities
  - ✓ Treatment Areas
  - ✓ Other considerations
- Questions and Answers

# Settlement Agreement & Role of Independent Evaluator

- Settlement Agreement
  - ✓ Focus on Campbell High School
  - ✓ OIA and other schools
- Independent Evaluator Background
  - ✓ Former Civil Rights Attorney at U.S. Department of Education, Office for Civil Rights
  - ✓ Harvard's Graduate School of Education (K-12 Education Law & Higher Education Law)
  - ✓ Consult with institutions to ensure compliance with federal law
- Next Steps
  - ✓ Data collection
  - ✓ Facility review
  - ✓ Coaches receive survey and are interviewed
  - ✓ Interest and ability survey

# Title IX of the Education Amendments

- 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
- Campbell High receives federal financial assistance = Title IX applies

# Title IX Participation Equity

**Compliance with any one of the following three participation tests:**

**Prong 1:  
Substantial  
Proportionality**

**OR**

**Prong 2:  
History and  
Practice of  
Program  
Expansion**

**OR**

**Prong 3: Full  
and Effective  
Accommodation  
of Interest and  
Ability**

# Athletic Participation

## Which participation opportunities count for Title IX purposes?

- Interscholastic opportunities
- Listed on the eligibility or squad lists maintained for each sport
- Receiving institutionally-sponsored support; *e.g.*, coaching, equipment
- Participating in organized practice sessions and team activities
- On the team as of date of first competition, plus those added after the first date and during the competitive season (case-by-case analysis)
- KEY: look at several criteria to assess participation

## What about multi-sport athletes?

- Multisport athletes can be multi-counted for participation equity purposes, *e.g.*, a cross country, indoor track and outdoor track athlete could count 3 times

**OPPORTUNITIES MUST BE ACTUAL PARTICIPATION OPPORTNUTIES**

# Prong 1: Substantial Proportionality

**Are the male/female interscholastic athlete participation percentages substantially proportional to the full-time male/female enrollment percentages?**

- Ultimate standard is whether the disparity equates to enough athletes that could create a “viable team” ...but what does that mean?
- Consider average squad size of sports currently offered for the underrepresented sex

## **Effective roster management**

- Real athletic opportunities; no shadow opportunities
- Athletic program/coach buy in (cannot exceed ideal squad size of underrepresented gender, e.g., girls’ team coaches)

## Prong 2: Program Expansion

Not an option for Campbell High School, but this portion of the law asks whether a school can demonstrate a:

**History of program expansion for underrepresented sex**



**Current practice of expansion responsive to interest and abilities**

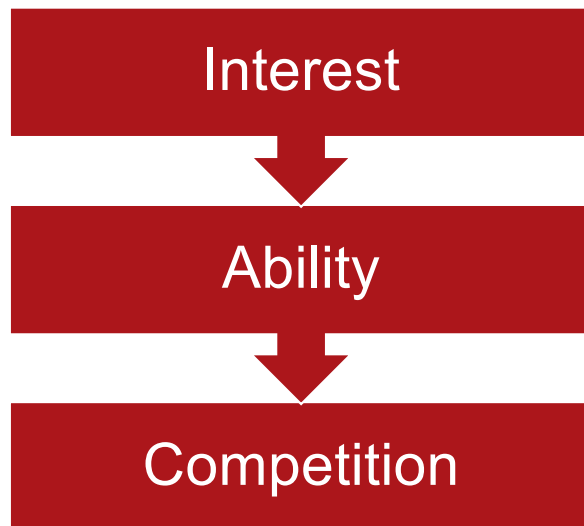
Key questions:

- Have any programs been eliminated or suspended?
- When teams added for the underrepresented sex, were teams also added for the overrepresented sex?



## Prong 3: Accommodating Interest & Abilities

Does the current program effectively accommodate the athletic interests and ability of the underrepresented sex?



**If there is interest and ability in a sport for which there is a reasonable expectation of competition, a school may not rely on Prong 3 to comply with this aspect of Title IX.**

# Approach

In determining whether an institution has unmet interest and ability to support a team, these factors become important:

- Whether the institution uses nondiscriminatory methods of assessment when determining the athletic interests and abilities of its students
  - ✓ Are there multiple indicators of interest?
  - ✓ What is the frequency of assessments?
  - ✓ Has the school determined if there is a reasonable expectation of competition?
- Whether viable teams for the underrepresented sex were recently eliminated
- Whether there are effective procedures for evaluating requests to add teams and assess participation
- Whether there exists vibrant club sport participation by members of the underrepresented sex in a sport not currently offered at the varsity level
- Conducting a survey to assess students' interests and abilities

## It's Not Just the Survey . . .

- Additional Factors to Consider:
  - ✓ Requests by students to add a sport
  - ✓ Participation rates in club or intramural sports and requests to elevate the sports to intercollegiate participation (and whether that is feasible)
  - ✓ Interviews with students, coaches, administrators, and others
  - ✓ Participation rates in regional feeder schools and community sports leagues
  - ✓ Participation in interscholastic sports in normal competitive regions/leagues, e.g., are you the one institution that does not compete in X sport?
- “While these indications of interest may be helpful 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.”

# Treatment Areas (“Laundry List”)

## **Locker Rooms, Practice & Competitive Facilities**

- Quality and availability of facilities
- Exclusivity of use of facilities
- Availability of locker rooms
- Quality of locker rooms
- Maintenance of facilities
- Preparation of facilities

## **Equipment & Supplies**

- Quality, maintenance, suitability
- Amount and availability

## **Scheduling of Games & Practices**

- Number of competitive events
- Number and length of practices
- Time of day for competition and practices
- Pre-season and post-season competition

## **Travel & Per Diem**

- Modes of travel
- Housing and meals while traveling
- Length of stay
- Per diem

# Treatment Areas (“Laundry List”), cont.

## **Coaching (and Tutors)**

- Full-time v. part-time
- Number of coaches, roles
- Training/experience
- Duration of contracts
- Conditions of contract renewal
- Nature of coaching duties
- Working conditions and benefits

## **Housing & Dining**

- Provided outside of travel?
- Snacks made available?

## **Recruitment**

- Opportunities to recruit
- Resources made available
- Limiting effect on recruitment?

## **Medical & Training Facilities**

- Medical personnel and assistance
- Weight and training facilities
- Conditioning facilities
- Certified athletic trainers
- Insurance Coverage

## **Publicity**

- Sports information personnel
- Publicity resources
- Publications and other promotional devices

## **Support Services**

- Administrative assistance
- Secretarial and clerical assistance

# Private Dollars

Private donations injected into an athletic program become institutional dollars no different than if the institution directed the spending itself. *See, e.g., Chalenor v. Univ. of North Dakota*. For example, if a booster club contributes funds to purchase fleece jackets for the boys' basketball team, that benefit (the fleece jackets) "counts" for Title IX purposes.

- Booster Clubs
- Team Fundraising
- Private Donations (parents, alumni, fans, etc.)
- In Kind Donations
- Others?

# Additional Considerations

- **Accommodating Athletes with Disabilities**

- 2013 Dear Colleague Letter: “...students with disabilities at the postsecondary level must also be provided an equal opportunity to participate in athletics, including intercollegiate, club, and intramural athletics.” What does this mean?

- ✓ Consideration for participation with non-disabled individuals *where qualified*
- ✓ Facilitation of participation in Paralympic or other adaptive events independently

- **Transgender and Transitioning Athletes**

- 2016 DCL rolled back; unclear how OCR (particularly individual regions) will treat complaints from transgender individuals
- NCAA Guidance still in place

## Next Steps

- Settlement requires multi-year focus to improve upon gender equity challenges at Campbell High School
- Athletic equity review completed by June 2024
  - ✓ Facility review
  - ✓ Interest & ability survey (including feeder programs)
  - ✓ Treatment areas
- Ongoing training
- Discussions with OIA and Campbell Leadership re: potential new sports
- Conversations with DOE and other interested parties
- Conversations with students, parents, etc. (already begun and open door policy)



# Questions?



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