

**Report by**  
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***FLORIDA INSTITUTE OF TECHNOLOGY***  
***Preliminary Report on Gender Equity in***  
***Intercollegiate Athletics***

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## **I. SCOPE OF OPINIONS TO BE RENDERED**

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I have been asked to prepare a report using publicly available information and that provided to me by FIT giving my opinions on whether the Florida Institute of Technology (“FIT”) intercollegiate athletics program (a) provides equitable participation opportunities and scholarship support to its male and female athletes as required by Title IX of the Education Amendments of 1972, (b) whether E-sports should be included in FIT Title IX participation counts, (c) whether male and female students enrolled in 100 percent full-time online program should be included as full-time undergraduate students for the purpose of computing Prong One proportionality and (d) the extent to which the college athletes would be likely to suffer harm as a result of the 2022-23 elimination of the varsity sports in which they participated at FIT.<sup>1</sup> In addition, I have been asked to review recently-provided FIT NCAA redacted squad lists to determine whether this data changed my opinion regarding whether FIT was providing equitable participation opportunities to its male and female athletes.

My opinions are based upon my expertise in sports management and gender equity in sports, my review of a limited number of public documents and government reports available to date regarding the factual situation in this case, my knowledge of National Collegiate Athletic Association (“NCAA”) and other sports governance association rules related to the classification of sports, teams, events, and eligibility to participate in college sports, my knowledge of athletic

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<sup>1</sup> As part of this initial review, I was not asked to examine the other effective accommodation participation elements that include selection of sports responsive to the interests and abilities of males and females respectively and provision of equal levels of competition. Neither was I asked to examine admissions, recruiting or the treatment and benefits elements of Title IX given that no discovery has yet taken place.

department fiscal management, and my knowledge of financial and other challenges faced by students who transfer from one four-year college to another.

## **II. EXPERT QUALIFICATIONS**

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

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

I am considered one of the foremost national experts on gender equity in athletics. I have testified, several times, about gender equity before congressional committees and state and federal administrative commissions. At the Women’s Sports Foundation, I oversaw the production of numerous research projects related to gender equity and sports participation of girls and women, including a comprehensive study of the Office of Civil Rights Title IX athletics enforcement

efforts. I have also served as a gender equity consultant to state education agencies, school districts, and institutions of higher education and continue to do so as President of SMR.

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

My expert qualifications are based upon my education, academic background, previous employment, experience, and other related factors. My background and qualifications, as well as a listing of my publications, to the best of my recollection, are set forth in the attached curriculum vitae as Exhibit A. My [www.SportsManagementResources.com](http://www.SportsManagementResources.com) web site contains my blogs on



athletics issues and other policy-related advice produced by me that are not included in my curriculum vitae.

### **III. OTHER CASES IN WHICH THE EXPERT HAS TESTIFIED**

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

### **IV. COMPENSATION**

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

- \$350 per hour for report preparation
- \$300 per hour for consultation with attorneys related to preparation for expert reports or depositions
- \$700 per hour for deposition or court testimony
- \$2,500 per day for site visits
- No charge for hours spent traveling
- Actual out-of-pocket expenses.

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

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My opinions are based upon my expertise in sports management and gender equity in sport and my review of public documents provided to me to date or public reports I have accessed. The

documents and sources relied upon in the formulation of my opinions for this report are listed in Exhibit C. I reserve the right to review and rely on additional relevant documents or other relevant information that comes to my attention following the date of submission of this report—and to prepare an additional report(s) that reflects such new information if requested. Finally, I reserve the right to depend on information I am able to recollect based on questions asked of me following the submission of this document and during my testimony at deposition or trial.

## **VI. PRELIMINARY COMMENTS**

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

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

*§ 106.41 Athletics.*

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

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

--- 34 C.F.R. § 106.41(c)

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

To date, and to my knowledge, there has been no discovery in this case. Thus, my assessment of whether FIT provided gender equitable opportunities, benefits, and treatment to its athletes was limited to publicly available information about the athletics program. Specifically, I used the information resources listed, among other resources listed within this report, in Exhibit C attached to this report. Using these information resources, I was able to assess and reasonably opine on whether FIT has treated its male and female athletes equitably related to the following Title IX elements:

- participation opportunities
- selection of sports that meet the interests and abilities of males and females respectively

- athletics financial aid
- recruiting

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

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

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

Last, it should also be noted that the affirmative, proactive aspects of Title IX compliance are so important that the federal regulations require that all schools or school districts comply with Title IX as a condition for receipt of federal funds.

**3. Impact of the Pandemic.** I advise my clients that the impact of the pandemic created two “rogue outlier years” – 2019-20 and 2020-21 -- as opposed to a normal enrollment fluctuation and that these years should be disregarded and athletic departments should demonstrate Title IX compliance in 2018-19 and then again in 2021-22. In 2019-20, college enrollment data was normal because Department of Education “common data set” reports used for that year (and every year) are computed on October 15 of the fall semester. The pandemic quarantine and cancellation of classes did not occur until March of 2020. The impact on athletics participation was significant with almost all schools have their full track and field seasons cancelled – NO outdoor track contests and some cancelled other sports who may or may not have had initial contest. Other schools cancelled sports outright. In 2020-21, both enrollment and athletic participation anomalies occurred. Many students did not return in the fall. For example, FIT enrollment dropped from 3166 in 2019-20 to 3010 in 2020-21.<sup>2</sup> In 2021-22, FIT enrollment further declined to 2,178 in 2021-22, following a national trend of significantly lower enrollments following the pandemic, especially at small private institutions.<sup>3</sup> Similarly, at many small institutions, athletes did not return in the fall because of the cancellation of fall sport seasons. At larger schools, athletes returned as most seasons were shortened and/or pushed into the spring of 2021. At FIT, DOE Equity in Athletics Disclosure reports revealed that male athletic participation dropped from 365 in 2019-20

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<sup>2</sup> Florida Institute of Technology. Common Data Set 2020-2021. Retrieve from: <https://www.fit.edu/media/site-specific/wwwfitedu/oir/documents/CDS-2021-2022-Final.pdf>

<sup>3</sup> National Student Clearinghouse Research Center. Covid 19: Stay Informed with the Latest Enrollment Information. (November 18, 2021) Retrieved from: <https://nscresearchcenter.org/stay-informed/>

to 206 in 2020-21 and female participation fell from 170 to 145 during this same period.<sup>4</sup> Thus, in the following sections, I may completely discount 2019-20 and 2020-21 data in my analysis, but will always display unconsidered data. Despite the significant enrollment decline at FIT, the male to female proportions have held steady. In 2018-19, male enrollment was 70.3 percent and in 2021-22 it was 70.2%. Changes in the proportion of male and female undergraduates make a difference in Title IX compliance. Thus, using 2018-19 enrollment and roster counts in this report appear to be reasonable.

## VII. OPINIONS

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**A. I opine that, during the 2003-04 through 2020-21 period, in 16 of those 18 years FIT did not provide male and female athletes with athletics participation opportunities proportional to the percent of males and females in its undergraduate student population as it was obligated to do under Title IX.**

**The Title IX Participation Opportunity Standard.** There are three options to meet the equal participation opportunity standard, typically referred to as Prongs One, Two, and Three:

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

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

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<sup>4</sup> Department of Education Equity in Athletics Disclosure Database. Retrieve from: <https://ope.ed.gov/athletics/#/>

The first prong reflects the goal of actual equity, in which each male and female student has the same opportunity to participate in intercollegiate athletics, and I discuss it at length below before. I then review why FIT does not meet the second and third prongs of the participation opportunity standard which reflect alternative means of compliance that explain why actual equity (male/female athletic participation proportional to percent male/female undergraduates) may not be possible at a given institution.

**FIT has failed to meet the Title IX Prong One participation proportionality standard in 16 of the last 18 years --during 2003-04 through 2020-21 period.** Table 1 below displays the Equity in Athletics Disclosure Act data upon which I relied to calculate whether FIT met the Prong One proportionality standard.<sup>5</sup> FIT is required to complete these reports on an annual basis as a condition of receiving federal Higher Education Act funds.

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<sup>5</sup> The EADA information can be used to reasonably estimate whether an institution meets the substantial proportionality participation requirement of Prong One. However, *EADA reports are not Title IX compliance reports*. Rather, these reports are conditions of receiving funding under the Higher Education Act (20 U.S.C. 1092(g)) that were designed to make prospective students aware of an institution of higher education's commitment to providing equitable athletic opportunities.

TABLE 1. Florida Institute of Technology – Athletics Participation 2003-04 through 2020-21  
Calculation of Male\* and Female\*\* Participation Gaps

Survey Year	Male Under Grad	Percent Male Under Grad	Female Under Grad	Percent Female Under Grad	Total Under grads	Male Athletes	Percent Male Athletes	Female Athletes	Percent Female Athletes	Total Athletes	Male Particip. Gap - # of Athletes	Percent Shortfall Male Opport.	Female Particip. Gap - # of Athletes	Percent Shortfall Female Opport.
2003-04	1546	69.7%	671	30.3%	2217	106	42.9%	141	57.1%	247	219	26.8%		
2004-05	1510	67.9%	714	32.1%	2224	115	46.2%	134	53.8%	249	168	21.7%		
2005-06	1554	68.6%	710	31.4%	2264	127	50.6%	124	49.4%	251	144	18.0%		
2006-07	1552	69.3%	687	30.7%	2239	126	52.1%	116	47.9%	242	136	17.3%		
2007-08	1706	71.1%	692	28.9%	2398	133	50.8%	129	49.2%	262	185	20.4%		
2008-09	1939	65.4%	1027	34.6%	2966	130	49.1%	135	50.9%	265	125	16.3%		
2009-10	2242	57.5%	1654	42.5%	3896	121	46.5%	139	53.5%	260	67	11.0%		
2010-11***	2196	54.8%	1812	45.2%	4008	169	53.8%	145	46.2%	314	7	1.0%		
2011-12	2343	56.7%	1788	43.3%	4131	230	59.6%	156	40.4%	386			20	2.9%
2012-13	2017	72.6%	762	27.4%	2779	235	59.0%	163	41.0%	398	196	13.5%		
2013-14	2229	72.8%	834	27.2%	3063	432	68.8%	196	31.2%	628	92	4.0%		
2014-15	2319	71.9%	906	28.1%	3225	373	64.4%	206	35.6%	579	154	7.5%		
2015-16	2261	70.9%	927	29.1%	3188	376	65.5%	198	34.5%	574	107	5.4%		
2016-17	2303	70.2%	978	29.8%	3281	394	64.8%	214	35.2%	608	110	5.4%		
2017-18	2324	71.2%	938	28.8%	3262	351	64.9%	190	35.1%	541	120	6.4%		
2018-19	2325	71.3%	936	28.7%	3261	342	64.2%	191	35.8%	533	132	7.1%		
2019-20	2257	71.3%	909	28.7%	3166	373	66.1%	191	33.9%	564	101	5.2%		
2020-21	2088	69.4%	922	30.6%	3010	206	58.7%	145	41.3%	351	122	10.7%		

\* The Male participation gap represents the number of male participation opportunities that would need to be added if female participation remained constant AND was equal to the percent females in the undergraduate student body. Computation = (# female athletes divided by % female undergraduates) minus (total actual male plus total actual female athletes).

\*\* The Female participation gap represents the number of female participation opportunities that would need to be added if male participation remained constant AND was equal to the percent males in the undergraduate student body. Computation = (# male athletes divided by % male undergraduates) minus (total actual male plus total actual female athletes).

\*\*\*In 2010-11 that male participation gap variance of seven was smaller than the size of a male team that could have been added, therefore within the acceptable Title IX Prong One variance.

The table demonstrates that in 16 of the 18 years (including 2019-20 and 2020-21 as the anomalous pandemic years in which it is obvious this pattern would continue), FIT failed to address its failure to provide equitable opportunities for male athletes. In only one year (2010-11) did it meet the standard and in only one year were female athletes underrepresented, a function of the highest ever female enrollment rather than any action of FIT to increase athletic opportunities for male athletes. Exhibit D contains a sport-by-sport examination of participation numbers during this same period.



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

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

*OCR would also consider opportunities to be substantially proportionate when the number of opportunities that would be required to achieve proportionality would not be sufficient to sustain a viable team, i.e., a team for which there is a sufficient number of interested and able students and enough available competition to sustain an intercollegiate team. As a frame of reference in assessing this situation, OCR may consider the average size of teams offered for the underrepresented sex, a number which would vary by institution.*

*For instance, Institution A is a university with a total of 600 athletes. While women make up 52 percent of the university's enrollment, they only represent 47 percent*

*of its athletes. If the university provided women with 52 percent of athletic opportunities, approximately 62 additional women would be able to participate. Because this is a significant number of unaccommodated women, it is likely that a viable sport could be added. If so, Institution A has not met part one.*

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

In other words, one looks at participation opportunities gap and not the percentage difference between percent of male and female participation opportunities. This is necessary because, if the school has a large number of athletes, the allowable percent variance will be smaller than a school with a small number of athletes. For example, if a school with 200 female athletes and a four percent variance equals eight athletes while a school with 400 female athletes and a four percent variance equals 16 athletes. That is why a school needs to compute what the percentage represents in actual participation opportunities, typically referred to as the “participation gap.”

With regard to the mathematical computation of the participation gap, here is a step-by-step breakdown of that computation process using the 2018-19 FIT athletic program data in Table 1. Table One shows that in 2018-19, FIT had 2,325 full-time undergraduate male students (71.3%) and 936 female students (28.7%) and ideally 71.3% and 28.7% of its athletics participation opportunities should have been offered to men and women respectively. Table One shows that only 64.2% of all athletic opportunities went to men and 35.8% to women, 7.1% short of what men were entitled to. Men are the underrepresented sex. An easy mathematical way to compute the number of male athletic opportunities that would have to be added (the male participation gap) to close the 7.1% gap is as follows:

- Divide the number of female athletes (overrepresented sex) by their percent of the undergraduate student body (191 divided by .287) – to get the total number of athletes if female athletes were 28.7% of all athletes--in this example, 191 divided by .287 is 666.5
- Then subtract the actual number of male athletes (342) and the actual number of female athletes (191) to find the number of new male participation opportunities that must be added for males to be 71.3% of all athletes – in this example, 666 minus the 533 current male and female athletes = 132
- Now check your math:
  - Current males are 342 plus 132 new males = 474 total male athletes.
  - 191 existing females plus the new male total of 474 = 665
  - 474 is 71.3% of 665.

Then the school would consider multiple options to achieve proportionality. If it is not in compliance with Prongs One, Two or Three, it cannot eliminate teams for the underrepresented sex. It could choose just to add new men's teams or reduce and cap the size of existing women's teams (termed "roster management"). If FIT was in compliance with Title IX, it could eliminate both men's and women's teams and install a roster management to achieve Prong One compliance. Financially strapped institutions might also wish to install a financially tiered athletic program<sup>6</sup> in which an equal percentage of female and male athletes respectively (not teams) are treated "like kings/queens" and an equal percentage are treated like "paupers." Title IX allows male and female athletes to be treated differently as long as equal percentages are treated in the same way.

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<sup>6</sup> Lopiano, D. and Zotos, C. (2013) Athletic Director's Desk Reference. Human Kinetics: Champaign, IL.

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

The athletic participation opportunities counted by schools are a core element of Title IX compliance. Prior to the 1990s, schools universally failed to offer equitable participation opportunities for women. In the early to mid-1990s, two major events happened to force schools to pay attention to their participation numbers. First, courts began to hear and rule on Title IX cases. In *Franklin v. Gwinnett County Schools*, 503 U.S. 66 (1992), the Supreme Court held that institutions can be sued in court for money damages. In cases against Brown University and Colorado State University, schools that could not comply with Prongs Two and Three, and were not in compliance with Prong One proportionality, were prevented by the courts from eliminating women's teams as a mechanism to reach proportionality. Second, Congress passed the Equity in Athletics Disclosure Act in 1994 ("EADA"). 20 U.S.C. §1092(g). The EADA required schools to start reporting information such as student enrollment and student athletic participation starting with the 1995-1996 academic year.

**Why FIT could not use the Prongs Two or Three Options.** FIT could not use the Prong Two option because it cannot demonstrate a history (beginning with 1975) and continuing practice of program expansion for the underrepresented sex (males). Institutions were given a three-year period to come into compliance with Title IX, from 1975 to 1978. Thereafter, FIT was obligated

to periodically assess the interests and abilities of the underrepresented sex and to add sports for the underrepresented sex as those interests and abilities were identified.<sup>7</sup> See Table 2 below.

TABLE 2. Florida Institute of Technology – 2003-04 through 2020-21  
Record of Dropped and Added Sports Compared to Male Participation Gaps  
Based on Annual FIT EADA Reports

Year	Female Enrollment	Male Participation Gap	Male Athletes	Female Athletes	Sports Added and Dropped - No Data Prior to 2003-04
2003-04	30.3%	<b>219</b>	106	141	No action to close the men's participation gap
2004-05	32.1%	<b>168</b>	115	134	No action to close the men's participation gap
2005-06	31.4%	<b>144</b>	127	124	No action to close the men's participation gap
2006-07	30.7%	<b>136</b>	126	116	No action to close the men's participation gap
2007-08	28.9%	<b>185</b>	133	129	No action to close the men's participation gap
2008-09	34.6%	<b>125</b>	130	135	No action to close the men's participation gap
2009-10	42.5%	<b>67</b>	121	139	No action to close the men's participation gap
2010-11	45.2%	<b>none</b>	169	145	Female enrollment at all-time high - men's rowing starts in EADA report
2011-12	43.3%	<b>none</b>	230	156	Female enrollment at second all-time high - men's lacrosse and men's and women's swimming added to create a female participation gap of 20
2012-13	27.4%	<b>196</b>	235	163	No action to close the men's participation gap
2013-14	27.2%	<b>92</b>	432	196	Men's football added but does not close the gap
2014-15	28.1%	<b>154</b>	373	206	Women's lacrosse added, increasing the men's participation gap
2015-16	29.1%	<b>107</b>	376	198	No action to close the men's participation gap
2016-17	29.8%	<b>110</b>	394	214	No action to close the men's participation gap; 9 women's coed opport. added
2017-18	28.8%	<b>120</b>	351	190	No action to close the men's participation gap
2018-19	28.7%	<b>133</b>	342	191	No action to close the men's participation gap; 13 women's coed opportunities added
2019-20	28.7%	<b>101</b>	373	191	Women golf and men's and women's tennis programs dropped; No men's or women's track due to pandemic
2020-21	30.6%	<b>122</b>	206	145	Men's football eliminated; men's and women's track and rowing seasons and coed sports due to pandemic

I had no records of the history of women's sports at FIT but performed a Google search for dropped sports as indicated in FIT EADA reports. Table 2 indicates that either FIT did not regularly assess the gender equity status of its athletics program or, if it did, it failed to respond to the significant underrepresentation of men's sports from 2003-04 to 2009-10 and again from 2012-

<sup>7</sup> See OCR's 1996 Policy Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test at page 9 and the OCR's 2010 Dear Colleague Letter re: Prong Three of the Three-Part Test for details re: methods of non-discriminatory assessment of interests and abilities to be considered by OCR.

13 through the present. Its record of male athletic participation opportunities by year does not show “consistent” increases in participation opportunities for the underrepresented sex.

According to EADA data, when it took action to report men’s rowing in 2010-11, the program achieved its only year of Prong One compliance. In 2011-12 it added men’s lacrosse and men’s and women’s swimming which created a female participation gap of 20. In 2012-13, when a significant female enrollment decline created a significant male participation gap, FIT appropriately responded by adding men’s football in 2013-14 but the addition of the team was insufficient to close the men’s participation gap. FIT made that gap even more pronounced in 2014-15 when it added women’s lacrosse instead of addressing the men’s participation shortfall. From that point on, it once again entered a five-year period of failing to address the men’s participation gap, even adding 22 more women’s sports opportunities in co-ed sports compared to nine men. It took no action to eliminate women’s sports. When it started eliminating sports in the midst of the pandemic, it eliminated men’s sports in addition to sports for the overrepresented sex. When it eliminated a men’s sport and in the same year failed to replace those male sports opportunities with an equal or greater number of male participants, it lost its opportunity to utilize Prong Two.

Similarly, FIT cannot use Prong Three because it cannot demonstrate that it has fully met the interests and abilities of the underrepresented sex, i.e., there is no other men’s sport that could have been added. Indeed, terminating any viable team for which the underrepresented sex had demonstrated interest and ability would disqualify FIT from using the Prong Three option because it could not maintain that it was fully meeting the interests and ability of the underrepresented sex and in the same breath eliminate a viable team.

I further opine that at no point in the EADA data history of FIT that I was able to review could it have claimed Prong Three compliance, because there are numerous men's sports not sponsored by FIT that could have been added (i.e., wrestling, rugby, triathlon, ice hockey, sailing, volleyball, water polo, as previously mentioned) in addition to those it eliminated. Indeed, even if there is no competition within the institution's normal geographic region, an institution may not claim Prong Three compliance without demonstrating that they have actively encouraged development of opportunities for the underrepresented sex, such as proposing to their conference (or other opponents in its normal competitive region) to also add a men's sport in order to have adequate competition within its normal competitive region.<sup>8</sup>

**Using EADA participation counts generally underestimates participation gaps.** Title IX counting is based on three primary sources: (1) the official athletics eligibility list (the NCAA Eligibility or Squad List<sup>9</sup> in the case of FIT), which contains financial aid, years of athletic eligibility, enrollment, medical status and any change of status such as withdrawal, quitting a team, etc.; (2) FIT's NCAA Hour Limitation Record<sup>10</sup> which is used to determine whether an athlete has attended team practices and meetings, and (3) the institution's report of all competition results (except that the TFRRS online database is the official source for all NCAA cross country, indoor track and field and outdoor track and field event results); which is used to determine years of

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<sup>8</sup> See 1979 Title IX Athletics Policy Interpretation (p. 71418 Federal Register/Vol. 44, No. 239, Sec. 5 c)

<sup>9</sup> National Collegiate Athletic Association. NCAA Division II Squad Lists and Instructions - Retrieved from: [https://www.ncaa.org/sites/default/files/CACH12\\_Standard\\_Reports\\_20151210.pdf](https://www.ncaa.org/sites/default/files/CACH12_Standard_Reports_20151210.pdf)

<sup>10</sup> Note that participation in a competition is not required in order to count as a participant: An athlete who participates in the majority of teams practices and never gets into a game does count. However, competition can be indicative of a genuine athletic participation opportunity. The *NCAA 2020-21 Division I Manual* at pg. 259, describes the record: **17.1.7.3.4 Hour-Limitation Record.** Countable hours must be recorded on a daily basis for each student-athlete regardless of whether the student-athlete is participating in an individual or team sport. Any countable individual or group athletically related activity must count against the time limitation for each student athlete who participates in the activity but does not count against time limitations for other team members who do not participate in the activity.

eligibility (participation in one competition usually results in the use of one year of NCAA eligibility). I would like to see these data sources but, to date, only the TFRRS online database was available to me and was unusable without the competition results and CARA reports of all other teams.

When primary sources are unavailable, use of secondary sources such as the institution's EADA reports and athletic-department-generated team rosters as displayed on the athletic department's official internet site and other electronic publications (e.g., media guides, statistical summaries, etc.) are acceptable alternatives for rendering a reasonable opinion on whether an institution is providing proportional participation opportunities to males and females because they are generated from primary sources. When using secondary sources, multiple secondary sources should be examined over a sufficient time period in order to be sure data from more current years are not outliers and to detect consistent counting or participation patterns. I could not access athletic department web rosters because sports dropped effective 2022-23 have been removed from the database. Therefore, the opinions in this report are almost entirely based on a review of EADA participation data and incomplete and improperly redacted FIT NCAA squad lists.

I opine that the annual Equity in Athletics Disclosure Act reports (<http://ope.ed.gov/athletics/#/>), which do not follow Title IX's counting instructions, overcount both male and female athletes, thereby underestimating the participation gap. Title IX's counting requirements (*1996 Clarification* at p. 3) define participants as those athletes:

1. Who are receiving the institutionally-sponsored support normally provided to athletes competing at the institution involved (e.g., coaching, equipment, medical and training room services) on a regular basis during a sport's season; and
2. Who are participating in organized practice sessions and other team meetings and activities on a regular basis during a sport's season; and



3. Who are listed on the eligibility or squad lists maintained for each sport; or
4. Who, because of injury, cannot meet a, b, or c above but continue to receive financial aid on the basis of athletic ability.

EADA Report participant counts do not follow Title IX counting instructions. I have been comparing EADA report participation counts to NCAA Squad List Counts and web site team rosters counts for the past twenty-five years. Even with the EADA overcounting of athletes due to different metrics, the male participation gaps are so large that FIT would still be out of compliance with respect to male athletes.

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

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

Counting or not counting 5<sup>th</sup> year team members who have already received a bachelor’s degree and those that might be injured but otherwise eligible to play both have a de minimis impact

on male or female counts. Thus, counting male athletes as female athletes results in an overcount of female athletes and has the effect of producing an undercount of the female participation gap. Adjusting counts after the first day of competition normally produces lower Title IX male and female participation counts because EADA allows no subtractions and most adjustments are subtractions -- athletes leaving the program. I have asked legal counsel to request properly redacted NCAA squad lists, CARA reports, and Seasons of Competition reports in order to prepare a subsequent report that more accurately produces Title IX participation counts.

**B. I opine that even using the incomplete redacted NCAA squad lists provided by FIT to compute male participation gaps from 2015-16 through 2021-22 and being unable to audit FIT Title IX counts does not change my opinion. During this period, in seven of those seven years examined, FIT did not, by its own record keeping provide male and female athletes with athletics participation opportunities proportional to the percent of males and females in its undergraduate student population as it was obligated to do under Title IX.**

**Incomplete data.** I was not provided with NCAA CARA (countable athletics-related activities) reports which would have enabled me to determine whether athletes had participated on a regular basis during the regular season nor seasons of competition reports which would have enabled me to determine whether athletes had participated in contests and used their maximum allowable seasons of eligibility. The FIT squad lists provided to me contained no information other than the names of participants and team totals regarding athletics financial aid.

## Sample Page of Redacted Squad List

Report Date:

11/17/2022

Institution:

Florida Tech

City/State:

Melbourne, FL

Squad List

Academic Year:

2015-16

Sport:

Men's Basketball

Maximum Grants Permitted:

10.0

First Contest of the Segment:

Name/I.D. No.	HS Grad	E L I G	Status of Student				Financial Aid				E X E M P T	Countable Players		Change in Status		Rev. Dist.	
			F S	Term 1st enrolled Any Year	# yrs rec'd aid	# of seas util	Recr.	Period of award	Athletic grant amount	Other cntbl. aid		Total cntbl. aid	Full grant amount	Equivalent award	Reason		Date
Alexander, Nigel																	
Anderson, Patrick																	
Booth, Robert																	
Casanova de Alba, Rafael																	
Daniel, Samuel James																	
Echols, Randall M																	
Fischer, Max C																	
Jackson, Corbin L																	
Johnson, Akeem Marxis																	
Majors, Jordan																	
Murphy, Derek L																	
Peel, Kyle Daniel																	
Queen, Jermolyn Jamal																	
Rajovic, Milorad																	
Spence, Isaac B.																	
Stahl, Nicholas																	

FT\_000013

A properly redacted page would have displayed all data and blacked out for each athlete the actual amount of aid received or information in the Countable Players columns and the Equivalent Award column so that it could be determined that the player was a recipient of aid but not the aid amount. The other information should not have been redacted as it is solely related to athletics eligibility and does not include academic or financial information. The “Change in Status” columns are particularly important to determine whether players departed prior to the start of the season or prior to completing the majority of the season. Thus, I did not have the information to corroborate a proper Title IX count.

Despite these data deficiencies, I (a) assumed that all athletes on all FIT Squad Lists were properly counted as participants, (b) fully accepted and subtracted that number of athletes that Attorney Knight represented were athletes “who did not meet the definition of a Title IX participant” (November 22, 2022 email explanation), and (c) ignored the fact that he asked to subtract athletes from squad lists I did not have and therefore could not count. Table 3 below shows the computation of male participation gaps accepting all the above deficiencies. Significant male participation gaps occurred in every year for which FIT NCAA Squad Lists were provided.

TABLE 3. Florida Institute of Technology - Athletic Participation 2015-16 to 2021-22 - Male Participation Gaps\* Based on FIT Redacted NCAA Squad Lists (eligibility forms) and IPEDS/EADA reported Undergraduate Full-time Enrollment.

Survey Year	Male Under Grad	Percent Male Under Grad	Female Under Grad	Percent Female Under Grad	Total Under grads	Male Athletes	Percent Male Athletes	Female Athletes	Percent Female Athletes	Total Athletes	Male Particip. Gap - # of Athletes	Percent Shortfall Male Opport.
2015-16	2261	70.9%	927	29.1%	3188	380	66.0%	196	34.0%	576	98	4.9%
2016-17	2303	70.2%	978	29.8%	3281	395	65.7%	206	34.3%	601	90	4.5%
2017-18	2324	71.2%	938	28.8%	3262	353	65.2%	188	34.8%	541	113	6.0%
2018-19	2325	71.3%	936	28.7%	3261	348	66.0%	179	34.0%	527	97	5.3%
2019-20	2257	71.3%	909	28.7%	3166	355	68.7%	162	31.3%	517	47	2.6%
2020-21	2088	69.4%	922	30.6%	3010	182	61.1%	116	38.9%	298	81	8.3%
Fall F-T Undergrad 3082 total enrollment is accurate - unknown sex breakdown-used previous year percentages**												
Est. 2021-22	2138.91	69.4%	943.092	30.6%	3082	235	63.3%	136	36.7%	371	73	6.1%
* The Male participation gap represents the number of male participation opportunities that would need to be added if female participation remained constant AND was equal to the percent females in the undergraduate student body. Computation = (# female athletes divided by % female undergraduates) minus (total actual male plus total actual female athletes). If females were underrepresented compared to their percent undergraduate full-time enrollment, the computation a Female Participation Gap that represents the number of female participation opportunities that would need to be added if male participation remained constant AND was equal to the percent males in the undergraduate student body would be = (# male athletes divided by % male												
**I have not been provided with Fall 2021 Common Set/IPEDS enrollment data. However, FIT's annual OCR report is posted on its website at <a href="https://www.fit.edu/media/site-specific/wwwfitedu/oir/documents/Fall-2021-OCR-Report.pdf">https://www.fit.edu/media/site-specific/wwwfitedu/oir/documents/Fall-2021-OCR-Report.pdf</a> - see Table 1.1 Fall 2021 Official Count Report - Enrollment Headcount - The F-T undergraduate enrollment at Melbourne on row 1 of that table produces the 3082 total enrollment count and I used the 2020-21 F-T undergraduate gender percentages to estimate the male participate gap.												

I note that 2021-22 is an estimated male participation gap because I have not been provided with 2021 fall IPEDS/Common Set full-time enrollment disaggregated by sex. I estimated percent male and female undergraduate enrollment using 2020-21 percentages because I have already

demonstrated in my discussion on page 9 that the male to female enrollment proportions have held steady despite the significant enrollment decline at FIT that reflected the impact of the pandemic. I also emphasize that 2019-20 and 2020-21 should be considered pandemic rogue outlier years for reasons previously explained.

Exhibit F of this report compares my computations using FIT EADA report data to FIT's NCAA Squad Lists data and illustrates how closely EADA numbers correspond to FIT NCAA squad lists.

**C. I opine that E-Sports should not be considered a sport and therefore its participants should not be included in a Title IX count of athletics participants.**

To date, The Department of Education Office for Civil Rights (OCR) has not issued any advice specific to counting Esports for Title IX participation compliance purposes. The applicable government guidance on the issue of what constitutes an interscholastic or intercollegiate sport is specified in OCR's September 17, 2008 *Dear Colleague Letter: Athletic Activities Counted for Title IX Compliance*. (see Exhibit E) The DC letter advises that OCR "does not have a specific definition of the term 'sport.'" Rather, OCR looks at whether the activity meets all the following specific factors:

- Whether the operating budget, support services, and coaching staff are administered by the athletic department and provided in a manner consistent with established varsity sports;

- Whether participants are eligible for athletic scholarships and varsity awards and recruited in the same manner as other varsity sports;
- Whether participants are recruited in the same manner as other varsity sports;
- Whether the number, length and quality of practice opportunities are available in a manner consistent with established varsity sports;
- Whether regular season competitive opportunities differ quantitatively and/or qualitatively from established varsity sports, specifically examining:
  - Whether the number of competitions and length of play are predetermined by a governing athletics organization, conference or consortium of institutions;
  - Whether the competitive schedule reflects the abilities of the team;
  - Whether the activity has a defined season;
  - Whether the season is determined by a governing athletics organization, conference or consortium.
- Whether pre-season and/or post-season competition exists consistent with that provided for established varsity sports (i.e., conference, state or national championships);
- Whether the activity is governed by a specific set of rules of play adopted by a state, national, or conference organization and/or consistent with established varsity sports, which include objective, standardized criteria by which competition must be judged;
- Whether resources for the activity are based on the competitive needs of the team;
- If post-season competition opportunities are available, whether participation is dependent on regular season results in a manner consistent with other varsity sports; and
- Whether the selection of teams/participants is based on factors related primarily to athletic ability.

With the exception of “providing resources necessary for competing in computer games,” FIT E-Sports do not meet all of the above criteria. The following issues have been raised as to whether E-Sports generally would qualify under Title IX to count as a sport under the above criteria:

1. Whether esports involve “athletic ability”, namely the use of physical skills or capabilities, as strength, agility, or stamina. E-Sports are “electronic” competitions rather than “physical” competitions. Think of pinball, similar mechanical and now electronic arcade machines that test reflex responses to stimuli.
2. Whether the activity is governed by a specific set of rules. For example, if you play basketball anywhere, the rules are the same. There are over 13 different video games recognized in E-Sports competition, with none of the rules for these games promulgated by an E-Sport national governing organization (i.e., NCAA football rules). The games are owned and created by a commercial vendor and leased to the players. Sport governance associations have no control over the rules of the game itself. Many educators are concerned about the sexism and violence embraced by more games. Competition may also be owned or offered by the game publisher or those who offer internet platforms to host the games. To my knowledge, no E-Sports organization has been established for a single video game.
3. FIT submitted lists of E-Sports “varsity” and “JV” players (FT\_000373-377 and FT\_000408) rather than NCAA Squad Lists which are official NCAA eligibility forms. The sex of players is not indicated and in the case of FT\_000408, gender identity rather than biological sex (male or female) is given. There is no indication of the year of the roster. Calling an activity “varsity” or “JV” or “a sport,” does not make it a sport. The activity must meet all of the criteria listed in the 2008 DC letter.

**D. I opine that students enrolled in FIT's online program that is 100 percent online and does not permit a student to take more than six hours per eight-week term should not be included in the total of full-time undergraduate students for the purpose of computing Prong One proportionality.**

OCR considers the fact situation at each institution when making its compliance determinations. I opine that it appears that FIT has consistently defined its full-time undergraduates for IPEDS/Common Set/EADA purposes as full-time Melbourne campus students pursuing the baccalaureate degree. It appears that FIT is now making an effort to increase its enrollment denominator for Title IX participant count purposes by adding students participating in its separate FIT 100 percent online program. The enrollment charts contained in Mr. Knight's October 14 email (see Exh. G) do not match FIT's IPEDS/EADA/Common Set submissions. If FIT reports its Melbourne students separately from its online students to the Department of Education, I opine that it considers these to be two separate populations. The former are regular on-campus students who may happen to take some online classes while the latter are 100 percent online students with a different academic calendar and course requirements. FIT's online program is an entirely separate program in which online students cannot enroll in more than six hours per term and a term, unlike the on-campus student term, is eight weeks. Campus students take 4-7 classes at a time over 16 weeks and represent the student body in which college athletes reside, while online students take two classes at a time over eight weeks and represent distance learners unlikely to participate in college athletics.



It should be noted that NCAA eligibility rules require full-time enrollment in courses conducted during the institutions' regular academic schedules (term time) in accordance with the institution's academic calendar and applicable policies and procedures (see NCAA Division II Manual, 14.2.2.). Campus students participating in athletics must enroll in at least 12 hours per semester and demonstrate normal progress toward the baccalaureate degree and may occasionally take online courses. FIT online students are distance learners in a non-traditional program who do not come to campus to attend classes.

**E. I opine that FIT's decision to eliminate men's and women's rowing, men's and women's track/cross country and men's golf effective in the 2022-23 year does not result in meeting the Prong One standard.**

**Prong One analysis of the 2022-23 FIT athletic program.** Table 4 on the next page shows FIT athletic program participation in 2018-19 for comparative purposes -- see columns B and C. Columns D and E display current projected 2022-23 participation removing all programs cut during the pandemic (coed sports, football, men's and women's golf, men's and women's rowing, men's and women's tennis and men's and women's track/cross country), using actual 2022-23 enrollment (October 2022 FIT common set data), and using 2022-23 Web rosters posted as of August 27, 2022 for participation counts. EADA data is not available. It should also be noted that posted website men's and women's lacrosse rosters appear to be spring 2022 rosters and not 2022-23 rosters and the men's lacrosse roster is somewhat suspect with regard to its atypically large size. Column D at Row 6 shows a male participation gap of 126 that clearly fails to meet the Prong One standard.

In columns F and G, I show that only reinstating all June 2022 men's cuts does not solve FIT's compliance problem. Column F at Row 6 shows a male participation gap of 97 that clearly fails to meet the Prong One standard.

TABLE 4. Prong One Proportionality Analysis in 2018-19 Compared to 2022-23 Projected Participation After Cutting Multiple Sports and a Possible Prong One Solution that Restores all Men's Cut Sports

R	Column A	B	C	D	E	F	G	H	I		
		2018-19 EADA Actuals		2022-23 without dropped sports using August 2022 web roster counts* & Oct. 2022 enrollment		2022-23 only reinstating all June 2022 cut men's sports		2022-23 Possible solution restoring all men's dropped sports, using, Oct. 2022 enrollment, roster manage w/ D-II avg. squad size- reduce football expense		NCAA Division II 2018-19 Average Squad Sizes	
		Male	Female	Male	Female	Male	Female	Male	Female		
1											
2	<b>Total -Athletes</b>	<b>342</b>	<b>191</b>	<b>180</b>	<b>130</b>	<b>200</b>	<b>126</b>	<b>300</b>	<b>126</b>		
3	<b>% - Athletes</b>	<b>64.2%</b>	<b>35.8%</b>	<b>58.1%</b>	<b>41.9%</b>	<b>61.3%</b>	<b>38.7%</b>	<b>70.4%</b>	<b>29.6%</b>		
4	<b>Total- Enrollment (2018-19)</b>	<b>2325</b>	<b>936</b>	<b>1529</b>	<b>649</b>	<b>1529</b>	<b>649</b>	<b>1529</b>	<b>649</b>		
5	<b>% - Undergrad Enrollment</b>	<b>71.3%</b>	<b>28.7%</b>	<b>70.2%</b>	<b>29.8%</b>	<b>70.2%</b>	<b>29.8%</b>	<b>70.2%</b>	<b>29.8%</b>		
6	<b>Male Participation Gap</b>	<b>132</b>		<b>126</b>		<b>97</b>			<b>1</b>		
7										<b>Male</b>	<b>Female</b>
8	<b>Baseball</b>	<b>31</b>	<b>0</b>	<b>33</b>	<b>0</b>	<b>33</b>	<b>0</b>	<b>33</b>	<b>0</b>	<b>42</b>	<b>0</b>
9	<b>Basketball</b>	<b>18</b>	<b>13</b>	<b>18</b>	<b>15</b>	<b>18</b>	<b>15</b>	<b>18</b>	<b>15</b>	<b>18</b>	<b>15</b>
10	<b>Coed Sports</b>	<b>3</b>	<b>22</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>		
11	<b>Football</b>	<b>121</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>100</b>	<b>0</b>	<b>113</b>	
12	<b>Golf</b>	<b>12</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>10</b>	<b>0</b>	<b>10</b>	<b>0</b>	<b>10</b>	
13	<b>Lacrosse**</b>	<b>44</b>	<b>24</b>	<b>64</b>	<b>24</b>	<b>40</b>	<b>24</b>	<b>40</b>	<b>24</b>	<b>40</b>	<b>24</b>
14	<b>Rowing</b>	<b>33</b>	<b>23</b>	<b>0</b>	<b>0</b>	<b>22</b>	<b>0</b>	<b>22</b>	<b>0</b>	<b>22</b>	
15	<b>Soccer</b>	<b>28</b>	<b>36</b>	<b>32</b>	<b>27</b>	<b>32</b>	<b>29</b>	<b>32</b>	<b>29</b>	<b>32</b>	<b>29</b>
16	<b>Softball</b>	<b>0</b>	<b>21</b>	<b>0</b>	<b>21</b>	<b>0</b>	<b>21</b>	<b>0</b>	<b>21</b>		<b>21</b>
17	<b>Swimming</b>	<b>29</b>	<b>20</b>	<b>33</b>	<b>27</b>	<b>22</b>	<b>20</b>	<b>22</b>	<b>20</b>	<b>22</b>	<b>20</b>
18	<b>Tennis</b>	<b>12</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>10</b>	<b>0</b>	<b>10</b>	<b>0</b>	<b>10</b>	
19	<b>Track&amp;Field/ Cross Ctry</b>	<b>11</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>13</b>	<b>0</b>	<b>13</b>	<b>0</b>	<b>13</b>	<b>13</b>
20	<b>Volleyball</b>	<b>0</b>	<b>11</b>	<b>0</b>	<b>16</b>	<b>0</b>	<b>17</b>	<b>0</b>	<b>17</b>		<b>17</b>
21	<b>Total</b>	<b>342</b>	<b>191</b>	<b>180</b>	<b>130</b>	<b>200</b>	<b>126</b>	<b>300</b>	<b>126</b>		

\* 2023 men's and women's lacrosse rosters have not yet been posted; 2022 web roster number used

\*\*2022 spring lacrosse web roster appears to be an anomaly at 64 participants; D-II average lacrosse team size is 40; range of previous FIT teams is 29-45; recommending a 45 maximum projection.

\*\*\*It appears that in the recent past, FIT has conducted a cross country/distance runner track and field program rather than a full track and field program, most likely having a cross country team in the fall and possibly having those distance runners participating in a spring track season

**Proper solution to achieve Prong One compliance.** Because FIT was operating an athletic program that was not in compliance with Prongs One, Two, or Three, it is obligated to

develop a compliance solution that does not further disadvantage the underrepresented sex by eliminating sports programs for that sex. Columns H and I display a possible Title IX solution that fulfills the FIT obligation to restore all cut men's sports, includes a roster management program based on Division II average team sizes, and posits a much lower cost football program that addresses past excessive football expenditures that caused FIT to eliminate the program in 2020-21.<sup>11</sup> FIT can create a financially tiered program that operates within its means, keeps all men's sports, and is Title IX Prong One compliant.<sup>12</sup>

While the dropping of football appeared to have a financial motivation, FIT denied that this was the case with dropping men's and women's rowing, men's and women's cross country/track and men's golf effective 2022-23:

"This is not a cost-cutting measure but rather a strategic decision to deliberately increase our competitiveness within our Sunshine State Conference," said [Jamie Joss](#), Director of Athletics. "Currently, with 17 sponsored varsity sports, our resources are simply spread too thin to adequately support each at a competitive level. Our Athletic Department is committed to leading the conference in scholar-athlete academic success while also fielding highly competitive athletic programs that bring pride to the university. This realignment will empower our core 11 conference sports with the increased resources and focus required to better achieve this vision."

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<sup>11</sup> FIT spent \$3.1 million of the athletic department's \$10.7 million on football during the 2018-19 fiscal year. See Gleeson, Scott and Florida Today Staff. Florida Tech eliminates its football program amid coronavirus pandemic. *USA Today* (May 11, 2020) Retrieve from: <https://www.usatoday.com/story/sports/ncaaf/2020/05/11/florida-tech-eliminates-football-program-amid-coronavirus/3109052001/>

<sup>12</sup> For a "how to" manual for how to do accomplish these purposes, see Lopiano, D. and Zotos, C. (2021) Restructuring A College Athletic Program to Protect Olympic Sports During Financial Uncertainty. Human Kinetics: Champaign, IL.

Again, if FIT was in compliance with Prong One, it could have made this strategic decision to eliminate any men's or women's sport and restructure to produce a program in Prong One compliance. However, considering its historical pattern of non-compliance with Prongs One, Two, or Three, I opine that it should first come into compliance with Prong One without further harming the underrepresented sex (male athletes) before being allowed the freedom to restructure.

**F. I opine that FIT male athletes have been significantly shortchanged for the 2004-05 to 2018-19 period in every year with regard to the provision of athletics financial aid.**

**Title IX financial aid requirement.** The financial aid section of the Title IX regulation has a direct reference to its application to athletics:

*§ 106.37 Financial assistance.*

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

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

In this area, scholarship equity is tied to the percentage of male and female student athletes, rather than the percentage of males and females in the general student body. Specifically, Title IX requires that total dollars awarded to male and female student athletes be proportional to their athletics program participation percentages. A disparity of less than one percentage point is permissible. This specification of distribution based on percentage of athletes, rather than percentage of males and females in the student body, is because an institution may be in

compliance with Title IX participation requirements by using the Prong Two or Three options, which do not require male/female athletics participation equal to the percentage of males and females in the undergraduate student body. However, FIT is unable to use the Prong Two or Three option and must meet the Prong One proportionality requirement with regard to athletic participation. However, it does not. Thus, I have computed scholarship entitlements assuming that FIT complies with Prong One and that its percentage of male athletes must be proportional to the percentage of male undergraduates.

Thus, Table 4 below shows the amount male and female athletes actually received compared to the amount male athletes should have received if their athletic participation percent was equal to the proportion of males in the undergraduate population -- their Prong One entitlement. FIT male athletes were significantly shortchanged.

TABLE 4. FIT Athletics Financial Aid – Actual Distribution of Scholarships to Male and Female Athletes from 2003-04 to 2020-21 Compared to Their Undergraduate Enrollment Entitlement  
(Based on Equity in Athletics Disclosure Act Data at <https://ope.ed.gov/athletics/#/>)

Survey Year	Men's Teams Athletics Financial Aid Actually Awarded	Percent Financial Aid to Male Athletes	Actual Percent of Male Athletes	Difference Between Aid Received & Aid Entitled	Male athlete Under (pink) Over (green) payment	Percent Male Under Grads	Women's Teams Athletics Financial Aid Actually Awarded	Percent Financial Aid to Female Athletes	Actual Percent of Female Athletes	Difference Between Aid Received & Aid Entitled	Female athlete Under (pink) Over (green) payment	Percent Female Under Grads	Under/ Over If % Male Athletes Equal to % Undergrad Enroll	Under/ Over If % Female Athletes Equal to % Undergrad Enroll
2003-04	\$ 770,716	47.9%	42.9%	5.0%	\$ (80,035)	69.7%	\$ 838,702	52.1%	57.1%	-5.0%	\$80,035	30.3%	\$ 351,594	\$ (351,594)
2004-05	\$ 650,701	39.3%	46.2%	-6.9%	\$ 113,511	67.9%	\$1,003,984	60.7%	53.8%	6.9%	-\$113,511	32.1%	\$ 472,759	\$ (472,759)
2005-06	\$ 871,245	46.6%	50.6%	-4.0%	\$ 74,163	68.6%	\$ 997,238	53.4%	49.4%	4.0%	-\$74,163	31.4%	\$ 411,274	\$ (411,274)
2006-07	\$ 869,909	42.3%	52.1%	-9.8%	\$ 201,397	69.3%	\$1,187,678	57.7%	47.9%	9.8%	-\$201,397	30.7%	\$ 556,342	\$ (556,342)
2007-08	\$ 959,811	44.1%	50.8%	-6.7%	\$ 145,315	71.1%	\$1,217,204	55.9%	49.2%	6.7%	-\$145,315	28.9%	\$ 588,974	\$ (588,974)
2008-09	\$ 1,081,337	41.5%	49.1%	-7.5%	\$ 195,382	65.4%	\$1,521,206	58.5%	50.9%	7.5%	-\$195,382	34.6%	\$ 620,056	\$ (620,056)
2009-10	\$ 1,213,922	41.2%	46.5%	-5.4%	\$ 158,438	57.5%	\$1,734,950	58.8%	53.5%	5.4%	-\$158,438	42.5%	\$ 483,042	\$ (483,042)
2010-11	\$ 1,284,424	45.2%	53.8%	-8.6%	\$ 244,335	54.8%	\$1,555,993	54.8%	46.2%	8.6%	-\$244,335	45.2%	\$ 271,852	\$ (271,852)
2011-12	\$ 1,608,936	47.7%	59.6%	-11.9%	\$ 400,403	56.7%	\$1,763,259	52.3%	40.4%	11.9%	-\$400,403	43.3%	\$ 303,689	\$ (303,689)
2012-13	\$ 2,336,568	49.6%	59.0%	-9.5%	\$ 446,580	72.6%	\$2,377,019	50.4%	41.0%	9.5%	-\$446,580	27.4%	\$ 1,084,556	\$ (1,084,556)
2013-14	\$ 2,892,783	57.2%	68.8%	-11.6%	\$ 588,347	72.8%	\$2,167,749	42.8%	31.2%	11.6%	-\$588,347	27.2%	\$ 789,857	\$ (789,857)
2014-15	\$ 3,460,955	57.3%	64.4%	-7.2%	\$ 433,482	71.9%	\$2,584,297	42.7%	35.6%	7.2%	-\$433,482	28.1%	\$ 886,003	\$ (886,003)
2015-16	\$ 4,011,121	59.6%	65.5%	-5.9%	\$ 396,128	70.9%	\$2,716,967	40.4%	34.5%	5.9%	-\$396,128	29.1%	\$ 760,588	\$ (760,588)
2016-17	\$ 4,426,138	59.9%	64.8%	-4.9%	\$ 361,871	70.2%	\$2,962,464	40.1%	35.2%	4.9%	-\$361,871	29.8%	\$ 760,071	\$ (760,071)
2017-18	\$ 4,354,038	61.3%	64.9%	-3.6%	\$ 255,516	71.2%	\$2,750,716	38.7%	35.1%	3.6%	-\$255,516	28.8%	\$ 707,718	\$ (707,718)
2018-19	\$ 3,980,357	62.9%	64.2%	-1.2%	\$ 78,425	71.3%	\$2,345,171	37.1%	35.8%	1.2%	-\$78,425	28.7%	\$ 529,564	\$ (529,564)
2019-20	\$ 3,794,408	65.6%	66.1%	-0.5%	\$ 29,818	71.3%	\$1,991,108	34.4%	33.9%	0.5%	-\$29,818	28.7%	\$ 330,665	\$ (330,665)
2020-21	\$ 1,740,583	46.5%	58.7%	-12.2%	\$ 458,232	69.4%	\$2,005,268	53.5%	41.3%	12.2%	-\$458,232	30.6%	\$ 859,038	\$ (859,038)
			<b>UNDERPAYMENT</b>		<b>\$ 4,501,307</b>				<b>OVERPAYMENT</b>		<b>-\$4,501,307</b>		<b>\$10,767,640</b>	<b>-\$10,767,640</b>

On the basis of proportional to athletic participation entitlement, over the full period covered, male athletes were shortchanged in 15 of the 16 years and, over the entire period, male athletes received \$10.8 million *less* than they should have received under Title IX's gender equity requirement.

**G. I opine that FIT male athletes on teams that have been eliminated from the athletic program have already suffered considerable harm and have already suffered considerable harm and will continue to suffer harm in the future as a result of the elimination of their sports.**

**Plaintiffs' declarations not yet reviewed.** I have not yet reviewed plaintiffs' declarations or interviewed them or their coaches but would anticipate, on the basis of past experience, that there will be a significant number of athletes who have experienced financial, academic or other harms such as those described in the following sections.

**Commencing with the announcement of the 2022-23 elimination of these men's sport programs, it will be difficult to restart them if they are not immediately reinstated.** If the decision to drop the teams effective during the 2022-23 season is not stayed, it will be extremely difficult to field a full team of reasonably skilled athletes before 2025-26 at the earliest. Reestablishing teams dropped prior to 2022-23 will be even more difficult. My reasons for this opinion for 2022-23 dropped teams are:

- (i) Each head coach will seek employment at an institution other than FIT as soon as possible.

In fact, I understand that both the head and assistant coaches for men's rowing have secured other positions. Prospective head coach applicants of equal quality will not consider coaching FIT without an assurance that the team will be restored to its previous varsity

sport status in the athletic program. Thus, absent a stay of the proposed program cuts, recruiting a permanent head coach replacement would have to wait until any court case and appeal was completed and resulted in a judgment in favor of the plaintiffs' eliminated team, easily a one to two-year process. Even then, prospective coaches would have to be assured of the long-term stability of the program in some way. Thus, it is unlikely that a favorable court judgment could occur prior to mid-2023-24, which means a new coach would likely not be hired until the end of the 2023-24 academic year. This would be well after 2024-25 freshman recruiting class members committed to their institutions – which would not include FIT as a choice.

- (ii) Realistically, recruiting varsity quality athletes to reconstitute the team would have to wait for the hiring of a new coach. Assuming a coach could be hired for the 2024-25 season at the earliest, the first recruiting class of athletes would not arrive on campus until the 2025-26 season, and it is doubtful that sufficient numbers or a balanced roster of quality freshmen, sophomores, juniors and seniors could be assembled for that season.
- (iii) 2022-23 and 2023-24 team schedules do not exist and rescheduling could occur for the 2023-24 seasons only if all judicial processes were completed, a judgment was rendered in favor of the plaintiffs and there was a sufficient number of current athletes who had not yet graduated or transferred who, combined with transfers and less than high quality athletes could be assembled to participate in a 2024-25 season.
- (iv) Since the announcement of the elimination of men's and women's rowing, men's and women's cross country/track and men's golf was made on June 28, 2022, current FIT freshmen and sophomore players were most likely to seek to transfer to other institutions for the spring 2023 semester, because of the academic and financial reasons cited below.

In fact, I understand that 10 of the 14 freshmen recruits (recruited and accepted) have decided not to attend. It would be possible but difficult to transfer for the fall 2022 semester at that late date. Thus, the viability of the team with regard to sufficient numbers of skilled players is likely to be quickly depleted.

- (v) It would take two to four years beginning in 2024-25 for FIT to rebuild its reputation and gain the confidence of the most highly sought-after prospective Division II student-athletes, who will look at FIT's decision to drop their sport as a lack of commitment. Only high-quality coach hires would minimize this liability.

**High likelihood of academic harm to individual athletes who transfer for the purpose of being able to continue their collegiate sports participation.** It would be impractical and very unusual for sophomore, junior, and senior transfers to other institutions not to be adversely affected academically. Institutions of higher education seldom accept 100 percent of all courses previously taken by transfer students because they are not exact matches to the courses offered at the new institution. In addition, almost every institution of higher education has minimum residency or credits-earned requirements in order to earn the baccalaureate degree from that institution. Depending on the number of credits accepted upon transfer, the student may be forced to extend her time in college or may have to take heavier academic loads to meet minimum credit or actual residency requirements. Also, it is usually more difficult for transfers to be accepted into more highly desired academic majors, due to prerequisite academic courses that may only be available at the new institution or, in the case of FIT athletes, access to a limited number of schools like FIT that specialize in science and technology fields.

I opine that it is unlikely that there will be a successful transfer to another Division II institution with a quality sport program unless the athlete is an exceptional student or proficient



enough to qualify for an athletic scholarship or be the beneficiary of special admissions privileges associated with that status. Thus, the transfer student-athlete may be forced to attend an academically less-selective institution and/or one without a comparable quality sport program.

**High likelihood of financial harm to student athletes.** Athletes who decide to transfer will have difficulty obtaining any athletic scholarship support for several reasons. Because all of the sports dropped in 2022-23 are NCAA Division II equivalency sports, many like golf with very low scholarship limits that may be split among any number of individuals, transferring athletes are more likely to receive partial athletic scholarships rather than full scholarships unless the athlete is nationally or regionally ranked and highly desired. Recruited student athletes usually receive preferred packaging of need-based and merit financial aid, meaning that a larger portion of their financial aid package will be non-repayable grants rather than loans. Thus, it is more likely that the athletes who transfer to another Division II institution with a comparable quality athletic program may not have athletic aid available because its limited allocation of scholarships has already been promised to returning athletes in the same class as the transfer and/or the institution may not have the non-athletic financial resources available to offer an attractive financial aid package that includes a significant percentage of non-repayable aid.

There are three other factors that will minimize the availability of athletic aid or institutional non-repayable aid for transfer students: (a) the Covid-19 economic crisis caused reductions in athletics budgets nationwide, (b) the unplanned extension of the eligibility of college athlete seniors who would have completed their athletic eligibility in the spring of 2020, but, because of Covid-19, did not use their last year of eligibility and returned to their original institutions a “do over” depleting athletic department reserves, (c) general institutional financial belt-tightening that affects the availability of non-repayable non-athletics-related grant aid. Thus,

the combination of lack of availability of athletics aid and more loans than non-repayable grants in the packaging of other non-athletics aid, increases the likelihood of transfer athletes will face significant additional out-of-pocket costs to complete their educations.

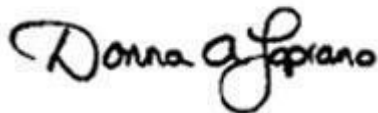
**Likelihood of harm to individual athletes who remain at FIT with regard to physical health and well-being and loss of the opportunity to achieve athletic performance outcomes.**

What happened to 2020 spring sport athletes who lost their spring eligibility because of Covid-19, but graduated, provides historical precedent. Most would probably end their athletic careers, rather than seek another institution to complete their eligibility. Those athletes who must remain at FIT because of the previously mentioned factors face additional, different types of harm. The Division II athlete's decision to attend a college or university because of the coach and participation in athletics is equally as important, and in some cases, even more important, than the academic opportunities offered. Daily physical conditioning, being pushed by the coach to achieve growth in the acquisition of skills, a commitment to devote 30- to 40-hours-per-week within a narrow window of time during which an athlete is physically capable of achieving high levels of performance, is a way of life for the athlete. When coaches are no longer available because they have departed and access to athletics facilities and services is limited because the athlete is no longer a member of the varsity athletic teams, this is a huge culture change that affects the mental health and well-being of athletes that should not be underestimated.

Coaches are the people who help balance the athlete's life, especially when that need is created by the pressures of classes, training, competition, dealing with injuries, etc. They guide the development of team chemistry and instill the player's trust in teammates – relationships that last for a lifetime. Breaking up the team construct of highly valued intrapersonal relationships is a significant harm – losing your best friend times ten.

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

Respectfully submitted,

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

Donna A. Lopiano, Ph.D.

Date: December 12, 2022

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

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Shelton, CT 06484 516-380-1213 (c) 203-538-5280 (w)  
[SportsManagementResources@gmail.com](mailto:SportsManagementResources@gmail.com)

*Revised as of 9-30-2022*

**EDUCATION**

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

**PREVIOUS EMPLOYMENT**

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2012-present	Adjunct Professor, Sports Management, Southern Connecticut State University
2008-present	President and Founder, Sports Management Resources <ul style="list-style-type: none"><li>o a consulting firm specializing in educational sport</li><li>o helping sports organizations solve integrity, growth and development challenges</li><li>o <a href="http://www.SportsManagementResources.com">www.SportsManagementResources.com</a></li></ul>
1992-2007	Chief Executive Officer, Women's Sports Foundation Built an internationally respected education, research and public policy organization: <ul style="list-style-type: none"><li>o Secured funds that enabled the Women's Sports Foundation to award more than \$50 million in cash grants and educational materials</li><li>o Expanded the Women's Sports Foundation endowment from \$1 million to \$4 million; grew annual revenues from \$1 million to \$10 million and built staff from eight to sixty-five</li><li>o Driving force behind the development of the award-winning GoGirlGo! educational curriculum that since 2001 has reached more than 625,000 girls; significantly changing their attitudes about healthy lifestyle choices</li><li>o Served as a leading expert and national spokesperson on gender equity issues, including Title IX and the Amateur Sports Act, providing expert testimony for numerous court cases on coaches' compensation, athletes' rights, and equitable treatment</li><li>o Repeatedly led national efforts to strengthen Title IX legislation and its enforcement, successfully educating elected officials and policy makers on the importance of upholding the law</li><li>o Recognized as one of the "100 Most Influential Sports Educators in America" by the Institute for International Sport, "100 Most Influential People in Sports" by <i>The Sporting News</i> and "The 50 Most Influential People in College Sports" by <i>College Sports</i></li></ul>
1975-1992	Director of Intercollegiate Athletics for Women and lecturer, Kinesiology and Health Education Department, The University of Texas at Austin Constructed what many believed to be the premiere women's athletics program during this period; twice earning designation of top program in the nation: <ul style="list-style-type: none"><li>o All eight sports consistently national ranked in the top ten in Division I</li></ul>

**PREVIOUS EMPLOYMENT (continued)**

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- Grew budget from \$57,000 in 1975 to over \$4 million with 34 endowed academic scholarships for student-athletes in 1992
  - Eighteen national championships in six different sports, 51 individual sport national champion athletes, 57 Southwest Conference championships and 395 All-American athletes, dozens among them Olympians and world champions
  - Ninety percent of women athletes who exhausted their athletic eligibility at the University of Texas received a baccalaureate degree
  - Served as Lecturer, Kinesiology and Health Education Department, teaching sports ethics and athletic management
- 1971-75      Assistant Professor of Physical Education, Assistant Director of Athletics and Head Coach of men's and women's varsity teams at Brooklyn College of The City University of New York
- Led development of new undergraduate curriculum for physical education majors
  - Taught undergraduate courses: Philosophical Perspectives of Physical Education, Women in Sport, Behavioral Perspectives of Physical Education, Coaching Techniques, and Psycho-Social Aspects of Women in Sport as well as skills and methods courses in volleyball, basketball, softball and officiating
  - Taught graduate courses in Sociology of Sport, Administration of Athletics, Women in Sport
  - Initiated women's intercollegiate volleyball and grew it into a nationally ranked program
  - Head Coach of women's basketball, women's softball, women's volleyball and men's volleyball
- 1969-70      Graduate Teaching Assistant, Women's Intramural Director, Women's Intercollegiate Volleyball Coach at The University of Southern California
- While a graduate assistant and doctoral student:
- Served as head administrator of the University's women's intramural program
  - Served as head varsity volleyball coach
  - Taught a variety of sports classes for undergraduate students
- Visiting Professor/Adjunct Professor/Executive in Residence - Courses Taught at Other Universities
- |                |  |
|----------------|--|
| Spring 2015-20 | Global Issues in Sport and Entertainment Management, Southern Connecticut State University                         |
| Fall 2014-20   | Governance and Administration of Sport Organizations, Southern Connecticut State University                        |
| Fall 2012-20   | Current Issues in Sport Management, Southern Connecticut State University  |
| Spring 2014-17 | Sport Ethics, Southern Connecticut State University  |
| 2013-2014      | Executive-in-Residence, University of New Haven College of Business  |
| Fall, 2011     | Amateur Sports Governance, New York University   |
| Spring, 2011   | Amateur Sports Governance, New York University   |
| Fall, 2011     | Seminar in Sports Business, Columbia University  |
| Spring, 2009   | Community, Educational and Open Amateur Sports Organization and Governance, University of Massachusetts at Amherst |
| Summer, 1981   | Sports Programs for Girls and Women, University of Illinois @ Chicago Circle                                       |
| Summer, 1980   | Coaching Softball, University of Iowa  |
| Summer, 1979   | Athletic Administration, University of Iowa  |
| Summer, 1976   | Administration of Girls' and Women's Athletics, University of Denver   |
| Summer, 1975   | Psycho-Social Aspects of Women in Sport, University of Washington  |

**TEACHING, COACHING AND ADMINISTRATIVE RESPONSIBILITIES**

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***Administrative Experience:***

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

**TEACHING, COACHING AND ADMINISTRATIVE RESPONSIBILITIES**

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***Courses Taught:***

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

***Coaching Experience:***

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

**PROFESSIONAL ORGANIZATIONAL AFFILIATIONS**

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

**HONORARY DEGREES**

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

**HALL OF FAME AWARDS**

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

## **OTHER AWARDS AND HONORS**

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

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

100 Most Influential Sports Educators in America, 2013

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

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

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

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

Sports Lawyers Association, 2008 Award of Excellence

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

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

Adelphi University Sports Leadership Institute, Community Leadership Award, 2007

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

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

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

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

International Olympic Committee Women and Sport Trophy, 2005

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

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

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

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

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

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

United States Sports Academy Distinguished Service Award, 2001

International Olympic Committee, Women and Sport Achievement Award, 2000

San Antonio Sports Foundation Appreciation Award, 2000

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

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

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

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

National Association of Sports Commissions Recognition Award, 1998

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

Stamford Old Timers Athletic Association National Honoree, 1998

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

NCSC Lifetime Achievement Award, 1997

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

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

Tennessee Lawyers Association for Women Recognition Award, 1995

NAFFY Award (National Association for Female Executives), 1995

King County and NYSAC Award for Contributions in Sports, 1994

National Collegiate Athletic Association Silver Anniversary Award, 1993

Dallas All Sports Association Distinguished Service Award, 1992



## **OTHER AWARDS AND HONORS (cont.)**

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National Association for Girls and Women in Sports Guiding Woman in Sport Award, 1992  
National Association of Collegiate Women Athletic Administrators, District 7 NACWAA  
Administrator of the Year, 1992 and 1991  
National Association for Girls and Women in Sport Guiding Woman in Sport Award, 1992  
Recipient of the 1987 Flo Hyman Memorial Gazelle Award "to honor a person who exemplifies feminist values in athletics and scholarship." Presented by the Project on Equal Education Rights of the NOW Legal Defense and Education Fund, 1987.  
Margaret C. Berry Award for Outstanding Contribution to Student Life, 1985, by the Eyes of Texas

## **LEADERSHIP EXPERIENCE**

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### *Current:*

Member, President, Board of Directors, The Drake Group (2015 to present)  
Member, Advisory Board, Fishlinger Center for Public Policy Research, College of Mount St. Vincent (2015 to present)  
Member, Advisory Board, The Drake Group, (2010 to present)  
Member, Advisory Board, Champion Women (2015-present)  
Chair, Drake Working Group on Collegiate Athletics Reform (2013 –present)  
Member, Advisory Board, Sports Law Institute, Vermont Law School (2013 to present)  
Member, Advisory Board, Friends of the Tisch Center – Sports (2011 to present)  
Member, Advisory Board, Center for Research on Sport & Physical Activity, D'Youville College (2010 to present)  
Member, Foundation for Global Sports Development (formerly Justice for Athletes), Advisory Board (2005 to present)  
Member, Advisory Board PowerPlay NYC, (2001 to present)  
Member, Advisory Board of the MBA in Sport Management, Florida Atlantic University (2000 to present)  
Member, Committee of Advisors, Positive Coaching Alliance (1999 to present)  
Member, Editorial Advisory Board of *Athletic Business* (1997 to present)

### *Past:*

Member, National Honors Committee of The National Women's Hall of Fame (1994 to 2015)  
Chair, International Baseball Federation (IBAF) Women's Baseball Committee (2009)  
Member, Advisory Board, 2003 World Congress of Sports  
Member, The ESPY Academy, (2002 to 2004)  
Member, United States Olympic Committee Board of Directors, Public Sector member (2000 to 2004)  
National Gambling Task Force, National Association of Student Personnel Administrators (1999)  
Member, Major League Golf Advisory Board (1999)  
Member, 1999 FIFA Women's World Cup Advisory Board (1997)  
Member, Advisory Board of SportsBridge (1997)  
Member, Nassau County (NY) Sports Commission (1995 to 2007)  
Member, Sara Lee Frontrunners Award Selection Committee, (1995-2000)  
Member, National Advisory Board to the National Consortium for Academics and Sports (1993 to 2004)  
Editorial Board, *Training Table* magazine, United States Sports Academy (1993)  
Advisory Board, *Fitness* magazine (1993-2000)  
ESPN American Sports Awards, Select Nominating Committee (1992-2000)  
SMART Eureka Advisory Board (1992-1998)  
NCAA Gender Equity Task Force (1992 to 1993)  
NACDA Foundation Blue Ribbon Review Committee, (1992)  
Ethics Fellow, Institute for International Sport (1990 to 1998)  
Member, Southern Association of Colleges and Schools Commission on Colleges Committee on Intercollegiate Athletics (1990-91)  
Babe Zaharias Award Selection Committee (1990)  
Chair, Education Division of Capital Area United Way (1990)  
Member, National Advisory Board of the Center for the Study of Sport in Society (1989 to 2008)  
Member, Advisory Board, Center for Athletes' Rights and Education (1989 to 2003)  
Chair, NCAA Legislative Review Committee (1989-1992)  
Member, NCAA Cost Reduction Committee (1989-90)



**LEADERSHIP EXPERIENCE (cont.)**

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*Past (cont.)*

Chair, National Association of Collegiate Women Athletic Administrators Television Committee (1988 to 1992)

Member, Executive Committee, Project Fair Play of Texas (1988-92)

Member, Future Directions Committee, University of Texas Ex-Students' Association (1988-90)

Member, Sports Foundation Feasibility Committee of the Austin Chamber of Commerce (1988-89)

Member, Community Advisory Board for Austin's Ronald McDonald House (1987-1992)

Trustee, Women's Sports Foundation (1987-1991)

Member, Council of Collegiate Women Athletic Administrators Legislation Committee (1986 to 1992)

Member, Board of Directors of the Women's Advocacy Project (1986-1992)

Member, NCAA Manual Revision and Deregulation Committee (1986-89)

Member, Executive Committee of the Texas University Interscholastic League (1986-88)

Member, City of Austin Parks and Recreation Board (1986)

Member, Board of Governors of the Texas Foundation for Intercollegiate Athletics for Women (1984-92)

Member, United States Olympic Development Committee (1984-88)

President, Association for Intercollegiate Athletics for Women (AIAW) (1981)

President-Elect, Association for Intercollegiate Athletics for Women (1980)

Past-President, Association for Intercollegiate Athletics for Women (1982)

President, Southwest Association for Intercollegiate Athletics for Women (1980)

President-Elect, Southwest Association for Intercollegiate Athletics for Women (1979)

Consultant to Office of Civil Rights, U.S. Department of Education on Title IX Investigations of Athletic Programs (1979)

Investigator, American Council on Education Study of the Financial Problems of Intercollegiate Athletics (1978-79)

Member, AIAW Ethics and Eligibility and Eligibility Committee (1978)

Chair, AIAW Television Committee (1976-77)

Chair, AIAW President's Summit Conference on Intercollegiate Athletics (1976)

Member, NAGWS Development Committee (1975-76)

Member, AIAW Restructure Committee (1975)

Chair, AAHPERD/DGWS Softball Guide Committee (1974-76)

Member, Eastern Association of Intercollegiate Athletics for Women Volleyball Committee (1974-76)

Member, AAHPERD Secondary Physical Education Commission Ad Hoc Committee for the Development of a Secondary Physical Education Program Assessment Instrument (1974-75)

Chair, United States Collegiate Sports Council Volleyball Committee (1973-75)

Director, National Softball Program, Italian Olympic Committee (1973-75)

Chair, AAHPERD/DGWS Softball Examinations and Rating Committee (1973-75)

Chair, New York State Association for Intercollegiate Athletics for Women's Volleyball Sport Committee (1972-74)

**EXPERT WITNESS/CONSULTANT – LAWSUITS**

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*Association for Intercollegiate Athletics for Women v. National Collegiate Athletic Association* (antitrust), 735 F.2d 577 (D.C. Cir. 1984)

*Bowers v. Baylor University* (employment discrimination/Title IX), 862 F. Supp. 142 (W.D. Tex. 1994)

*Pederson v. Louisiana State University* (Title IX), 912 F. Supp. 892 (M.D. La. 1996)

*Stanley v. University of Southern California* (employment discrimination), 13 F.3d 1313 (9th Cir. 1994)

*Roberts v. Colorado State University* (Title IX), 814 F. Supp. 1507 (D. Colo. 1993)

*Rachel Sanders et al v. University of Texas at Austin* (Title IX), settled out of court

*Cohen v. Brown University* (Title IX), 879 F. Supp. 185 (D.R.I. 1995)

*Tyler v. Howard University* (employment/Title IX), No. 91-CA11239 (D.C. Super. Ct. 1993).

*Weaver v. Ohio State University* (employment/Title IX), 71 F. Supp. 2d 789 (S.D. Ohio 1998)

*Haffer v. Temple University* (Title IX), 678 F. Supp. 517 (E.D. Pa. 1988)

*Blair v. Washington State University* (Title IX), 108 Wn.2d 558 (Wash. 1987)

*Perdue v. City University of New York* (employment discrimination), 13 F. Supp. 2d 326 (E.D.N.Y. 1998)

*Vicki Dugan v. Oregon State University* (employment discrimination/Title IX) 1999, settled out of court

*Law v. National Collegiate Athletic Ass'n* (employment discrimination), 5 F. Supp. 2d 921 (D. Kan. 1998)

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

**EXPERT WITNESS/CONSULTANT – LAWSUITS (cont.)**

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

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

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

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

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

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

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

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

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

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

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

*Bull v. Bd. of Trs. of Ball State Univ.* (Title IX – retaliation against coaches), 1:10-cv-00878-JMS-TAB (S.D. Ind. May. 2, 2012)

*Bigge et al v. District School Board of Citrus County, Florida* (Title IX - retaliation against parents), No. 5:2013cv00049 - Document 85 (M.D. Fla. 2015)

*Brenny v. Bd. of Regents of the Univ. of Minn.* (Title IX – gender and sexual discrimination), 813 N.W.2d 417, 279 Ed. Law Rep. 1209 (Minn. Ct. App. 2012)

Post 2015

*Miller v. Bd. of Regents of Univ. of Minn.* (Title IX – gender and sexual discrimination), Case No. 15-CV-3740 (PJS/LIB) (D. Minn. Feb. 1, 2018)

*Portz v. St. Cloud State Univ.* (Title IX – athletics participation), 401 F. Supp. 3d 834 (D. Minn. 2019)

*Meyer v. The University of Iowa* (Title IX – gender and sexual discrimination), settled out of court

*Griesbaum v. The University of Iowa* (Title IX – gender and sexual discrimination), settled out of court

*Working v. Lake Oswego Sch. Dist.* (Title IX – athletics), No. 3:16-cv-0581-SB (D. Or. Jul. 19, 2017)

*B.W. v. Black Hills Football Club* (Title IX – sexual harassment), settled out of court

*T.S. v. Red Bluff Joint Union High Sch. Dist.* (Title IX – athletics), No. 2:17-cv-00489-TLN-EFB (E.D. Cal. Jul. 10, 2017)

*Videckis v. Pepperdine University* (Title IX – sexual harassment/sexual orientation), 150 F. Supp. 3d 1151 (C.D. Cal. 2015)

*Robb v. Lock Haven Univ. of Pa.* (Title IX – athletics), No. 4:17-CV-00964 (M.D. Pa. May. 7, 2019)

*Hudson v. California State University* (Title IX – gender, employment), settled out of court

*Radwan v. Univ. of Conn. Bd. of Trs.* (Title IX – athlete treatment), 465 F. Supp. 3d 75 (D. Conn. 2020)

*Howard v. William Jessup University* (Title VI and IX – employment), No. 2: 17-cv-00756-WBS-KJN (E.D. Cal. Aug. 14, 2019).

*A.B. by C.B. v. Hawaii State Department of Educ.*, 386 F. Supp. 3d 1352 (D. Haw. 2019).

*Kenny v. University of Delaware*, No. 19-3818 (3d Cir. Aug. 19, 2020).

*Gordon v. Jordan Sch. Dist.*, 522 F. Supp. 3d 1060 (D. Utah 2021)

*Cohen v. Brown University*, No. 21-1032 (1st Cir. Oct. 27, 2021).

*Ohlensehlen v. University of Iowa*, 509 F. Supp. 3d 1085 (S.D. Iowa 2020).

*Balow v. Michigan State University*, No. 1: 21-cv-44 (W.D. Mich. Feb. 19, 2021).

*Anders v. California State University*, No. 1: 21-cv-00179-AWI-BAM (E.D. Cal. July 16, 2021).

*Lazor v. University of Connecticut*, No. 3: 21-cv-583 (SRU) (D. Conn. May 26, 2021).

*McGowan v. Southern Methodist University*, Civil Action No. 3: 18-CV-141-N (N.D. Tex. May 6, 2020).

*Jackson Leech et al v. Clemson University, et al.* (2021) ((Title IX – athletics participation)

*Jennifer L. Calloway and Brad Calloway v. University of South Carolina-Upstate* (2021) (Title IX Retaliation)

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Carnell, Amy v. Michael Koslosky, Sound Football Club, Northwest Nationals and the Washington State Youth Soccer Association (2020) Superior Court of the State of Washington, King County (sexual assault of minor)

Niblock, Elizabeth v. University of Kentucky, Mitch Barnhart and Eli Capilouto. (2020) U.S. District Court, Eastern District of Kentucky, Lexington Central Division (Title IX – athletics participation)

Geathers, Robert v. NCAA, Court of Common Pleas of Orangeburg Cty., South Carolina (2021) (concussion)

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### **Books, Books Chapters, Handbooks, Training Programs and Research Reports**

Lopiano, D. and C. Zotos (2020) *Restructuring A College Athletic Program to Protect Olympic Sports During Financial Uncertainty*. Champaign, IL: Human Kinetics.

Lopiano, D. (2020) "Title IX and Gender Equity in Athletics" and "Athletics Liability". Vector Solutions SafeColleges and SafeSchools Online Training Courses. See: [https://www.vectorsolutions.com/course-details-edu/title-ix-and-gender-equity-in-athletics/ss-staff/course-gender\\_equity\\_athletics](https://www.vectorsolutions.com/course-details-edu/title-ix-and-gender-equity-in-athletics/ss-staff/course-gender_equity_athletics) and [https://www.vectorsolutions.com/course-details-edu/athletic-liability/ss-staff/course-athletic\\_liability](https://www.vectorsolutions.com/course-details-edu/athletic-liability/ss-staff/course-athletic_liability)

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Lopiano, D. (2015) The roots of corruption in US collegiate sport. Global Corruption Report: Sport. Transparency International. Routledge: London/New York

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Lopiano, D., Fortunato, J, Hogshead-Makar, N. and Starr, K. (2012) *Safe4Athletes Handbook: Local Sport Club Policies and Procedures to Provide Athletes with a Safe and Positive Environment Free of Sexual Abuse, Bullying and Harassment*. Safe4Athletes.org See: <http://safe4athletes.org/4-clubs/model-policy>

M. Snyder and L. Zurn. (2007). The Women's Sports Foundation Report: The Status of Female Youth Health and Physical Activity in the Boston Metropolitan Area. East Meadow, NY: Women's Sports Foundation.

Lopiano, D. (2006) "Gender and Sport" in *New Game Plan for College Sport* edited by Richard E. Lapchick, American Council on Education and Praeger Publishing, pp. 127-155.

Lopiano, D., and Lakowski, T. (2006). *Increasing Youth Sports & Physical Activity Participation: A Women's Sports Foundation Public Policy Guide*. East Meadow, NY: Women's Sports Foundation.

Lopiano, D. (2002) *Advocating for Gender Equality in Sport: The Experience of the Women's Sports Foundation in the United States. A Guide and Education Kit*. Women's Sports Foundation, East Meadow, NY.

Lopiano, D. and C. Zotos. (2001) *Women's Sports Foundation Education Guide: Special Issues for Coaches of Women's Sports*. East Meadow, NY: Women's Sports Foundation.

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

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

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### **Books, Books Chapters, Handbooks, Training Programs and Research Reports**

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

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

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

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

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

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

### **Journal Articles**

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

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

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

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

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

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

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

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

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

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

### **Congressional Testimony**

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

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



## **Congressional Testimony**

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

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Lopiano, Donna and Mariah Burton Nelson. (2022) A Fair and Inclusive Solution for Transgender Women in Sports. August 4, 2022. *Forbes.com*. Retrieve at: <https://www.forbes.com/sites/donnalopiano/2022/08/04/a-fair-and-inclusive-solution-for-transgender-women-in-sports/?sh=2b24cb3712ef>

Lopiano, Donna. (2022) Why the NCAA's Transgender Eligibility Policy is Outdated – And How It Can Be Fixed. January 5, 2022. . *Forbes.com*. Retrieve at: <https://www.forbes.com/sites/donnalopiano/2022/01/05/ncaa-transgender-eligibility-policy-creates-major-controversy-in-womens-swimming/?sh=1fb6a8243d10>

Gill, E., Lopiano, D., Smith, B., Sommer, J., Gurney, G., Lever, K., Porto, B., Ridpath, D.B., Sack, A., Thatcher, S., and Zimbalist, A. (2021) The Drake Group Position Statement: A Continuing Disgrace – Intercollegiate Athletics Race Issues. Retrieve at: <http://thedrakegroup.org>

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Brian Porto, Gerald Gurney, Donna Lopiano, Mary Willingham, B. David Ridpath, Allen Sack, and Andrew Zimbalist. (2019) *The Drake Group Position Statement: Congress Granting a Limited Antitrust Exemption to the NCAA and Its Member Institutions*. Retrieve at: <https://www.thedrakegroup.org/2013/06/04/congress-granting-a-conditional-limited-antitrust-exemption-to-the-ncaa-and-its-member-institutions/> This paper was originally issued on June 1, 2015 and revised on October 4 and 28, 2019)

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"Sports Must Work to Make Our Society Better, Not More Violent", in *Sports Business Journal*, May 3, 1999.

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"Next Goal for Women: Commitment From the Keepers of Capital", in *Sports Business Journal*, July 26, 1999.

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"Concepts and Issues in Administrative Behavior: A Book Review," *A Compendium of Analytical Book Reviews in Organizational Behavior* (Percy G. Rogers, editor), University of Southern California Press, Los Angeles, CA, 1972.

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Fast Pitch Softball: Developing the Pitcher (Part II), Truckee River Studios, Inc. (Verdi, Nevada), 1984.

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

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

## **ATHLETIC PARTICIPATION**

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Participated in 26 National Championship tournaments in four different sports

### **Softball:**

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

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

### **Volleyball:**

- Participant in Five National USVBA Volleyball Championship Tournaments

## **ATHLETIC PARTICIPATION**

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### Basketball:

- Participant in Five National AAU Basketball Championship Tournaments

### Field Hockey:

- Participant in Three National Field Hockey Championship Tournaments



**Donna A. Lopiano, Ph.D.**

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

<b>Expense Type</b>	<b>Fee Basis</b>
<b>Consultation with attorneys</b> related to preparation for depositions, trial testimony, expert reports, compliance plans or legal theories	<b>\$300/hour</b>
<b>Preparation of written reports</b> including review of case materials, research/data collection related to preparation of such reports	<b>\$350/hour</b>
<b>Deposition or court testimony</b>	<b>\$700/hour</b>
<b>Hours traveling</b> Exception: consultant travels for court testimony and such appearance does not occur for any reason - \$2,500/day flat rate. Exception: assumes a video capability for deposition; consultant shall not be required to travel a distance greater than 50 miles from Shelton CT	<b>No charge</b>
<b>Site Visits</b> for assessment, presentations, or other purposes requested by client	<b>\$2,500/day flat rate</b>
<b>"Out-of-pocket" expenses for site visits</b> including:	<b>Actual</b>
<ul style="list-style-type: none"> <li>postage, mailing or overnight shipping costs or reproduction of materials detailed above upon which analysis will be based</li> <li>actual cost of coach class travel (except for airline trips in excess of 1,000 miles, "extra space" seating if available in coach class and for international travel, business class airfare)</li> <li>actual cost of transfers to and from Shelton, Connecticut and LaGuardia or JFK airports for departure and return travel and, at the destination, transfers from and to the airport and hotels and/or the site to be visited</li> <li>actual cost of accommodations, including internet service</li> <li>provision of meals or reimbursement for actual cost not to exceed \$75.00 per diem</li> </ul>	

## **Invoicing and Payment Terms**

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

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

## **Interim Reports**

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

## APPENDIX C

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

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

Department of Education Equity in Athletics Disclosure Database. Florida Institute of Technology EADA Reports: 2003-04 through 2020-21. Retrieve from:  
<https://ope.ed.gov/athletics/#/>

Florida Institute of Technology. Redacted NCAA Squad Lists and Unidentified Roster Sheets

- 2015-16 NCAA Squad Lists: Baseball (FT\_000001-4), Football (FT\_000005-12), Men's Basketball (FT\_000013-14), Men's Golf (FT\_000015-16), Men's Lacrosse (FT\_000017-20), Men's Crew (FT\_000021-23), Men's Soccer (FT\_000024-26), Men's Swimming and Diving (FT\_000027-29), Men's Tennis (FT\_000030-31), Men's Outdoor Track (FT\_000032-34), Men's Cross Country (FT\_000035-36), Women's Basketball (FT\_000037-38), Women's Golf (FT\_000039-40), Women's Rowing (FT\_000041-43), Women's Soccer (FT\_000044-46), Women's Softball (FT\_000047-48), Women's Swimming and Diving (FT\_000049-50), Women's Tennis (FT\_000051-52), Women's Outdoor Track (FT\_000053-54), Women's Volleyball (FT\_000055-56), Women's Cross Country (FT\_000057-58) (**no women's lacrosse**)
- 2016-17 NCAA Squad Lists: Baseball (FT\_000059-62), Football (FT\_000063-71), Men's Basketball (FT\_000072-73), Men's Golf (FT\_000074-75), Men's Lacrosse (FT\_000076-79), Men's Crew (FT\_000080-82), Men's Soccer (FT\_000083-85), Men's Swimming and Diving (FT\_000086-88), Men's Tennis (FT\_000089-90), Men's Outdoor Track (FT\_000091-93), Men's Cross Country (FT\_000094-95), Women's Basketball (FT\_000096-97), Women's Golf (FT\_000098-99), Women's Rowing (FT\_000100-102), Women's Lacrosse (FT\_000103-105), Women's Soccer (FT\_000106-108), Women's Softball (FT\_000109-110), Women's Swimming and Diving (FT\_000111-113), Women's Outdoor Track (FT\_000114-115), Women's Tennis (FT\_000116-117), Women's Volleyball (FT\_000118-119), Women's Cross Country (FT\_000120-121)
- 2017-18 NCAA Squad Lists: Baseball (FT\_000122-124), Football (FT\_000125-132), Men's Basketball (FT\_000133-134), Men's Golf (FT\_000135-136), Men's Lacrosse (FT\_000137-140), Men's Crew (FT\_000141-143), Men's Soccer (FT\_000144-146), Men's Swimming and Diving (FT\_000147-149), Men's Tennis (FT\_000150-151), Men's Cross Country (FT\_000152-153), Women's Basketball (FT\_000154-155), Women's Outdoor Track (FT\_000156-158), Women's Golf (FT\_000159), Women's Lacrosse (FT\_000160-162), Women's Rowing (FT\_000163-164), Women's Soccer (FT\_000165-167), Women's Softball (FT\_000168-170), Women's Swimming and Diving (FT\_000171-172), Women's Tennis (FT\_000173-174), Women's Volleyball (FT\_000175-176), Women's Cross Country (FT\_000177-178) **no men's outdoor track**

- 2018-19 NCAA Squad Lists: Baseball (FT\_000179-181), Football (FT\_0000182-189), Men's Basketball (FT\_000190-191), Men's Golf (FT\_000192-193), Men's Lacrosse (FT\_000194-197), Men's Crew (FT\_000198-201), Men's Soccer (FT\_000202-203), Men's Swimming and Diving (FT\_000204-206), Men's Tennis (FT\_000207-208), Men's Outdoor Track (FT\_000209-210), Men's Cross Country (FT\_000211-212), Women's Basketball (FT\_000213-214), Women's Golf (FT\_000215-216), Women's Lacrosse (FT\_000217-219), Women's Rowing (FT\_000220-221), Women's Soccer (FT\_000222-224), Women's Softball (FT\_000225-226), Women's Swimming and Diving (FT\_000227-228), Women's Tennis (FT\_000229), Women's Outdoor Track (FT\_000230-231), Women's Volleyball (FT\_000232-233), Women's Cross Country (FT\_000234)
- 2019-20 NCAA Squad Lists: Baseball (FT\_000235-237), Football (FT\_0000238-246), Men's Basketball (FT\_000247-248), Men's Golf (FT\_000249-250), Men's Lacrosse (FT\_000251-254), Men's Crew (FT\_000255-257), Men's Soccer (FT\_000258-260), Men's Swimming and Diving (FT\_000261-263), Men's Outdoor Track (FT\_000264-265), Men's Cross Country (FT\_000266-267), Women's Basketball (FT\_000268-269), Women's Lacrosse (FT\_000270-271), Women's Rowing (FT\_000272-274), Women's Soccer (FT\_000275-277), Women's Softball (FT\_000278-280), Women's Swimming and Diving (FT\_000281-283), Women's Outdoor Track (FT\_000284-285), Women's Volleyball (FT\_000286-287), Women's Cross Country (FT\_000288-289) **no men's tennis, no women's golf, no women's tennis**
- 2020-21 NCAA Squad Lists: Baseball (FT\_000290-292), Men's Basketball (FT\_000293-294), Men's Golf (FT\_000295-296), Men's Lacrosse (FT\_000297-300), Men's Crew (FT\_000301-303), Men's Soccer (FT\_000304-306), Men's Swimming and Diving (FT\_000307-309), Men's Outdoor Track (FT\_000310-311), Men's Cross Country (FT\_000312-313), Women's Basketball (FT\_000314-315), Women's Lacrosse (FT\_000316-317), Women's Swimming and Diving (FT\_000318-319), Women's Outdoor Track (FT\_000320), Women's Rowing (FT\_000321-322), Women's Soccer (FT\_000323-325), Women's Softball (FT\_000326-327), Women's Volleyball (FT\_000328-329), Women's Cross Country (FT\_000330) **no men's football**
- 2021-22 NCAA Squad Lists: Baseball (FT\_000331-333), Men's Basketball (FT\_000334-335), Men's Golf (FT\_000336-337), Men's Lacrosse (FT\_000338-342), Men's Crew (FT\_000343-344), Men's Soccer (FT\_000345-347), Men's Swimming and Diving (FT\_000348-350), Men's Outdoor Track (FT\_000351-352), Men's Cross Country (FT\_000353-354), Women's Basketball (FT\_000355-356), Women's Lacrosse (FT\_000357-359), Women's Rowing (FT\_000360-361), Women's Soccer (FT\_000362-364), Women's Softball (FT\_000365-366), Women's Swimming and Diving (FT\_000367-368), Women's Outdoor Track (FT\_000369), Women's Volleyball (FT\_000370-371), Women's Cross Country (FT\_000372) **no men's football**
- 2022-23 NCAA Squad Lists: Baseball (FT\_000378-380), Men's Basketball (FT\_000381-382), Men's Lacrosse (FT\_000383-386), Men's Soccer (FT\_000387-389), Men's Swimming and Diving (FT\_000390-392), Women's Basketball (FT\_000393-394), Women's Lacrosse (FT\_000395-397), Women's Soccer (FT\_000398-400), Women's Softball (FT\_000401-402), Women's Swimming and Diving (FT\_000403-405), Women's Volleyball (FT\_000406-407) **no men's football, no men's golf, no men's**



**crew, no men's outdoor track, no men's cross country, no women's rowing, no women's outdoor track , no women's cross country**

- Undated E-Sports Game Rosters: JV and Varsity League of Legends (no sex of players indicated) (FT\_000373), JV and Varsity Rainbow 6 Siege (no sex of players indicated) (FT\_000374, JV and Varsity Rocket League (no sex of players indicated) (FT\_000375), JV and Varsity Super Smash Brothers Ultimate (no sex of players indicated) (FT\_000376), JV and Varsity Valorant (no sex of players indicated) (FT\_000377)
- Undated E-Sports Game Rosters: (no sex of players indicated/only gender identities) League of Legends, JV and Varsity Rocket League, JV and Varsity Super Smash Brothers Ultimate, JV and Varsity Valorant

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Knight, Jeff. Email to Arthur Schofield, James Larew, and Claire Diallo dated October 14, 2022 Subject: Florida Institute of Technology and Men's Rowing.

Knight, Jeff. Email to Arthur Schofield, James Larew, and Claire Diallo dated November 22, 2022 Subject: Navarro, et. Al v. Florida Tech – squad lists [IMAN-BRICKER.FID1969177]. Notification of numbers of student-athletes by sport, by year who did not meet the definition of a Title IX participant and notification that 22-23 NCAA squad lists are projected numbers.

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National Collegiate Athletic Association. NCAA Division II Manual 2020-21. Retrieve at: <http://www.ncaapublications.com/p-4606-2020-2021-ncaa-division-ii-manual.aspx>

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

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

United States Government Title IX Resources:

- 20 U.S.C. '1681 et seq. ("Title IX")
- 24 CFR Part 106 (the "Title IX regulations")
- OCR's 1979 Policy Interpretation on Title IX and Intercollegiate Athletics
- OCR's 1996 Policy Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test
- OCR's 2003 Further Policy Clarification on the Three-Part Test
- OCR's 2010 Dear Colleague Letter re: Prong Three of the Three-Part Test
- OCR's 1990 Title IX Athletics Investigator's Manual
- OCR's 2008 Dear Colleague Letter: Athletic Activities Counted for Title IX Compliance

Walters, Tim. Florida Tech discontinuing three varsity sports. *FloridaToday.com* (February 7, 2019) Retrieve from: <https://www.floridatoday.com/story/sports/2019/02/07/florida-tech-discontinuing-three-varsity-sports/2805025002/>

## EXHIBIT D. Florida Institute of Technology (FIT) Men's and Women's Sport Roster Sizes from 2003-04 through 2020-21

NOTE: 2019-20 and 2020-21 Pandemic Rogue Outlier Years

Sports	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21
<b>Men's Sports</b>																		
Baseball	35	36	39	37	36	36	33	35	35	35	40	33	35	38	34	31	34	36
Basketball	16	15	15	16	16	16	13	16	18	19	20	16	17	14	17	18	16	14
Football											142	116	133	130	115	121	122	
Golf	9	11	19	18	19	22	20	11	12	12	14	14	13	13	12	12	19	20
Lacrosse									29	35	45	38	40	43	43	44	52	58
Rowing								20	30	32	34	30	26	29	32	33	36	
Soccer	24	27	27	26	32	27	25	27	27	30	30	27	31	31	26	28	30	25
Swimming & Diving									15	31	36	31	30	30	27	29	31	30
Tennis	9	11	16	18	17	20	16	20	22	17	17	20	16	17	17	12		
All Track Combined	13	15	11	11	13	9	14	40	42	24	54	48	35	49	28	11	25	23
Other Sports/Co-ed																3	8	
<b>TOTAL</b>	<b>106</b>	<b>115</b>	<b>127</b>	<b>126</b>	<b>133</b>	<b>130</b>	<b>121</b>	<b>169</b>	<b>230</b>	<b>235</b>	<b>432</b>	<b>373</b>	<b>376</b>	<b>394</b>	<b>351</b>	<b>342</b>	<b>373</b>	<b>206</b>
<b>Women's Sports</b>																		
Basketball	16	17	13	14	17	14	13	14	19	17	15	15	15	15	17	13	11	12
Golf	7	6	6	6	6	8	8	9	7	9	8	9	8	8	6	9		
Lacrosse												20	19	23	21	24	18	21
Rowing	42	32	28	23	24	22	25	26	22	19	18	25	23	26	19	23	25	23
Soccer	25	25	27	25	28	35	37	31	30	35	43	35	33	36	34	36	35	33
Softball	20	18	19	20	20	17	15	14	20	18	21	19	18	18	19	21	25	22
Swimming & Diving									8	16	18	22	22	21	17	20	23	16
Tennis	9	8	8	7	9	10	11	10	11	12	12	13	13	13	10	6		
All Track Combined	10	14	9	7	10	12	12	26	24	22	35	31	31	30	26	6	19	5
Volleyball	12	14	14	14	15	17	18	15	15	15	16	17	16	15	14	11	14	13
Other Sports/Co-ed														9	9	22	21	
<b>TOTAL</b>	<b>141</b>	<b>134</b>	<b>124</b>	<b>116</b>	<b>129</b>	<b>135</b>	<b>139</b>	<b>145</b>	<b>156</b>	<b>163</b>	<b>186</b>	<b>206</b>	<b>198</b>	<b>214</b>	<b>192</b>	<b>191</b>	<b>191</b>	<b>124</b>

\* EADA reports allows schools to combine Xctry, indoor and outdoor track participant counts to report "all track combined". All data retrieved from Department of Education Equity in Athletics Disclosure Database at <https://ope.ed.gov/athletics/#/>

**EXHIBIT E**

## UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, DC 20202- \_\_\_\_\_

The Office for Civil Rights in the United States Department of Education issues this guidance to provide State educational agencies, local educational agencies, and postsecondary institutions with information to ensure that male and female students are provided equal opportunities to participate in intercollegiate and interscholastic athletics programs consistent with *Title IX of the Education Amendments of 1972*, 20 U.S.C §§ 1681 *et seq.*, and its implementing regulations (34 C.F.R. Part 106).

This guidance represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations.

If you are interested in commenting on this guidance, please email us your comment at [OCR@ed.gov](mailto:OCR@ed.gov) or write to us at the following address: Assistant Secretary for Civil Rights, 400 Maryland Avenue, SW, Potomac Center Plaza, Washington, DC 20202-1100.

Dear Colleague:

SEP 17 2008

On behalf of the Office for Civil Rights (OCR) of the United States Department of Education, I am writing to provide technical assistance regarding your compliance with *Title IX of the Education Amendments of 1972 (Title IX)*, 20 U.S.C. §§ 1681 *et seq.* Specifically, this letter provides clarifying information to help institutions determine which intercollegiate or interscholastic athletic activities can be counted for the purpose of *Title IX* compliance; it does not represent a change in OCR's policy under *Title IX*.

As you are aware, *Title IX* prohibits discrimination on the basis of sex in education programs and activities by recipients of Federal financial assistance. The *Title IX* regulations governing athletics state, in relevant part:

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....

34 C.F.R. § 106.41(a). In particular, the regulations require institutions to "provide equal athletic opportunity for members of both sexes." 34 C.F.R. § 106.41(c).

When OCR conducts an investigation to determine whether an institution provides equal athletic opportunities as required by the *Title IX* regulations, OCR evaluates the opportunities provided by the institution's intercollegiate or interscholastic "sports." OCR does not have a specific definition of the term "sport." Instead, OCR considers several factors related to an activity's structure, administration, team preparation and competition, which are identified below, when

**[OCR-00048]**



determining whether an activity is a sport that can be counted as part of an institution's intercollegiate or interscholastic athletics program for the purpose of determining compliance with 34 C.F.R. § 106.41(c).

Many institutions are members of intercollegiate athletic organizations, such as the National Collegiate Athletic Association and the National Association of Intercollegiate Athletics, or state high school associations that have organizational requirements, which address the factors identified by OCR. When the organizational requirements satisfy these factors and compliance with the requirements is not discretionary, OCR will presume that such an institution's established sports can be counted under *Title IX*. This presumption can be rebutted by evidence demonstrating that the institution is not offering the activity in a manner that satisfies the factors below.

When the presumption does not apply or has been rebutted effectively, OCR will evaluate an institution's activity on a case-by-case basis. In such an evaluation, OCR will consider the factors below to make an overall determination of whether the activity can be considered part of the institution's intercollegiate or interscholastic athletics program for the purpose of *Title IX* compliance.

If, after reviewing the factors in their entirety, OCR determines that an activity should not be counted under *Title IX*, an institution may ask OCR to reconsider its initial determination and may provide OCR with other evidence related to the activity's structure, administration, team preparation and competition. This approach affords recipients the flexibility to create athletics programs that are responsive to the specific interests and abilities of their particular student bodies.

In its case-by-case evaluation of whether an activity can be counted as an intercollegiate or interscholastic sport for the purpose of *Title IX* compliance, OCR will consider all of the following factors:

- I. **PROGRAM STRUCTURE AND ADMINISTRATION** — Taking into account the unique aspects inherent in the nature and basic operation of specific sports, OCR considers whether the activity is structured and administered in a manner consistent with established intercollegiate or interscholastic varsity sports in the institution's athletics program, including:
  - A. Whether the operating budget, support services (including academic, sports medicine and strength and conditioning support) and coaching staff are administered by the athletics department or another entity, and are provided in a manner consistent with established varsity sports; and
  - B. Whether the participants in the activity are eligible to receive athletic scholarships and athletic awards (e.g., varsity awards) if available to athletes in established varsity sports; to the extent that an institution recruits participants in its athletics program, whether participants in the activity are recruited in a manner consistent with established varsity sports.

II. **TEAM PREPARATION AND COMPETITION** — Taking into account the unique aspects inherent in the nature and basic operation of specific sports, OCR considers whether the team prepares for and engages in competition in a manner consistent with established varsity sports in the institution's intercollegiate or interscholastic athletics program, including:

- A. Whether the practice opportunities (e.g., number, length and quality) are available in a manner consistent with established varsity sports in the institution's athletics program; and
- B. Whether the regular season competitive opportunities differ quantitatively and/or qualitatively from established varsity sports; whether the team competes against intercollegiate or interscholastic varsity opponents in a manner consistent with established varsity sports;

When analyzing this factor, the following may be taken into consideration:

- 1. Whether the number of competitions and length of play are predetermined by a governing athletics organization, an athletic conference, or a consortium of institutions;
  - 2. Whether the competitive schedule reflects the abilities of the team; and
  - 3. Whether the activity has a defined season; whether the season is determined by a governing athletics organization, an athletic conference, or a consortium.
- C. If pre-season and/or post-season competition exists for the activity, whether the activity provides an opportunity for student athletes to engage in the pre-season and/or post-season competition in a manner consistent with established varsity sports; for example, whether state, national and/or conference championships exist for the activity; and
- D. Whether the primary purpose of the activity is to provide athletic competition at the intercollegiate or interscholastic varsity levels rather than to support or promote other athletic activities.

When analyzing this factor, the following may be taken into consideration:

- 1. Whether the activity is governed by a specific set of rules of play adopted by a state, national, or conference organization and/or consistent with established varsity sports, which include objective, standardized criteria by which competition must be judged;
- 2. Whether resources for the activity (e.g., practice and competition schedules,<sup>1</sup> coaching staff) are based on the competitive needs of the team;

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<sup>1</sup> For purposes of this analysis, there is no presumption that the amount of time dedicated to competition must be equal to or greater than the amount of time dedicated to practice.



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3. If post-season competition opportunities are available, whether participation in post-season competition is dependent on or related to regular season results in a manner consistent with established varsity sports; and
4. Whether the selection of teams/participants is based on factors related primarily to athletic ability.

Please keep in mind that OCR's determinations based on these factors are fact-specific. Therefore, determinations may vary depending on a school district or postsecondary institution's athletics program, the nature of the particular activity, and the circumstances under which it is conducted.

It is OCR's policy to encourage compliance with the *Title IX* athletics regulations in a flexible manner that expands, rather than limits, student athletic opportunities. By disseminating this list of factors, OCR intends to provide institutions with information to include new sports in their athletics programs, such as those athletic activities not yet recognized by governing athletics organizations and those featured at the Olympic games, if they so choose. Expanding interscholastic and intercollegiate competitive athletic opportunities through new sports can benefit students by creating and stimulating student interest in athletics, taking advantage of athletic opportunities specific to a particular competitive region, and providing the opportunity for access to a wide array of competitive athletic activities.

OCR remains available to provide technical assistance on this issue to recipients on a case-by-case basis. If you have further questions regarding the application of *Title IX* to athletics programs, or seek technical assistance, please contact the OCR enforcement office serving your state or territory. Contact information for these offices is available on the Department's website at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>.

Thank you for your attention to these matters and your continued efforts to ensure equal athletic opportunities for all of our nation's students.

Sincerely,

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

Stephanie Monroe  
Assistant Secretary for Civil Rights

## EXHIBIT F. Florida Institute of Technology (FIT) Men's and Women's Sport EADA\* Compared to FIT Redacted NCAA Squad List Rosters Adjusted per Knight

11-22-22 email\*\* from 2015-16 through 2021-22

NOTE: 2019-20 and 2020-21 were Pandemic Rogue Outlier Years

NOTE: No squad lists were provided and EADA reports did not explain "Other Sports-Co-ed" participants

Sports	15-16 EADA	15-16 FIT SQUAD LIST	16-17 EADA	16-17 FIT SQUAD LIST	17-18 EADA	17-18 FIT SQUAD LIST	18-19 EADA	18-19 FIT SQUAD LIST	19-20 EADA	19-20 FIT SQUAD LIST	20-21 EADA	20-21 FIT SQUAD LIST	21-22 FIT SQUAD LIST
<b>Men's Sports</b>													
Baseball	35	35	38	38	34	34	31	31	34	34	36	36	36
Basketball	17	17	14	15	17	17	18	17	16	15	14	15	17
Football	133	131	130	131	115	115	121	121	122	121	0	0	0
Golf	13	13	13	13	12	12	12	12	19	19	20	0	11
Lacrosse	40	42	43	43	43	43	44	45	52	46	58	54	64
Rowing	26	30	29	30	32	33	33	32	36	35		0	22
Soccer	31	30	31	30	26	26	28	28	30	30	25	25	29
Swimming & Diving	30	30	30	30	27	27	29	29	31	30	30	28	33
Tennis	16	16	17	17	17	17	12	12	0	0	0	0	0
All Track Combined	35	36	49	48	28	29	11	21	25	25	23	24	23
Other Sports/Co-ed							3		8				
<b>TOTAL</b>	<b>376</b>	<b>380</b>	<b>394</b>	<b>395</b>	<b>351</b>	<b>353</b>	<b>342</b>	<b>348</b>	<b>373</b>	<b>355</b>	<b>206</b>	<b>182</b>	<b>235</b>
<b>EADA Difference</b>		<b>-4</b>		<b>-1</b>		<b>-2</b>		<b>-6</b>		<b>18</b>		<b>24</b>	
<b>Women's Sports</b>													
Basketball	15	15	15	15	17	17	13	13	11	11	12	12	14
Golf	8	8	8	8	6	6	9	9	0	0	0	0	0
Lacrosse	19	14	23	22	21	22	24	25	18	17	21	21	25
Rowing	23	25	26	26	19	19	23	23	25	23	23	20	24
Soccer	33	33	36	36	34	36	36	36	35	35	33	28	31
Softball	18	18	18	18	19	19	21	21	25	21	22	21	18
Swimming & Diving	22	22	21	21	17	17	20	20	23	23	16	17	21
Tennis	13	13	13	13	10	10	6	6	0	0	0	0	0
All Track Combined	31	32	30	32	26	28	6	14	19	18	5	5	12
Volleyball	16	16	15	15	14	14	11	12	14	14	13	13	16
Other Sports/Co-ed			9		9		22		21				
<b>TOTAL</b>	<b>198</b>	<b>196</b>	<b>214</b>	<b>206</b>	<b>192</b>	<b>188</b>	<b>191</b>	<b>179</b>	<b>191</b>	<b>162</b>	<b>124</b>	<b>116</b>	<b>136</b>
<b>EADA Difference</b>		<b>2</b>		<b>8</b>		<b>4</b>		<b>12</b>		<b>29</b>		<b>8</b>	

\* EADA reports allow schools to combine Xctry, indoor and outdoor track participant counts to report "all track combined." All data retrieved from Department of Education Equity in Athletics Disclosure Database at <https://ope.ed.gov/athletics/#/>

\*\*FIT provided redacted NCAA Squad Lists (official eligibility forms) - see Exhibit C for Bates references by sport. "All track combined" is the aggregated count of outdoor track and cross country.

<b>Yellow Cells</b>	Subsequent to receipt of FIT redacted squad lists, J. Knight notified plaintiffs by email on November 22, 2022 (see Exhibit F) that these numbers were to be adjusted downward because "certain student-athletes did not meet the definition of a Title IX participant." Corrected adjusted redacted squad lists were NOT provided, only the number of participants to be subtract from the squad list. Yellow cells reflect these adjusted numbers.
<b>Green Cells</b>	FIT did not provide a squad list for this team. The number of athletes is the number of participants who appear on the FIT athletic department website -- <a href="https://floridatechsports.com">https://floridatechsports.com</a> -- OR the athletic department internet archive ( <a href="https://web.archive.org/">https://web.archive.org/</a> ) for that year AND this number was adjusted downward per the November 22, 2022 Knight email (see Exhibit F). If "0" no roster found anywhere/no deduction possible.





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October 14, 2022

**VIA ELECTRONIC MESSAGE ONLY**

Arthur Schofield  
 330 Clematis Street,  
 Suite 207  
 West Palm Beach, FL  
 33401

James C. Larew  
 504 E. Bloomington St.  
 Iowa City, IA 52245

Claire Diallo  
 504 E. Bloomington St.  
 Iowa City, IA 52245

**Re: Florida Institute of Technology and Men's Rowing**

Dear Jim, Claire, and Arthur,

We write in response to your letter of September 6, 2022 and in furtherance of our call on September 22, 2022. As we indicated, we will not rebut every point that you raised with us. Rather, our goal is to narrow the facts in dispute and see if we can find a mutually agreeable solution. Nevertheless, while we appreciate the confidence that you expressed in your clients' case, we feel similarly about our client's.

Before turning to the substance, we note that during our call you stated that your overarching goal is to get the men's rowing team back "on the water." As you likely know, the rowers are currently "on the water." The rowing team is competing against other institutions and they are supported by Florida Tech. The rowers are still equipped with the vast capital that is required for a men's rowing program, including: a boathouse, trailers, trucks, wakeless launch boats, ergonomic training machines, a training facility, racing boats (which, as you know, can be costly), and all other necessary equipment. In fact, Florida Tech recently purchased four boat motors, two new launch boats, and is in the process of installing power in the team shed at the Canal 54 training site for the men's and women's rowing teams. Florida Tech has also insured this equipment as an institution. In short, this support is considerable in quality and quantity.

Beyond this support, the men's rowing team still has access to the endowment funds that were set up for the varsity sport programs, which provide the opportunity for annual financial draws, and the team also has access to any other fundraised money that was not in an endowment.

In terms of scheduling and competition, you no doubt recognize that rowing is a unique sport in that varsity status often does not hinge on whether the team can





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participate in a scheduled competition. This means that the men's rowing schedule does not change drastically because as a club rowing program they can still attend many of the same regattas that that they competed in as a varsity program, such as the *Head of the Charles* or the *Dad Vail Regatta*.

Most importantly, Florida Tech is honoring the scholarships for the men's rowing athletes, along with the other transitioned teams. If the rowers choose to transfer, they are able to do so without having to sit out a year, and Florida Tech is ready and willing to assist any student-athlete who chooses this path. Though, to date, none have notified Florida Tech that they are pursuing this option.

### **Florida Tech is in Compliance with Prong 1**

Florida Tech's institutional data shows that it is in compliance with Title IX's athletic participation requirements. Before turning to the specifics, we want to note that we appreciate Dr. Lopiano's assessment but we would be remiss if we did not point out that her methodology has been challenged in other Title IX matters. These challenges center on Dr. Lopiano's use of EADA data in coming to her conclusions, though in reading your letter it appears as though you recognize EADA's limitations.

Again, rather than offer a lengthy exchange on Dr. Lopiano's work, we prefer to focus on the institutional numbers that reflect actual practice at Florida Tech and that demonstrate compliance with Title IX counting instructions. To that end, the data that you shared with us omits (1) full-time undergraduate online students and (2) varsity eSports participation. With those omissions corrected, Florida Tech's compliance becomes apparent.

According to Florida Tech's projections, after the elimination of men's and women's rowing, men's and women's cross country/distance track, and men's golf as varsity sports, and the addition of eSports, Florida Tech expects to have approximately 211 male student athletes and 128 female student athletes. As a result, Florida Tech further expects to provide 62.24% of its athletic opportunities to male student athletes and 37.76% of its athletic opportunities to female student athletes. This compares favorably to Florida Tech's full-time undergraduate enrollment, which is 62.85% male, leaving a mere 0.61% difference between the number of athletic opportunities offered to male student-athletes and their total enrollment. The participation gap for the 2022-2023 academic year is anticipated to be 7, which means Florida Tech would need to add just





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7 male participation opportunities to be in exact compliance. And, as you know well, exact compliance is not necessary.<sup>1</sup>

Table 1

Year	2018-2019	2019-2020	2020-2021 <sup>2</sup>	2021-2022	2022-2023
<b>Students</b>	4166	3838	3664	3647	3462
Men / Women	2685 / 1481	2530 / 1308	2338 / 1323	2380 / 1265	2176 / 1281
Men / Women (%)	64.45% / 35.55%	65.92% / 34.08%	63.81% / 36.11%	65.26% / 34.69%	62.85% / 37.00%
<b>Student-athletes</b>	528	519	319	460	339 <sup>3</sup>
Men / Women	349 / 179	357 / 162	182 / 137	296 / 164	211 / 128
Men / Women (%)	66.10% / 33.90%	68.79% / 31.21%	57.05% / 42.95%	64.35% / 35.65%	62.24% / 37.76%
Difference in Rates	- 1.65%	- 2.87%	- 6.76% <sup>4</sup>	- 0.91%	- 0.61%
<b>Participation Gap<sup>5</sup></b>	<b>14</b>	<b>23</b>	<b>60</b>	<b>13</b>	<b>7</b>

However, case law has recognized that “a participation gap is not necessarily the result of one decision. It may be the result of many decisions over the course of several years.”<sup>6</sup> As a result, it may be more accurate to look at the average participation gap over the past eight years. Here, however, the average participation gap over that period of time reflects that *female* athletes have been underrepresented by 1 participation opportunity (see Table 2).

<sup>1</sup> See *Balow v. Michigan State Univ.*, No. 1:21-CV-44, 2022 WL 3152232, at \*3 (W.D. Mich. Aug. 8, 2022) (internal citations omitted)

<sup>2</sup> Notably, prior to the 2020-2021 academic year, Florida Tech eliminated their football program, which caused a large participation gap for males that year. However, Florida Tech remedied this by adding more participation opportunities elsewhere on existing teams, as well as adding a varsity eSports program. Also worth noting is that student enrollment, both male and females, have continuously decreased over the course of the past five years.

<sup>3</sup> Student-athlete numbers for this academic year are not yet finalized.

<sup>4</sup> Reflecting the elimination of the football program.

<sup>5</sup> The number of athletic opportunities needed to be added in order to demonstrate exact compliance.

<sup>6</sup> *Balow* at \*10 (W.D. Mich. Aug. 8, 2022).





*Response of Florida Tech*  
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Table 2

Year	Total Students	Male Students	Female Students	Total Athletes	Male Athletes	Female Athletes	Percentage Gap (%)	Participation Gap
2015-2016	4406	2772	1634	582	380	202	2.38%	22
2016-2017	4360	2771	1589	600	394	206	2.11%	20
2017-2018	4232	2734	1498	549	361	188	1.15%	10
2018-2019	4166	2685	1481	528	349	179	1.65%	14
2019-2020	3838	2530	1308	519	357	162	2.87%	23
2020-2021	3664	2338	1323	319	182	137	6.76%	60
2021-2022	3647	2380	1265	460	296	164	0.91%	13
2022-2023	3462	2176	1281	339	211	128	0.61%	7

The former varsity men's rowing team has, for the past five years, averaged 31 members. The average size of a Florida Tech's men's team this academic year is expected to be 35.<sup>7</sup> With an expected participation gap of 7 male athletes this year – and 1 female athlete over the course of eight years – neither a varsity men's rowing program nor any other varsity men's team is feasible. Put simply, Florida Tech is in compliance with its Title IX athletic participation requirements under prong one.

Moreover, in addition to analyzing the participation gap, courts have considered the difference in the undergraduate percentage and athletic participation percentage in determining whether substantial proportionality exists under prong one. Courts have held that “a disparity within two percentage points is proof that an educational institution falls within the substantial proportionality safe harbor.”<sup>8</sup> Florida Tech's anticipated percentage gap for 2022-2023 is 0.61%.<sup>9</sup>

By all measures, Florida Tech expects to be in Title IX compliance during the 2022-2023 academic year.<sup>10</sup>

Stepping back for a moment, it is important to make clear that Florida Tech is allowed to make reasonable business decisions with respect to its athletic offerings so

<sup>7</sup> *Balow*, at \*4, stating that “this Court should not compare the participation gap to the size of an average women's team at MSU . . . Instead, the Court must determine whether the participation gap is large enough to sustain a viable team, i.e., ‘a team for which there is a sufficient number of interested and able students and enough available competition to sustain an intercollegiate team.’ (internal citations omitted)

<sup>8</sup> *Biediger v. Quinnipiac University*, 728 F. Supp. at 110. See also *Equity in Athletics v. Dep't of Educ.*, 639 F. 3d 91, 109-10 (4<sup>th</sup> Cir. 2011) (“EIA provides no support for its contention that a disparity as low as 2% (and according to the record, not much above 1%) is substantially disproportionate as a matter of law.”).

<sup>9</sup> For this year, males represent 62.85% of the total Florida Tech undergraduate enrollment and males represent 62.24% of the total student-athlete participants.

<sup>10</sup> While we do not address Prong 2 or Prong 3 compliance in this response, Florida Tech does not waive any argument that it is compliant under these standards.





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Page 5

long as it remains in compliance with Title IX. Title IX itself "provides institutions with flexibility and choice regarding how they will provide nondiscriminatory participation opportunities."<sup>11</sup> In practice this means that when an institution's sports offerings comply with Title IX, students have no legal right to any *particular* team that they may wish to add or preserve.<sup>12</sup> Regardless, as it stands today, Florida Tech is compliant with Title IX and is committed to providing equal athletic opportunities to both male and female athletes.

In our initial call you described at some length that you believe this matter is appropriate for preliminary injunctive relief. We disagree. The facts of this case are significantly different than the facts in the University of Iowa and University of Connecticut cases that you mentioned, and those differences will doubtlessly factor into a court's decision whether to grant injunctive relief. Here, Dr. Lopiano's methodology is flawed and the correct numbers show that Florida Tech is compliant with its Title IX obligations. Beyond that, the men's rowing team, while no longer in varsity status, is "on the water" and is participating in events. To the extent any wish to transfer, they are free to do so and Florida Tech will do what it can to accommodate as much. For those that stay, they will continue to receive the scholarship aid that they did while the team was in varsity status.

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<sup>11</sup> 1996 Policy Clarification. See *Neal v. Bd. of Trustees of California State Universities*, 198 F.3d 763, 769–70 (9th Cir. 1999): "Every court, in construing the Policy Interpretation and the text of Title IX, has held that a university may bring itself into Title IX compliance by increasing athletic opportunities for the underrepresented gender (women in this case) or by decreasing athletic opportunities for the overrepresented gender (men in this case)." See also, *Horner*, 43 F.3d at 275; *Kelley v. Board of Trustees*, 35 F.3d 265, 269 (7th Cir. 1994); *Roberts v. Colorado State Bd. of Agric.*, 998 F.2d 824, 830 (10th Cir. 1993).

<sup>12</sup> See *Miami Univ. Wrestling Club v. Miami Univ.*, 302 F.3d 608, 615 (6th Cir. 2002) ("There is no constitutional right to participate in intercollegiate athletics."); *Equity in Athletics, Inc. v. Department of Education*, 639 F.3d 91, 109 (4th Cir. 2011) (there is no "property interest in intercollegiate athletic participation").





*Response of Florida Tech*  
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We recognize that your clients will be disappointed in this response but we hope that they are willing to continue our dialogue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeff Knight", written over a horizontal line.

Jeff Knight  
Kasey Nielsen  
Bricker & Eckler LLP