



Via U.S. Mail and Facsimile

April 5, 2018

Stan Crippen
President
Lake Elsinore Unified School District
545 Chaney St.
Lake Elsinore, CA 92530

Dr. Peter Hopping
Principal
Lakeside High School
32593 Riverside Dr.
Lake Elsinore, CA 92530

RE: *Lakeside High School – Title IX Issue*

Dear Mr. Crippen and Dr. Hopping,

Legal Aid at Work (“Legal Aid”) and the California Women’s Law Center (“CWLC”) have become aware of serious gender-based inequality issues at Lakeside High School and request immediate attention to this matter.

Title IX of the Education Amendments of 1972 prohibits educational programs receiving federal financial assistance from discriminating against students on the basis of sex. 20 U.S.C. § 1681, *et seq.* Title IX’s implementing regulations specifically provide: “No 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(a). Title IX further prohibits retaliation. *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 174 (2005); *Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 870-71 (9th Cir. 2014).

I. TITLE IX COMPLIANCE

Under Title IX, educational institutions must provide female students with equal athletic treatment and benefits as compared to male students. *See* Department of Education, Office for Civil Rights’ Policy Interpretation, 44 Fed. Reg. 71,415 (1979); 34 C.F.R. § 106.41(c)(2)–(10); *Ollier v. Sweetwater Union High Sch. Dist.*, 858 F. Supp. 2d 1093, 1111-12 (S.D. Cal. 2012) (finding unequal treatment and benefits as to class of female athletes). Further, Title IX requires female students be afforded equal participation opportunities, 20 U.S.C. § 1681, and prohibits any retaliation against those raising Title IX concerns. *Ollier*, 858 F. Supp. 2d at 1113.

A. Participation Opportunities

The Department of Education’s Office for Civil Rights’ (“OCR”) 1979 Policy Interpretation created a “three-part” test to determine whether a recipient of federal funds is in fact providing equal participation opportunities for male and female students. 44 Fed. Reg. 71,418. In determining whether a recipient is providing the sexes with “equal athletic opportunity,” one factor listed in the regulations is “[w]hether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes.” 34 C.F.R. § 106.41(c). The 1979 OCR interpretation’s “three-part” test to determine whether a recipient is effectively accommodating both sexes includes:

- (1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
- (2) 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 an underrepresented sex; or
- (3) Whether it can be demonstrated that the interests and abilities of the members of an underrepresented sex have been fully and effectively accommodated by the present program.

44 Fed. Reg. 71,418. While initially written in the collegiate context, this test unambiguously applies to high school sports as well. *See Ollier*, 768 F.3d at 855 (“[T]he three-part test applies to a high school.”). Here, based on available information, Lakeside cannot show it satisfies the test under any of its three parts.

Part one examines whether participation opportunities for male and female students are substantially proportionate to their respective enrollments. *Cohen v. Brown*, 101 F.3d 155, 163 (1st Cir. 1996) (affirming that the “participation opportunities” offered by an institution are measured by counting *actual* participants on teams). “Substantial proportionality requires a close relationship between athletic participation and enrollment.” *Ollier v. Sweetwater Union High Sch. Dist.*, 604 F. Supp. 2d 1264, 1271-72 (S.D. Cal. 2009) (rejecting 6.7% as an acceptable gap between girls’ enrollment and participation in athletics); *Biediger v. Quinnipiac Univ.*, 691 F.3d 85, 91 (2d Cir. 2012) (describing a non-compliant 3.62% disparity between female enrollment and female athletic participation).

The athletic opportunities Lakeside High School provides for females and males are not substantially proportionate. Based on the 2015-2016 enrollment and athletic numbers available through the California Interscholastic Federation (“CIF”) Participation Census data (<http://www.cifstate.org/coaches-admin/census/index>), male students represented 49.8% of the student population and female students represented 50.2% of the student population. However, the percentage of athletes who are female was just 42.1%, whereas male athletes comprise 57.9% of the athletic program. Thus, there is an 8.1% gap between enrollment and athletic participation

among girls. Sierra Vista would need to add 97 female athletes to achieve proportionality under Title IX.¹

Therefore, Lakeside fails part one of the test. *See Ollier*, 768 F.3d at 856-57 (affirming as unacceptable 6.7% gap between female enrollment and participation in athletics).

Where an institution fails to meet proportionality under part one, it bears the burden of showing a history and continuing practice of program expansion demonstrably responsive to girls' interest—part two. *Cohen v. Brown Univ.*, 991 F.2d 888, 901-02 (1st Cir. 1993). Part two examines an “institution’s record of adding female participation opportunities and its current ‘plan of program expansion that is demonstrably responsive to the developing interests and abilities’ of women.” *Mansourian v. Regents of Univ. of Cal.*, 602 F.3d 957, 969 (9th Cir. 2010) (citing the 1996 *Office for Civil Rights Guidance Letter*); *see also Bryant v. Colgate Univ.*, No. 93-CV-1029, 1996 WL 328446, at *11 (N.D.N.Y. June 11, 1996) (“[t]he hallmarks of this defense are *continuity and persistence*.”) (emphasis added). Title IX was passed over forty-five years ago and thus, all educational institutions that receive federal funding have been on notice of the law’s requirements since the 1970s. *See Ollier*, 768 F.3d at 857 (finding defendants failed to demonstrate a history and continuing practice where female participation had dramatic ups and downs during the relevant period).

Here, based on available information, Lakeside cannot show a history and continuing practice of program expansion demonstrably responsive to girls' interest.

As to part three, “[i]f there is sufficient interest and ability among [girls], not slaked by existing programs, an institution necessarily fails this prong of the test.” *Cohen*, 991 F.2d at 898. *See, e.g., Ollier*, 768 F.3d at 858-59 (noting school’s inability to find a field hockey coach does not indicate female students’ interest waned). It is not a defense to cite evidence that more boys try out or express interest in sports, if interested girls are turned away. *Neal v. Cal. State Univ.*, 198 F.3d 763, 769-73 (9th Cir. 1999); *Cohen v. Brown Univ.*, 101 F.3d at 178-80.

Here, the interests of female students at Lakeside in athletics are not satisfied by existing programs. Many female students have expressed interest in wrestling on their own team and within their own program, yet, based on available information, Lakeside administrators and/or the Board rejected, on multiple occasions, the request to add a female wrestling program. Furthermore, several other schools in the area and within the league of Lakeside offer girls’ wrestling teams, indicating there is ample nearby competition.

As Lakeside does not accommodate female interest in athletics, Lakeside does not meet part three of the test. Lakeside thus fails to provide its female students with equitable

¹ Note: Data from the 2016-2017 school year appears incorrect such that there is an unusually low number of female students listed on the CIF Participation Data and thus, 2015-2016 figures are used.

participation opportunities under the law. Simply put, Lakeside must add a female girls' wrestling team, an action that would be directly responsive to the requests of Lakeside female students to close the participation gap and fulfill the interests of the underrepresented gender.

B. Equal Treatment and Benefits

Based on available information, Lakeside fails to provide female athletes with equal treatment and benefits as to the female wrestlers that are currently attempting to participate—girls who are having to fund their own team which is not school-supported or sponsored. Equality in treatment and benefits is analyzed based on the following factors, among other considerations: equipment and supplies; scheduling of games and practice time; travel allowances; opportunities to receive coaching; assignment and compensation of coaches; locker rooms, practice and competitive facilities; training facilities and services; and publicity and necessary funds for teams for one sex. 34 C.F.R. § 106.41(c).

1. Provision of Equipment and Supplies

“Equipment and supplies” include, but are not limited to, uniforms, sport-specific equipment, and general equipment. 44 Fed. Reg. 71,416. Supplies may be assessed based on quality, amount, suitability, maintenance and availability. *Id.* Here, Lakeside provides female wrestlers with inferior equipment and supplies. Female wrestling uniforms are not of the same quality and quantity as male uniforms. For instance, male wrestlers are provided with their own uniforms and girls' wrestlers are not. Girls' wrestling team members must borrow uniforms and jackets from the boys' team, and because the uniforms are not meant for female wrestlers they do not fit properly. As to equipment, boys' wrestling is provided with new equipment from the school, and girls' wrestling is forced to borrow the boys' equipment. Female wrestlers must borrow headgear and backpacks from the boys' wrestlers and are not provided with headgear or backpacks of their own.

2. Scheduling of Games and Practice Times

Title IX requires schools to treat athletes equitably as to “the time of day competitive events [and practices] are scheduled.” 44 Fed. Reg. 71,416. Yet, Lakeside schedules practices and games in a manner that is inequitable between female and male athletes. For example, a review of Lakeside's wrestling schedule on www.home-campus.com reveals that the girls' varsity wrestling team had 13 scheduled competitions for the 2017-2018 winter season, while the boys' wrestling team had 18. The girls' junior varsity wrestling team only had 2 competitions scheduled during that same time, while the boys' junior varsity wrestling team had 8 scheduled competitions.

3. Travel Allowances

Compliance with Title IX in the category of travel allowances is assessed by comparing, among other factors, the “modes of transportation” for male and female athletes. 44 Fed. Reg. 71,416. At Lakeside, the boys' wrestling team receives funding from the District for

transportation, but the girls' wrestling team only receives funding through the boys' wrestling coach, who sets aside moneys allocated to the boys' team.

4. *Opportunities to Receive Coaching*

Compliance with Title IX with regard to coaching is assessed by examining the relative availability of full-time coaches, part-time coaches, and assistant coaches. 44 Fed. Reg. 71,416. Coaches for male teams at Lakeside, in particular the wrestling team, are generally permanent school staff members. In comparison, female sports teams at Lakeside have more "walk-on" coaches who lack both teaching credentials and comparable access to school resources, facilities and students for recruiting purposes. Because Lakeside's girls' wrestling team is not funded, the girls' wrestling coach does not receive any stipend or compensation for coaching the team. In addition, the boys' wrestling team has several coaches that receive stipends, yet the girls' team's single coach does not. Thus, Lakeside's female student athletes are not receiving the same benefits as to coaching. *See Ollier*, 858 F. Supp. 2d at 1105 (finding school district violated Title IX by failing to hire consistent coaching staff for female athletes).

5. *Provision of Practice and Competitive Facilities*

Compliance with Title IX is assessed by examining the quality and availability of practice and competition facilities, as well as the quality and availability of team rooms. 44 Fed. Reg. 71,416. Here, Lakeside provides inferior practice and competitive facilities to female athletes. For example, the girls' wrestling team is forced to practice in the cafeteria. There is only one wrestling room on campus, and the boys' program is given priority to use it over the girls' program. In order to practice in the cafeteria, the girls' program has to move all the chairs and tables in the cafeteria out of the way to clear space. *See Ollier*, 858 F. Supp. 2d at 1100 (finding the locker room, practice and competition facilities available to female athletes were unequal as compared to those available to male athletes).

6. *Provision of Training Facilities and Services*

Another category requiring examination under Title IX is the adequacy of training facilities and services including, among other factors, the availability and quality of weight and training facilities. 44 Fed. Reg. 71,416. Not being a school-funded program, female wrestlers lack the same access to necessary weight and training facilities.

7. *Publicity and Promotional Support*

Publicity is assessed by examining, among other factors, the "[a]ccess to . . . publicity resources for men's and women's programs," and the "[q]uantity and quality of publications and other promotion devices featuring men's and women's programs." 44 Fed. Reg. 71,417. Because the girls' wrestling program does not receive funding or support from the school, their matches and meets are not publicized at the same level as the boys' wrestling program. *See Ollier*, 858 F. Supp. 2d at 1112 (finding Title IX violation where female sports were covered less in yearbooks, fewer announcements were made in the school's daily newsletter, and cheerleaders

attended more male athletic games than female athletic games).

8. *Fundraising*

Although the unequal expenditure on boys' and girls' sports does not itself constitute noncompliance, compliance may be assessed by examining the "failure to provide necessary funds for teams for one sex." C.F.R. § 106.41(c). Lakeside does not provide funding for the girls' wrestling teams, although it fully funds the boys' wrestling teams. Thus, girls' teams must unequally rely on external funding and fundraising to obtain equipment and uniforms, pay for meets and related transportation, to obtain coaching support, and more.

II. REMEDY

We request that Lakeside take immediate steps to remedy violations of Title IX by funding and sponsoring a girls' wrestling program for the 2018-2019 season and onward. Adding opportunities for girls through a female wrestling program and ensuring female wrestlers are treated and benefitted equally is critical. We hope to resolve this matter expeditiously and look forward to hearing from you.

Sincerely,

Elizabeth Kristen



Legal Aid at Work

Amy Poyer



California Women's
Law Center