

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

VERONICA OLLIER, *et al.*,) Civil No. 07cv714-L(WMC)
Plaintiffs,)
v.)
SWEETWATER UNION HIGH)
SCHOOL DISTRICT, *et al.*,)
Defendants.)

)

This is a class-action case¹ in which the plaintiff class is defined as all present and future Castle Park High School (“CPHS”) female students and potential students in the Sweetwater Union School District (“District”) who participate, seek to participate, and are or were deterred from participating in student athletics activities at CPHS. The class representatives are Veronica Ollier, Naudia Rangel, Martiza Rangel, Amanda Hernandez and Arianna Hernandez. Defendant Sweetwater Union High School District (“SUHSD” or the “District”), is a public school district located in Chula Vista, California. CPHS is a school within the District.

Defendant District is alleged to have unlawfully discriminated against female student athletes at CPHS with respect to “practice and competitive facilities; locker rooms; training facilities; equipment and supplies; travel and transportation, coaches and coaching facilities; scheduling of games and practice times; publicity; and funding” in violation of Title IX.

¹ The Court granted plaintiffs' motion for class certification on August 25, 2008.

1 (Complaint, ¶ 40.) Additionally, plaintiffs allege that defendant has “failed to provide female
 2 students with equal athletic participation opportunities, despite their demonstrated athletic
 3 interest and and abilities to participate in athletics.” *Id.*, ¶ 71. Because of these alleged failures,
 4 plaintiffs assert that girls’ participation in sports is severely limited and interested girls are
 5 discouraged from going out for sports. *Id.*, ¶ 74.

6 On March 30, 2009, the Court granted plaintiffs’ motion for summary adjudication on
 7 their second cause of action finding that plaintiffs demonstrated through uncontroverted,
 8 admissible evidence that defendants are not in compliance with Title IX based on unequal
 9 participation opportunities in athletic program.² [doc. #87] The remaining claims are violation of
 10 Title IX based on unequal treatment and benefits to females at CPHS, and retaliation.³

11 A ten-day bench trial was held between September 14, 2010 and October 15, 2010. Based
 12 on the trial, the parties’ stipulations, and admitted evidence, the Court issues the following
 13 findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52(a).

14 **FINDINGS OF FACT**

15 **I. Equal Treatment and Benefits Under Title IX**

16 **A. Background**

17 “The impact of Title IX on student athletes is significant and extends long beyond high
 18 school and college; in fact, numerous studies have shown that the benefits of participating in
 19 team sports can have life-long positive effects on women.” *Parker v. Franklin County*
 20 *Community School Corp.*, 2012 WL 266870, *4 (7th Cir. January 31, 2012)(citing Dionne L.
 21 Koller, *Not Just One of the Boys: A Post-Feminist Critique of Title IX’s Vision for Gender*

22 ² In the same Order, the Court granted plaintiffs’ motion for summary adjudication
 23 with respect to defendants’ affirmative defenses: promissory estoppel, contribution and
 24 indemnity, failure to mitigate, statute of limitations, excuse, condition subsequent, good faith, act
 25 of God, failure to exhaust administrative remedies, complaint barred for failure to exhaust
 26 judicial remedies, deliberate indifference, general governmental immunity, exercise of discretion
 27 within scope of employment – Government Code § 820.2, failure to exhaust internal remedies,
 legitimate business purpose, business necessity, failure to comply with Tort Claims Act –
 Government Code §§ 900 *et seq.*, immunity from negligent misrepresentation, eleventh
 amendment immunity, qualified immunity and reservation of additional affirmative defenses.

28 ³ Plaintiffs have stipulated that they will dismiss their 42 U.S.C. §1983 claim which
 results in the dismissal of claims against all individual defendants. The remaining Title IX claims
 are against the District defendant only.

1 *Equity in Sports*, 43 CONN. L. REV. 401 (2010). In her article, Koller states:

2 Studies have shown that sports participation provides important lifetime benefits to
3 participants such as “discipline, teamwork, time management, and leadership that
4 further long-term personal growth, independence and well being” and “better
5 physical and mental health, higher self-esteem, a lower rate of depression, and
6 positive body image, as well as the development of responsible social behaviors,
7 greater educational success, and inter-personal skills.” (quotations omitted).

8 43 CONN. L. REV. at 413.

9 “[D]iscriminating against female athletes and creating feelings of inferiority with their
10 male counterparts can have long-lasting negative effects.” *Parker*, 2012 WL 266870, *4 (citing
11 *Cnty. for Equity v. Mich. High Sch. Athletic Ass'n*, 178 F. Supp.2d 805, 837–38 (W.D. Mich.
12 2001), aff'd, 377 F.3d 504 (6th Cir. 2004), judgment vacated on other grounds, 544 U.S. 1012
13 (2005), aff'd on remand, 459 F.3d 676, 695 (6th Cir. 2006).

14 Plaintiff Veronica Ollier attended CPHS for four years, graduating in 2007. She played
15 softball on the JV and Varsity teams during her freshman year of high school and then on the
16 Varsity team the remaining three years. Veronica also played basketball and was the football
17 team manager her first and second years of high school.

18 Maritza Rangel attended CPHS in 2008 and 2009. She played JV softball during her first
19 year of high school.

20 Naudia Rangel attended CPHS from the second semester of her freshman year through
21 her graduation in 2007. Naudia played softball all four years she attended CPHS and played
22 girls' basketball during her second year of high school.

23 Amanda Hernandez played softball on the JV team her first, second and fourth years of
24 high school. She also played basketball during her time at CPHS.

25 Arianna Hernandez entered CPHS in 2008 and will graduate in 2012. She plays softball,
26 and has played Varsity water polo, and basketball. Arianna was the captain of the JV softball
27 team in 2008-09.

28 Douglas Christopher Martinez (“Coach Martinez” or “Chris Martinez”) was the walk-on
29 coach of the CHPS girls' softball team from 1999-2006. He became the head coach of the
30 softball team in 2000.

1 Defendant District is a public school district located in Chula Vista, California. CPHS is a
2 school within the District. CPHS has an active athletic program with numerous sports offered to
3 enrolled students.

4 Maria Castilleja was the Principal of CPHS from the fall semester of 2002 through the
5 spring semester of 2006. Paul Van Nostrand was the Athletic Director at CPHS from the 1999-
6 2000 to 2004-05 school years; Russell Moore was the Athletic Director at CPHS from the 2005-
7 06 school year through January 2010. The Athletic Director supervises all athletic coaches.
8 Neither Athletic Director testified at trial. Gary Gauger is the Maintenance Manager for the
9 District and was designated as the Person Most Knowledgeable about documents relating to
10 improvements to the softball field at CPHS. Angela Yuhas-Russo was an English teacher who
11 became the girls softball coach at CPHS after Coach Martinez's employment was terminated.

12 Just prior to the 2006-07 school year, Coach Martinez was relieved of his duties as
13 softball coach at CPHS. On July 27, 2006, plaintiffs' counsel sent a letter regarding alleged Title
14 IX violations at CPHS to the School Board, Interim Superintendent, Principal and Athletic
15 Director. This action was filed on April 19, 2007.

16 Plaintiffs called Sue Enquist as an expert in the area of softball. She is an All-American,
17 world champion and national champion softball player, and has coached softball at UCLA for
18 more than 26 years. The Court found Sue Enquist qualified to testify as an expert witness
19 regarding softball and baseball.

20 Plaintiffs retained Donna Lopiano as a Title IX expert. The Court qualified Lopiano as an
21 expert witness in Title IX compliance issues. On May 9, 2008, Lopiano conducted an on-site
22 inspection at CPHS. In conducting a comprehensive Title IX evaluation of CPHS's athletic
23 program and facilities, Lopiano also reviewed documents produced by defendants and deposition
24 testimony. Lopiano's evaluation used the Title IX analysis set forth in the Policy Interpretation
25 and Investigator's Manual.

26 At trial, Lopiano testified that she found wide-spread Title IX equal treatment and
27 benefits violations at CPHS. Equal treatment and benefits claims allege sex-based differences in
28 the schedules, equipment, coaching, and other factors affecting participants in athletics. The

1 Court notes that while Lopiano's testimony was challenged, her methodology and conclusions
2 were uncontroverted.

3 **B. Recruiting Benefits**

4 Each athletic coach at CPHS is tasked with recruiting new team players and conducting
5 publicity for the team. If there is no coach for a team, no recruiting occurs. The decision for how
6 recruiting is to occur is left to the discretion of the individual coaches.

7 Female athletes were provided with fewer coaches, coaches with more limited experience,
8 and coaches who were unable to adequately coach because of excessive other assignments.
9 Coaches for female athletic teams had higher turnover rates than coaches for male teams and as a
10 result, there was less stable coaching for girls' teams which in turn means less successful teams
11 and recruitment of players. Further, coaches for girls' sports teams were on several occasions
12 appointed shortly before the start of the season and therefore, there was no time for recruiting by
13 the coach. Sports teams were discontinued when coaches were not hired. The lack of coaches for
14 girls' teams impacted negatively the teams' ability to participate in conference and non-
15 conference competitions. This also influenced the ability to adequately recruit girls for athletic
16 teams.

17 For purposes of obtaining players, head coaches need time for recruiting but at least one
18 of the coaches for girls' teams was the head coach for three teams. No coach for male teams was
19 ever assigned to be head coach for three teams. The head coach for the three girls' teams was
20 unable to recruit for softball and was told by the CPHS Athletic Director to not recruit for
21 softball because she was an inexperienced new coach and had the burden of three head coaching
22 positions.

23 Coaches of boys' teams recruit more heavily than girls' teams coaches. The Athletic
24 Director went to feeder schools to talk about boys' athletic programs programs. Middle-school
25 boys and their parents were invited to watch football practice at CPHS. There were three sports –
26 wrestling, football and roller hockey – that were designated as co-ed. Participation by girls on
27 these teams was minimal but there were no efforts by the coaches to recruit additional girls on
28 the coed teams.

1 Defendants presented no evidence that recruitment practices had changed at CPHS since
2 the filing of this action.

3 **C. Locker Rooms, Practice and Competition Facilities**

4 For Title IX compliance, locker rooms are evaluated with respect to location, size of
5 lockers, exclusivity, and whether the locker room area is a team meeting area.

6 With respect to the quality and size of locker rooms at CPHS, 38.8% of male athletes had
7 superior facilities as compared to 0% of female athletes. The remaining 61.2% of all male
8 athletes had adequate facilities and 100% of female athletes had adequate facilities.

9 The CPHS football team had its own separate locker rooms that was rated as superior in
10 size and quality. But female athletes had access only to a generic locker room with lockers that
11 were too small to store athletic equipment, and was shared with all the other girls' athletic teams
12 and with all the other physical education classes. Because of the small size of the lockers,
13 females althletes, including the CPHS softball team, were required to carry all of their equipment
14 with them during the school day. Female athletes at CPHS were required to vacate the girls'
15 locker room whenever a visiting football team came to campus and therefore, they were unable
16 to use the locker room during that time.

17 Locker rooms are rated superior if lockers are next to the practice and competition
18 facilities, adequate if the lockers are in close proximity and on-campus, and inadequate if lockers
19 were located off-campus. At CPHS, 82.9% of male athletes and 54% of female athletes have
20 superior location of locker rooms; 11.8% of male athletes and 40% of female athletes have
21 adequate locker rooms with respect to locker room location.

22 Superior or adequate team meeting facilities were provided to 58% of male athletes and
23 30% of female athletes. The main gymnasium at CPHS has two adjacent team rooms. The
24 basketball, volleyball and wrestling teams have access to these team rooms.

25 Prior to the 2010 softball season, the softball team did not meet in a team room. During
26 the 2010 softball season, an empty classroom near the JV field was the designated softball team
27 room; however, there were no lockers in the room. Nor was the room painted with the school
28 colors.

1 With respect to the quality and size of practice facilities, 90% of male athletes had
2 superior practice facilities compared to 78% of female athletes. Dr. Lopiano's 2008 analysis of
3 the girls' softball field, indicated that the practice facility was of much lower quality than the
4 boys' practice facilities in that boys had separate instructional areas, more instructions aids, and
5 additional equipment. Ninety percent of male athletes and 80% of female athletes benefitted
6 from superior location of practice facilities.

7 With respect to the size and quality of competition facilities at CPHS, 97% of male
8 athletes and 79.3% of female athletes have superior competition facilities. Adequate competition
9 facilities were available for field hockey and tennis.

10 The location of athletic competition facilities showed that 86.8% of male athletes and
11 77.6% of female athletes had access to superior locations.

12 Sue Enquist testified that the softball facility was inferior to the boys' baseball facility.
13 The baseball facility had a netted instructional complex consisting of a main competition field
14 for practices, two pitching areas or bullpens, rollaway backstop, multi-station instructional areas,
15 a batting cage, significant storage area, four stands for spectators, on-field facilities that allowed
16 for multiple practice stations, protective screens, and a separate batting cage for batting from
17 multiple areas. The baseball complex was fully enclosed which restricted its use from any other
18 use and prevented damage from use and overuse. The playing surface was high quality, and the
19 outfield fences were wind-screened.

20 Veronica Ollier and Naudia Rangel testified that when they played softball at CPHS,
21 between 2003-07, the Varsity softball field had a too-small backstop that was wooden which
22 allow for balls to ricochet off at a high rate of speed. The dugouts were chain-link rather than
23 cinder block, and for most of the time, the dugouts did not have a roof. As a result the players
24 were not adequately protected from the sun and wind, and were susceptible to distractions from
25 spectators.

26 The baseball field has large, cinder block dugouts with aluminum benches with backrests,
27 cubby holes inside the dugout to store gear, and storage attached to the dugouts. The baseball
28 dugouts are painted with the school colors and have the school logo and mascot on them. These

1 dugouts allow greater privacy for greater player focus and fewer interruptions from the general
2 public. The cinder block dugouts also provide protection against the weather for the players.

3 There was no outfield fence for the softball field. The infield dirt was extremely hard,
4 uneven with many grooves and divots which caused players to be afraid of bad hops and
5 reluctant to slide or dive for balls in the infield. There were large holes in the dirt in the batter's
6 box. The outfield grass encroached into the infield dirt. The outfield grass was patchy, uneven
7 and dangerous. The poor condition of the softball field made practices and games difficult and
8 negatively impacted player development.

9 Because no one from CPHS was designated or acted to maintain the softball field, the
10 softball team and its coach performed maintenance on the field. Maintenance Manager Gauger
11 has not seen a regular maintenance schedule for the softball field. Maintenance of a softball field
12 requires watering, raking and scarification so the dirt surface can be consistent and safe. The
13 outfield needs cutting, watering and fertilization. At CPHS, the maintenance of the softball
14 facility was particularly problematic because of the lack of perimeter fencing, the use of the field
15 by physical education classes for kickball, softball and soccer, and use by the girls' field hockey
16 and soccer programs. Recreational youth soccer leagues used the softball fields on weekends
17 when Veronica Ollier and Naudia Rangel attended CPHS. In contrast, the boys' baseball field
18 was not used for physical education classes or for any other uses. Regular maintenance was
19 provided for the baseball field by the baseball coach's father, Mr. Sosa.

20 Administrators at CPHS knew the softball field was inferior to the baseball field.
21 Principal Castilleja testified that she believed the softball field was in need of improvement in
22 2006.

23 In 2006-07, certain renovations to the softball field were undertaken. Roofs were added to
24 the dugouts, new dirt was put on the infield, new pitching rubber and a permanent walkway next
25 to the field were installed. But the new dirt did not adhere to the hard-packed dirt and as a result,
26 the new layer of dirt did not remain in place. The newly added permanent asphalt walkway was a
27 hazard because players in cleats could slip on the smooth surface, as Naudia Rangel did.

28 Sue Enquist examined the softball and baseball infields in 2008, 2009, and 2010. Each

1 time the softball infield was deemed to be inferior to the baseball infield. In May 2008, the
2 softball soil was very firm and cement-like. The softball field had been insufficiently watered.
3 The soil had not been graded to create a consistent and firm field which increased the risk of
4 injury to the players. The hard dirt made it difficult for players to slide without being bruised.
5 The grass in the second base area of the softball field was growing into the dirt and was
6 unmanicured which results in unevenness of the soil area and increases inconsistent bounces in
7 the infield. In May 2008, the boys' baseball infield playing surface was in good condition, was
8 level, the dirt was excellent with a firm blending of two types of dirt resulting in consistent
9 bounces and decreased risk of injury when players would slide.

10 In April 2009, the softball infield remained inferior to the baseball infield with respect to
11 safety and quality. The softball infield had uneven transitions and overgrowth of grass onto the
12 dirt while the baseball field had clean, smooth transitions from grass to dirt which allowed for a
13 more consistent playing surface for running bases or fielding ground balls.

14 In May 2010, the softball infield remained inferior to the baseball infield because it had a
15 false top layer of soil that increased the risk of injury. In contrast, in May 2010, the baseball
16 infield had clean lines of transition and the field was manicured and level which decreases the
17 risk of player injury.

18 Sue Enquist testified that the softball outfield was inferior to the baseball outfield in 2008
19 and 2009 in that it was uneven and consisted of areas of thatches of grass and dead areas which
20 increased the risk of player injury and untrue or bad ball bounces.

21 In May 2008, there was no outfield fence at the softball field. As a result, students were
22 able to cut through the outfield leading to more outfield grass damage. During Enquist's site visit
23 to the softball field, a physical education class was in session on the softball field. In contrast,
24 the boys' baseball outfield playing surface was more level, the quality of the grass was more
25 consistent and was firmer than the girls' softball outfield playing surface.

26 In her site visit in April 2009, Enquist did not see improvements to the softball outfield –
27 dead grass areas created an inconsistent playing surface and a plumbing repair to the softball
28 outfield caused an uneven area in the grass. In May 2010, Enquist noted that the softball outfield

1 had been improved.

2 As previously noted, perimeter fencing provides for an enclosed outfield that protects the
3 field from overuse and damage. Further, not having a side fence hampers the ability to designate
4 out-of-play ball and increases the risk of injury for spectators. The boys' baseball field is
5 enclosed by fencing, includes a home run fence, and is a secure, locked facility. The baseball
6 fencing was installed approximately 20 years ago. Although CPHS Administrators were aware
7 that the softball field did not have perimeter fencing while the baseball field did, and
8 Maintenance Manager Gauger suggested the softball field be enclosed, fencing was not
9 provided.

10 In April 2009, the softball field had a non-permanent outfield fence and the site was still
11 not secured. In 2010, the varsity softball field was completely enclosed with secure, permanent
12 fencing, which included a windscreen. Enquist opined that the fencing improvements to the
13 softball field remained inferior and unsafe in comparison to the baseball field because the side
14 fencing did not have safety caps.

15 The baseball team has an instructional complex consisting of a main competition field for
16 practices, two pitching areas or bullpens, rollaway backstop, multistation instructional areas, a
17 batting cage, storage area, four grandstands for spectators, on-field facilities that allow multiple
18 practice stations, protective screens and a separate batting cage for batting from multiple areas
19 rather than just on home plate.

20 The Junior Varsity softball team practices on the JV field but plays games on the Varsity
21 field. The JV softball infield was gravel, there was little grass in the outfield, there were no fixed
22 bases, the pitcher's rubber would move around, and home plate was in disrepair. The JV field
23 had lots of potholes and rocks making for unsafe conditions for the players.

24 In 2008, Sue Enquist noted that there has been little to no maintenance to the JV softball
25 field. The infield soil was extremely hard and uneven, and stones and other debris was on the
26 field. The Varsity and JV outfields overlap making it impossible for players to use the JV and
27 Varsity fields at the same time for practices or games without risk of injury. There were no
28 dugout areas on the JV field and the backstop was too small to protect spectators at the JV field.

1 Also in 2008, the pitcher's rubber on the JV field was incorrectly lined up to home plate
2 by eight feet and turned to the left. There were no fixed bases or fixed base plugs. The use of
3 flat, rubber bases on the JV field increased the risk of injury to players who run bases.

4 When the perimeter fence was added to the Varsity softball facility, the practice facility
5 outfield became non-regulation size.

6 Sue Enquist found no improvements to the JV field during any of her three site
7 evaluation. There was very little to no maintenance to the field. The infield soil was extremely
8 hard and uneven. The outfield grass was uneven with inconsistent thatches of grass. There were
9 no dugout areas on the JV softball field and no protection was available for spectators at the
10 field.

11 The softball facility has no dedicated bullpens on the field. The girls use a warm-up area
12 that was next to the Conex box. This area is unsafe because neither the catcher nor the pitcher in
13 the area can see that ball that is being hit from the player at home plate. The boys' baseball
14 facility had bullpens that had cement blocks that built up the mound to maintain the mound
15 integrity, and there were two designated lanes allowing for two sets of pitchers and catchers
16 warming up for each team. Both bullpens had protection chainlink on one side so players were
17 able to see the home plate area.

18 Because of the inferior conditions on both the JV and Varsity softball fields, players and
19 spectators suffered injuries. Amanda Hernandez tripped over a pothole on the JV softball field in
20 May 2010, which resulted in her being on crutches for two weeks and missing one week of
21 school. Naudia Rangel's glasses kept breaking from balls taking wild hops on the hard dirt and
22 hitting her in the face. A paramedic was required to assist when a spectator was hit in the head
23 by a ball that was hit over the softball backstop.

24 In 2008, Lopiano deemed the girls' softball competition facility inadequate. In 2010, the
25 Varsity softball competition facility received improvements including the installation of a
26 permanent fence, outfield improvements, and the removal of a dangerous drainage area.
27 Notwithstanding these improvement, the quality of the surface of the softball field remained
28 dangerous in 2010 according to Enquist.

1 CPHS's baseball complex has four separate seating areas surrounding the backstop while
2 the girls' softball complex has a single section of stands. A second set of stands was added to the
3 softball complex. But Dr. Lopiano was unable to determine if that modification would alter her
4 opinion that male sport facility amenities remain superior to fans of female sports.

5 Dr. Lopiano found that concessions for female athletic events were offered less than
6 concessions for male athletic events and the CPHS did not have a non-discriminatory policy
7 regarding when concessions would be provided. In 2006, the baseball field had a concession
8 stand run by the baseball team but the softball team did not. In April 2009, Enquist found that
9 there was a fully functioning concessions stand for baseball with snacks, drinks, apparel, and
10 press guides for sale. Although a concession stand was added next to the softball field, no
11 evidence was presented that it has been used or opened.

12 Scoreboards were available for 55.6% of all male athletes at CPHS compared to 29.9% of
13 all female athletes.

14 The locker room, practice and competition facilities provided to females athletes at CPHS
15 are unequal as compared to the locker room, practice and competition facilities provided to male
16 athletes.

17 **D. Equipment, Uniforms and Storage**

18 Because of late hires and more inexperienced coaches for the girls' athletic teams, female
19 athletes receive fewer and lesser quality equipment and consumable supplies compared to male
20 athletes. Specifically, girls' sports like softball and hockey, where there are no corresponding
21 male teams that would allow for borrowing equipment for the boys' sports, are significantly
22 disadvantages. Softball coach Yuhas/Russo testified that she had insufficient balls for the
23 pitching machine and could not order more because it was late in the season and budgets had
24 been frozen.

25 Sue Enquist found that the softball program had significantly less sports specific
26 equipment, e.g., ball carts, buckets and balls, than the baseball program. There was no
27 replacement schedule for equipment that the softball team uses.

28 In May 2008, located on the baseball field was a large maintenance storage area that held

1 all maintenance-related items. There was no similar storage area on the softball field.

2 During Coach Martinez's tenure, because of the lack of maintenance equipment, Martinez
3 brought in his own equipment to use on the softball field.

4 With respect to uniforms, there was a nondiscriminatory uniform replacement schedule in
5 place at CPHS but coaches were permitted to make different determinations as to what they
6 could buy with their budgets and that could be in conflict with the replacement schedule policy.
7 Each head coach had discretion to select and order team uniforms. The Athletic Director
8 provided no oversight to determine whether the uniform replacement schedule was followed.

9 Coaches were also given discretion to require their players to purchase a "spirit pack"
10 which typically consisted of a t-shirt and pair of shorts. The Athletic Director did not provide
11 oversight to ensure that the same percentage of male and female athletes were require to
12 purchase the spirit packs or not.

13 At trial, no evidence was presented to show monitoring of uniform replacement practices
14 for gender equity occurs.

15 The CPHS athletic department has a policy requiring coaches to complete an inventory at
16 the end of each season. But defendant provided no written equipment or uniform inventories
17 either prior to or at trial. In order to conduct a Title IX analysis concerning the quality and
18 quantity of equipment and other supplies provided to male and female athletes, basic inventories
19 are essential. Because defendant provided no equipment or uniform inventories at trial, Lopiano
20 was able to consider only what she observed during her site visit.

21 Whether dedicated and accessible storage areas are equitably available to male and
22 female athletes is part of a Title IX analysis. Lopiano found that 65% of male athletes and 41%
23 of female athletes had dedicated storage areas. CPHS provided the softball team with half of a
24 Conex box in which to store softball equipment; the other half was used by the boys' baseball
25 program. But in addition to the Conex box, the boys' baseball team had a storage room attached
26 to their dugouts.

27 In May 2008, player equipment storage, *i.e.*, where players have their bat bags, helmets
28 and other amenities that they use as individual players, was available for CPHS baseball players

1 only. There was no such equipment storage for the girls' softball players.

2 No evidence was presented that defendant monitors the provision of athletic equipment
3 storage for gender equity. The Athletic Director did not provide any oversight for gender equity
4 in the provision of equipment, supplies and uniforms to ensure that male and female athletes
5 were provided with the same benefits.

6 **E. Scheduling Benefits**

7 Girls and boys are required under Title IX to have the same optimum practice or
8 competition times. Immediately after schools is the most desirable practice times for sports. With
9 respect to desirable competition times, that time is when parents are available to come and watch
10 the sporting events. Ordinarily, desirable competition times are early evening rather than
11 immediately after school.

12 Dr. Lopiano testified that female athletes had less access to premium game times than
13 male athletes. Girls basketball games were played on Friday nights at 6:00 p.m. while the boys'
14 basketball games were played on Friday nights at 7:30 p.m. No effort was made to alternate the
15 times by week or season. Similarly, boys' water polo was scheduled for Fridays at 5:00 p.m. and
16 the girls' events were at 3:00 p.m.; field hockey competition was scheduled at 3:00 or 5:00 p.m.
17 but boys' football played in the evening. Girls' basketball practice times were from 5-7:00 p.m.,
18 while the boys' Varsity basketball team practiced immediately after school during all four years
19 Amanda Hernandez was at CPHS.

20 In 2010, boys' and girls' basketball scheduling was corrected to meet equitable
21 competitive scheduling requirements but no evidence of any other time changes for any other
22 sports was produced.

23 Athletic Director at CPHS permitted coaches to determine practice times. There is an
24 absence of monitoring athletic practice times for gender equity at CPHS. Similarly, the District
25 did not appoint a person responsible for monitoring the number of practice opportunities
26 provided to the school's athletic teams for gender equity.

27 **F. Equal Access to Coaching**

28 Female athletes were provided with fewer coaches. The athlete/coach instructional ratio,

1 which is calculated by dividing the total number of athletes on a team by the total number of
2 coaches provided to that team, is an indicator of access to equitable coaching for males and
3 females. The athlete/coach instructional ratio for females was not equal to that afforded to males.

4 Assistant coaches were not provided in the same quantity or quality for female athletes at
5 CPHS. Head coaches who were assigned late, which happened with some frequency, did not get
6 an assistant coach although head coaches had the discretion to decide what assistants they
7 needed.

8 The Athletic Director allowed coaches of boys' teams to use their coaching salary for
9 additional assistant coaches. As a result, coaching support for the boys' programs was not
10 equitably determined based on the coaching salary schedule. Although the salary would appear
11 equal for the baseball and softball coaches, there were more baseball coaches because the head
12 baseball coach did not take his salary but instead used his salary for assistant coaching salaries.
13 More assistant coaches for the baseball team were available than provided for the softball team.

14 In the season after Coach Martinez was terminated, softball coach Yuhas/Russo decided
15 not to have any assistant coaches for the Varsity and JV teams. This resulted in her being the
16 only coach present at practices and games.

17 The hiring of coaches for girls' sports was the responsibility of the Athletic Director. An
18 open coaching position was first offered to on-campus teachers through the school's Daily
19 Bulletin. If no response was obtained, the position was posted at the District. CPHS would take
20 no other action to fill an open coaching position.

21 If no coach was hired, a team was discontinued. The current athletes in that sport would
22 be unable to participate during that year and even if a team was reconstituted the following year,
23 the participants would have an inferior schedule. This is because the Metro Conference would
24 not create a conference schedule for the following year for sports that were not sponsored in the
25 current year.

26 Girls' field hockey, tennis, water polo and golf teams have often lacked consistent
27 coaching staffs. CPHS had no girls' field hockey team in 2005, 2007 or 2008, or girls' tennis
28 team during the 2007 and 2008 school years because no coaches were hired for those sports.

1 Neither girls' water polo nor girls' lacrosse has been offered at CPHS, also because CPHS failed
2 to hire coaches. CPHS' lack of efforts to consistently and timely obtain coaches for girls' teams
3 severely impacts girls' opportunities for competitive athletics.

4 Athletic Director Moore acknowledged that he had not done any analysis on gender
5 equity for the quality of coaches for the boys' and girls' teams. Nor did CPHS conduct any
6 reviews to determine if they were providing quality coaches equitably to male and female
7 athletes.

8 **G. Medical and Training Services**

9 At CPHS, an athletic trainer, Eddy Ayub, was available during the fall football season to
10 work with the football players. Also during the fall, a physician, Dr. Camarada, was available
11 for rehabilitation every Saturday morning. The Saturday clinic was predominately during the
12 football season but was not limited to football.

13 Dr. Lopiano opined that if it were assumed that only athletes who participated in fall
14 sports had access to the trainer and doctor, 43% of the male athletes and 29% of the female
15 athletes could receive these services.

16 The weight training facility, while available for use by boy and girls, was used
17 predominately by boys. The nature of the available equipment at CPHS was designed for
18 absolute-strength-based sports in which boys' participate. For women's sports, a training facility
19 will typically have lower weight plates, free weights, flexibility equipment, core strength
20 equipment. In 2010, significant changes were made to the weight-training and conditioning
21 facility with the intent to make the area more gender equitable. But no evidence was presented
22 that the renovated facility was being used by girls' and boys' teams in an equitable manner.
23 Further, neither the Athletic Director nor defendant monitored weight room usage for gender
24 equity.

25 **H. Publicity and Promotional Support**

26 At CPHS, there was greater coverage of boys' athletic teams than girls' teams in the
27 yearbook. The Castle Park Daily Bulletin featured almost twice as many announcements for
28 boys' athletic teams compared to announcements for girls' athletic teams. Coaches have

1 discretion to submit announcement to the Daily Bulletin. Coach Martinez never was told he
2 needed to do any publicity on behalf of the softball team during his seven years as coach.

3 Band, cheerleaders and pep squads can provide support at athletic events. Forty-six per
4 cent of male athletes and 13% of female athletes received the benefit of a band being at their
5 events.

6 The cheerleaders' schedule was decided at the discretion of the cheer coach. During the
7 time Veronica Ollier was at CPHS, the cheerleaders would cheer for football and boys'
8 basketball games but not for any girls' teams games.

9 From 1998 through the date of the trial, no one at CPHS was tasked with monitoring
10 publicity or promotional opportunities for gender equity. The publicity or promotional
11 opportunities at CPHS include the Daily Bulletin, announcements, the electronic marquee, and
12 yearbook.

13 **I. Fund-raising Benefits**

14 Equitable Fund-raising benefits are required under Title IX. At CPHS, boys teams were
15 permitted to fund-raise. The boys' baseball team sold concessions from their snack stand and the
16 money raised was used for the baseball team. In contrast, softball coach Yuhas/Russo was
17 permitted by the Athletic Director to prohibit all fund-raising by the softball team. As a result,
18 the girls were unable to attend post-season competitions or non-conference competitions that
19 they had previously attended with parent-raised funds.

20 A grant-making body – the Trojan Foundation – supported the athletic program at CPHS.
21 The coaches of girls' teams were not advised as to what they could request and the method for
22 receiving Trojan Foundation funds. Because the coaches for boys' teams did not have the same
23 turnover rate as coaches for the girls' teams, they were aware of the availability of and
24 requirements for obtaining Trojan Foundation funds. It was the responsibility of the Athletic
25 Director and defendant to inform coaches about their funding sources so that equitable access to
26 those sources could be obtained. Testimony was presented that action has been taken to remedy
27 this disparity in this particular Fund-raising practice.

28 No one at CPHS has monitored Fund-raising opportunities or donations to the athletic

1 program for gender equity. Defendant did not present any evidence to indicate that this situation
2 has changed.

3 **J. Administrative Activity**

4 CPHS failed to provide a system for Title IX implementation and compliance. Instead,
5 Title IX compliance was at the discretion of individual coaches and the defendant did not
6 monitor coaches to determine if equitable treatment and benefits for male and female athletes
7 was carried out. School principals are tasked with ensuring that the individual school is in
8 compliance with Title IX. The Athletic Director is generally given the responsibility, however,
9 to monitor gender equity requirements.

10 Mercedes Lopez is the Director of Student Support Services at the District and, since
11 2010, she is the District's Title IX Coordinator. Her responsibility is to submit a report to the
12 U.S. Department of Education Office of Civil Rights every two years regarding participation
13 numbers. She testified that she based her reports on information reported to her by the high
14 schools in the District and she did not independently verify the numbers she received from the
15 school.

16 No evidence was presented that CPHS had ever conducted a Title IX self-evaluation, a
17 requirement under the implementing regulations.

18 As a result of systemic administrative failures at CPHS, female athletes have received
19 unequal treatment and benefits before and during the time this action has been pending.
20 Although some remedial measures have been taken at CPHS, particularly with respect to the
21 girls' softball facility, those steps have not been consistent, adequate or comprehensive.
22 Additionally, there has been no evidence presented that the District has addressed or
23 implemented policies or procedures designed to cure the myriad areas of general non-
24 compliance with Title IX.

25 **II. Retaliation**

26 Steve Rangel, parent of named plaintiff Maritza Rangel, complained to CPHS Principal
27 Castellija and Athletic Director Moore about inequalities for girls in the school's athletic
28 programs in May 2006. Rangel met with Principal Castellija about improvements for the girls'

1 softball field and non-compliance with Title IX.

2 Also in May 2006, Rangel spoke to Moore about Title IX concerns relating to
3 improvements to the softball field dugouts, including needed fencing, grass growing in the
4 infield, a broken backstop, potholes in the outfield, and limited audience seating. Moore
5 informed Assistant Principal Duggan a few days later of his meeting with Rangel. Moore did not
6 recall Duggan doing anything about Rangel's complaint about the softball field, took no further
7 action and spoke to no one else about alleged Title IX violations at CPHS.

8 Moore and Coach Chris Martinez, who had been a walk-on softball coach for seven years
9 at CPHS, held a meeting in May 2006, that was intended to discuss the upcoming softball season
10 and to walk the softball field. Rangel was also present at the meeting between Moore and
11 Martinez. Rangel pointed out the disparities between the girls' softball field and the boys'
12 baseball field. In his deposition, Moore acknowledged that he told Martinez, with Rangel
13 present, that walk-on coaches, *i.e.*, coaches who were not CPHS teachers, could be released from
14 their employment at any time. Both Martinez and Rangel understood that Moore was threatening
15 to terminate Martinez's continued coaching of the softball team if additional complaints were
16 made about the girls' softball facilities. Moore also stated that the gymnasium was more of a
17 priority than the softball field. Approximately six weeks after this conversation, Coach Martinez
18 was terminated by Principal Castellija.

19 Defendants provided several reasons for terminating Martinez: (1) the school wanted to
20 replace coaches with certified teaching employees; (2) Martinez improperly determined the
21 eligibility of a player and the softball team forfeited games as a result; (3) Rangel could not get
22 his Blue Card to coach but Martinez allowed him to coach the summer club team; (4) Martinez
23 provided late paper work to the school board in seeking approval for a tournament in Las Vegas
24 and although the Board made an exception allowing the team to go on the trip, the trip posed an
25 unnecessary liability risk for the Board.

26 In January 1987, a preference for certified teachers as coaches was adopted and has
27 remained in place. The long-standing policy is to first offer a coaching position to a certified
28 employee if a coaching position becomes available and is implemented as coaching vacancies

1 arise. Once an individual becomes a District employee, it no longer matters whether a coach is a
2 certified teacher or not. When a coaching vacancy occurs it is offered to a certified employee
3 and if a coaching position is not covered, the position is offered more broadly. A certified
4 teacher does not have the right to have a coach removed so the teacher can fill a coaching
5 position. When Principal Castilleja terminated Martinez, she did not have anyone selected to fill
6 the coaching position.

7 Coaches are not responsible for determining the academic eligibility of students to play
8 on athletic teams. Assistant Principal Mary Rose Peralta was responsible for eligibility
9 determinations in 2005. In 2005, Coach Martinez mistakenly believed a player, Erica Rangel,
10 was eligible to play. When the Administration determined Rangel was academically ineligible
11 and had been improperly played, the girls' softball team forfeited games. Even though the
12 playing of an ineligible player and the resulting forfeiture of games were given as a reason for
13 Martinez's termination, Castilleja did not write up Martinez and no action was taken against him
14 at the time. Martinez had been told by a prior assistant principal in charge of eligibility that
15 taking an advanced placement class could be used in determining eligibility. Assistant Principal
16 Peralta wrote to the CIF stating that Martinez had made an honest mistake in determining the
17 eligibility of Erica Rangel. During the seven years Martinez coached, he did not play any other
18 ineligible player. Other CPHS coaches had played ineligible players but no other coach was
19 disciplined for this infraction. Athletic Director Moore apologized to Martinez for providing
20 incorrect information concerning eligibility rules and agreed that the system for determining
21 eligibility was difficult. Finally, the eligibility error occurred in the 2004-05 school year but
22 Martinez was not terminated or otherwise disciplined that year.

23 In order for a parent or other individual to assist with on-campus athletic activities, a Blue
24 Card must be obtained. Parent Steve Rangel had a Blue Card from 1997 to 2002, and coached in
25 the District. But when Rangel reapplied for a Blue Card in 2006, he was denied due to felony
26 convictions on his record. While his application for a Blue Card was pending, Rangel had
27 assisted with coaching during the school year. Once Martinez was told not to allow Rangel to
28 coach because Rangel could not obtain a Blue Card, Rangel no longer assisted with coaching the

1 school's softball team. Athletic Director Moore told Rangel, however, that he could help
2 maintain the softball field without a Blue Card. Principal Castilleja saw Rangel on the softball
3 field in the summer of 2006, when Martinez was not present. The summer ball club was not
4 under the auspices of the high school. Martinez asked for assistance from CPHS administrators
5 to deal with Rangel in keeping him off the field because the school had responsibility for dealing
6 with Rangel as the parent of a player.

7 In 2005, Coach Martinez did not comply with the required submission of paperwork prior
8 to leaving on a softball team trip. Castellija admitted she did not write him up for anything,
9 including the late paperwork in 2005. In 2006, Martinez completed the required paperwork for a
10 team trip to Las Vegas although he turned in the paperwork late. After the Las Vegas trip,
11 Martinez and Moore met to discuss the upcoming 2006 softball season.

12 **CONCLUSIONS OF LAW**

13 **I. Title IX, Equal Treatment and Benefits**

14 Title IX prohibits sexual discrimination in educational programs or activities that are
15 supported by federal financial aid. 20 U.S.C. § 1681(a). Title IX and its implementing
16 regulations provide:

17 No person in the United States shall, on the basis of sex, be excluded from
18 participation in, be denied the benefits of, be treated differently from another
19 person or otherwise be discriminated against in any interscholastic, intercollegiate,
any such athletics separately on such basis.

20 34 C.F.R. § 106.41(a).

21 “Congress enacted Title IX in response to its finding—after extensive hearings held in
22 1970 by the House Special Subcommittee on Education—of pervasive discrimination against
23 women with respect to educational opportunities.” *Cohen v. Brown Univ.* (“*Cohen II*”), 101
24 F.3d 155, 165 (1st Cir. 1996). The goals of Title IX were “to avoid the use of federal resources
25 to support discriminatory practices” and “to provide individual citizens effective protection
26 against those practices.” *Id.* (quoting *Cannon v. Univ. of Chicago*, 441 U.S. 677, 704 (1979)).

27 Title IX requires “equal treatment,” which has been interpreted by the OCR to require
28 “equivalence in the availability, quality and kinds of other athletic benefits and opportunities

1 provided male and female athletes.” Department of Education, Office for Civil Rights, Policy
 2 Interpretation (“Policy Interpretation”), 44 Fed. Reg. 71,413, 71,417-418; Clarification of
 3 Intercollegiate Athletics Policy Guidance: The Three-Part Test (Clarification) (1996). Equal
 4 treatment claims allege sex-based differences in the schedules, equipment, coaching, and other
 5 factors affecting participants in athletics. *See McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d
 6 275, 299 (2d Cir. 2004). Policy interpretation by the OCR is entitled to deference by the Court.
 7 *Mansourian v. Regents of the University of California, University of California at Davis*, 594
 8 F.3d 1095, 1103, n.9 (9th Cir. 2010). The Court takes judicial notice of the *Title IX*
 9 *Investigator’s Manual*, Office of Civil Rights, Department of Education (1990) (“Investigator’s
 10 Manual”).

11 Compliance in the area of equal treatment and benefits is assessed based on an overall
 12 comparison of the male and female athletic programs, including an analysis of recruitment
 13 benefits, provision of equipment and supplies, scheduling of games and practices, availability of
 14 training facilities, opportunity to receive coaching, provision of locker rooms and other facilities
 15 and services, and publicity. 34 C.F.R. 106.41(c).

16 “[A] disparity in one program component (*i.e.*, scheduling of games and practice time)
 17 can alone constitute a Title IX violation if it is substantial enough in and of itself to deny
 18 equality of athletic opportunity to students of one sex at a school.” *McCormick v School Dist. of*
 19 *Mamaroneck*, 370 F.3d 275, 293 (2d Cir. 2004); Policy Interpretation, 44 Fed. Reg. 71,417 (Dec.
 20 11, 1979). A disparity in one program component, however, “can be offset by a comparable
 21 advantage to that sex in another area,” *McCormick*, 370 F.3d at 293, as long as “the overall
 22 effect of any differences is negligible.” Policy Interpretation, 44 Fed. Reg. at 71,415.

23 **A. Recruiting Benefits**

24 Equal efforts to recruit male and female athletes are required under Title IX. Policy
 25 Interpretation, 44 Fed. Reg. at 71,417. The evidence presented at trial demonstrates that
 26 defendants have not instituted recruiting policies and have failed to monitor athletic recruiting
 27 that provide for equitable efforts to recruit female athletes at CPHS. As a result, there are
 28 significant disparities in female athlete recruitment. Female athletes at CPHS are denied

1 opportunities and benefits that male athletes have and these opportunities are not negligible. This
2 violates Title IX.

3 **B. Locker Rooms, Practice and Competition Facilities**

4 Male and female athletes are required under Title IX to have access to the same quality
5 facilities on the same basis. Policy Interpretation, 44 Fed. Reg. at 71,417.

6 The evidence provided at trial demonstrates that the quality, size and location of the
7 locker rooms were better for male athletes than female athletes at CPHS. Similarly, the evidence
8 shows that male athletes have higher quality practice and competitive facilities than female
9 athletes. The boys' facilities also are better maintained and protected from damage and overuse.
10 Defendants do not monitor locker rooms, practice and competition facilities for gender equality.
11 The disparities concerning locker rooms, practice and competition facilities are disadvantages to
12 female athletes that are not negligible.

13 **C. Equipment, Uniforms and Storage**

14 Under Title IX, schools must provide female athletes with equitable "equipment and
15 supplies which include, *inter alia*, uniforms, sport-specific equipment, general equipment, and
16 conditioning and weight-training equipment. Policy Interpretation, 44 Fed. Reg. at 71,416.
17 Supplies are assessed for quality, amount, suitability, maintenance and availability. *Id.*

18 Male athletes were provided with more and superior quality equipment and supplies than
19 those provided to female athletes. The availability and type of uniforms provided to the female
20 athletes were not equitable compared to male athletes. Further, male athletes were provided with
21 more and better storage facilities than the female athletes at CPHS.

22 The disparities in the provision of equipment, uniforms and storage denied girls
23 opportunities and benefits that boys enjoy, and that denial of opportunities and benefits was not
24 negligible.

25 **D. Scheduling Benefits**

26 Male and female athletes are entitled to equitable number of competitive events per sport,
27 the time of day competitive events are scheduled, the number and length of practice
28 opportunities, and the time of day practice opportunities are scheduled. Policy Interpretation, 44

1 Fed. Reg. at 71,416.

2 Because of defendants' consistent failure to timely hire coaches for girls' sports, girls
3 were provided with fewer competitive opportunities than boys. Boys also had greater access to
4 premium game times for competition and practice times that are provided immediately after
5 school than the girls.

6 Evidence produced shows that defendants do not monitor this element for gender equity.
7 These disparities in scheduling benefits are not negligible.

8 **E. Equal Access to Coaching**

9 Female and male athletes are required to receive equivalent opportunities for quality
10 coaching under Title IX. Policy Interpretation, 44 Fed. Reg. at 71,416. Equivalent coaching is
11 assessed by examining the relative availability of full-time coaches, part-time coaches and
12 assistant coaches. *Id.* With respect to the assignment of coaches, compliance with Title IX is
13 assessed by examining the training, experience, and other qualifications of coaches and their
14 professional standing. *Id.*

15 The girls' teams coaches at CPHS were fewer in number, less experienced, and more
16 overburdened than the boys' teams coaches. This disparity directly impacted the quantity and
17 quality of the instructional benefits that the coaches provided to the female athletes. The
18 disadvantages to the girls in equal access to coaching are not negligible.

19 **F. Medical and Training Services**

20 Title IX requires medical and training services to be provided equitably. Policy
21 Interpretation, 44 Fed. Reg. at 71,417.

22 Male athletes at CPHS were provided with greater access to athletic trainers and medical
23 services than female athletes. These disparities deny girls opportunity and benefits that boys
24 enjoy and they are not negligible.

25 **G. Publicity and Promotional Support**

26 Equitable publicity benefits and promotional support are required under Title IX. Policy
27 Interpretation, 44 Fed. Reg. at 71,417.

28 Factors to consider in assessing whether publicity is equitably provided include access to

1 publicity resources. The quantity and quality of publications and other promotional devices
2 featuring men's and women's programs. *Id.*

3 Evidence presented shows that girls' athletic activities were provided with less coverage
4 and promotion in yearbooks, fewer announcements in the school's Daily Bulletin, less signage
5 on the school's electronic marquee, and inferior signage. The CPHS band and cheerleaders
6 performed at more boys' sports than girls' sports.

7 The inferior publicity and promotional support to girls are not negligible.

8 **H. Fund-raising Benefits**

9 Title IX requires that revenues from all sources be used to provide equitable treatment
10 and benefits to both girls and boys. A source of revenue may not justify the unequal treatment of
11 female athletes. Investigator's Manual at 5.

12 Defendants fail to monitor athletic Fund-raising opportunities and allow coaches full
13 discretion over Fund-raising. Further, defendants do not review this element for gender equity.

14 **I. Mootness**

15 Since the filing of this action, defendants have made some improvements to the girls'
16 athletic facilities and the scheduling of boys and girls basketball. Mootness can be found when a
17 defendant voluntarily ceases a practice when "the record [] show[s] that (1) it can be said with
18 assurance that there is no reasonable expectation . . . that the alleged violation will recur, and (2)
19 interim relief or events have completely and irrevocably eradicated the effects of the violation."
20 *Sossamon v. Texas*, 131 S. Ct. 1651, 1668 (2011) (citing *Smith v. Univ. of Wash. Law Sch.*, 233
21 F.3d 1188, 1194 (9th Cir. 2000)(alteration in original)). Although defendant may change a
22 policy or take some remedial measures while litigation is pending, the fact of "voluntary
23 cessation" nevertheless may allow claims to go forward. *Sossamon*, 131 S. Ct. at 1670 (2011);
24 see e.g., *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 719
25 (2007) ("Voluntary cessation does not moot a case or controversy unless subsequent events
26 make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected
27 to recur" (internal quotation marks and alterations omitted)); *United States v. Bradau*, 578 F.3d
28 1064, 1068 (9th Cir. 2009)(citing *Friends of the Earth, Inc. v. Laidlaw Environmental Services*

1 (TOC), Inc., 528 U.S. 167, 189 (2000)).

2 The Supreme Court has stated that when a party asserts that a case has become moot,
 3 “[t]he burden of demonstrating mootness ‘is a heavy one.’ ” *County of Los Angeles v. Davis*, 440
 4 U.S. 625, 631 (1979).

5 In this case, even though defendants have presented some evidence of changes to athletic
 6 facilities at CPHS and scheduling of basketball practices and games, additional evidence shows
 7 that many violations of Title IX have not been remedied or even addressed. Because of
 8 defendants’ continuing failure to address gender equity in athletics in a full and comprehensive
 9 manner, CPHS has not met its burden to demonstrate that the interim measures have completely
 10 and irrevocably eradicated the effects of the alleged violations. This action is not moot.

11 **II. Retaliation**

12 “[R]etaliation against individuals because they complain of sex discrimination is
 13 ‘intentional conduct that violates the clear terms of [Title IX].’ ” *Jackson v. Birmingham Bd. of*
14 Educ., 544 U.S. 167, 173–174 (2005). Courts generally look to Title VII cases to define Title
 15 IX’s applicable legal standards. *Burch v. University of Cal. Davis*, 433 F. Supp.2d 1110, 1125
 16 (E.D. Cal. 2006); *see also Oona R.-S. by Kate S. v. McCaffrey*, 143 F.3d 473, 476 (9th Cir.1998)
 17 (holding that Title VII standards apply to hostile environment claims under Title IX). Under
 18 Title VII, and, by analogy, Title IX, to establish a *prima facie* case of retaliation plaintiffs must
 19 show: (1) they engaged in a protected activity; (2) they were thereafter subjected to an adverse
 20 action; and (3) a causal link exists between the protected activity and the adverse action.
 21 *Papelino v. Albany Coll. of Pharmacy of Union Univ.*, 633 F.3d 81, 91 (2d Cir. 2011); *Wallis v.*
22 J.R. Simplot Co., 26 F.3d 885, 890 (9th Cir.1994); *see also Jackson*, 544 U.S. at 184. Once the
 23 plaintiff establishes a *prima facie* case of retaliation, the burden shifts to the defendant to
 24 advance a legitimate, non-retaliatory reason for its conduct; “if it does so, the plaintiff must be
 25 able to convince the factfinder both that the [defendant’s] proffered explanation was false, and
 26 that retaliation was the real reason for the adverse . . . action.” *Isler v. Keystone Sch. Dist.*, 2008
 27 WL 3540603, at *4 (W.D. Pa. Aug.12, 2008) (internal quotations omitted).

28 Plaintiffs engaged in the following protected activities: Parent Steve Rangel complained

1 of Title IX violations to Athletic Director Moore and to Principal Castilleja; counsel for
2 plaintiffs sent a letter regarding Title IX violations at CPHS to the School, Board, Interim
3 Superintendent, Principal, and Athletic Director in July 2006; and plaintiffs filed this action in
4 April 2007.

5 Plaintiffs suffered adverse actions as follows: Coach Martinez was terminated shortly
6 before the start of the softball season for pretextual reasons; Coach Martinez was replaced with a
7 far less experienced coach who did not conduct a winter ball program; the softball team had no
8 assistant coaches; the replacement coach was assigned as the head coach for three sports; the
9 girls' softball program was disrupted; the softball program's donated Conex box was removed;
10 the 2007 softball teams did not obtain necessary equipment; an annually celebrated banquet for
11 the 2007 softball team was not held; award letters and patches to plaintiffs during their senior
12 year were not given; parents were not permitted to volunteer for the softball team; the softball
13 team's Las Vegas tournament opportunity was withheld. These actions were adverse to plaintiffs
14 because their long-term and successful softball program was significantly disrupted to the
15 detriment of the program and participants.

16 A causal link may be established by an inference derived from circumstantial evidence,
17 such as knowledge of plaintiffs participation in protected activities and the proximity in time
18 between the protected action and allegedly retaliatory adverse action. *Jordan v. Clark*, 847 F.2d
19 1368, 1376 (9th Cir.1988). In the present case, there was a causal connection between the
20 protected activities and the adverse actions in temporal proximity: plaintiffs engaged in
21 protected activities in May and July 2006, and April 2007, and adverse actions were taken
22 against plaintiffs in July 2006, and Spring of 2007.

23 Defendant must articulate a legitimate, non-retaliatory reasons for its action. "The
24 defendant's burden at this stage is one of production, not persuasion. The court may not make a
25 credibility assessment." *Njenga v. San Mateo County Superintendent of Schools*, 2010 WL
26 1261493, at *14 (N.D. Cal. 2010) (citing *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S.
27 133, 142 (2000)). As set forth above, defendants offered four non-retaliatory reasons for
28 terminating Martinez.

1 Then plaintiffs must show defendant's proffered explanation was false, and that retaliation
2 was the real reason for the adverse action.

3 Prior to the May 2006 meeting between Martinez and Athletic Director Moore, the clear
4 intention was for Martinez to continue coaching the 2006-07 season. It was only after Rangel
5 raised Title IX non-compliance issues for the first time at the May 2006 meeting that Martinez's
6 coaching position was threatened by the Athletic Director. Shortly thereafter, Martinez was
7 terminated as coach for girls' softball.

8 A preference for certified teachers was in place long before Martinez was hired. Principal
9 Castilleja denied speaking to coaches in 2005-06 about wanting to go in a different direction by
10 having more on-campus coaches. Offering a coaching position to a certified employee occurs
11 only when vacancies arise. When Castilleja terminated Coach Martinez, she had no certificated
12 employee ready to replace Coach Martinez.

13 The student eligibility situation occurred during the 2004-05 school year. Martinez was
14 not written up for the forfeited games in 2005. Nor was Martinez terminated after that year but
15 instead after the 2005-06 school year. Determination of player academic eligibility was the
16 responsibility of school administration, specifically Assistant Principal Mary Rose Peralta, not
17 Coach Martinez. Peralta acknowledged that Martinez made an honest mistake concerning his
18 belief that the student was eligible to play.

19 Martinez did not permit Steve Rangel to coach after being notified Rangel could not
20 obtain a Blue Card. The summer softball club that was practicing at CPHS was not conducted
21 under the auspices of the high school. Martinez was not present when Principal Castilleja saw
22 Rangel on the softball field.

23 Prior to the date of the Las Vegas softball team trip, Martinez provided the required
24 paperwork to the District, albeit late. Principal Castilleja did not write up Martinez for the late
25 paperwork. The May 2006 meeting between Moore and Martinez was to discuss the coming
26 softball season so there was no intent to terminate Martinez for the late paperwork.

27 Defendant's stated reasons for Martinez's termination are not credible and are pretextual.

28 ///

RELIEF

2 Since the filing of this action, defendants have made some improvements to facilities in
3 an attempt to bring the facilities and programs into Title IX compliance. The improvement
4 include: the removal of the inadequate JV field; the creation of a dedicated softball field
5 enclosed by fencing; new, covered dugouts with cubbies; backstop; grandstand; maintenance
6 schedules for watering; and a better infield. Other improvements include the scheduling of
7 practices to avoid discrimination over practice times on dual facilities. Expert witness Donna
8 Lopiano testified to the substantial inequities in most of the programs identified in the
9 Investigator's Manual on her site visit. In some cases she was unable to fully evaluate whether
10 gender equity was in place because of inadequate information provided by the defendants.
11 Overall she found CPHS was not in compliance with Title IX. Lopiano also testified that a
12 subsequent site visit would not change her opinion about compliance even though improvements
13 had been made specifically to the softball facilities because her opinion was based on overall
14 compliance of the athletic program at CPHS rather than limited remediation. Looking to hand-
15 selected individual changes or improvements without conducting a new overall study is
16 insufficient for determining compliance with Title IX.

17 Defendants have violated Title IX in failing to provide equal treatment and benefits, and
18 retaliating against the plaintiff class. Plaintiffs are entitled to declaratory relief.

19 Injunctive relief is appropriately granted under Title IX. In order to be entitled to
20 permanent injunctive relief, a plaintiff must establish the following: (1) the likelihood of
21 irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate
22 to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff
23 and defendant, a remedy in equity is warranted; and (4) that the public interest would not be
24 disserved by a permanent injunction. *Sierra Forest Legacy v. Sherman*, 2011 WL 2041149, at
25 *16 (9th Cir. May 26, 2011).

26 Here the plaintiff class has suffered and continues to suffer irreparable injury. Female
27 athletes and potential athletes have been denied the opportunity to participate in high school
28 sports on an equal level with the male students at their school. When inequalities are not

1 addressed and corrected, female athletes, prospective students, faculty and the community at
2 large, are told athletics for girls are not as important as boys.

3 The balance of hardships weighs firmly in plaintiffs' favor. The inequalities demonstrated
4 at trial should have been rectified years ago by the District. Female students consistently have
5 been denied athletic opportunity equal to male students. This inequity is highlighted and most
6 apparent between the boys' baseball team and the girls' softball team at CPHS. The girls' softball
7 team has been treated as vastly inferior to the boys' baseball team, which it is not.

8 The public interest in remedying gender discrimination is strong and promoting
9 compliance with Title IX is an important societal value:

10 Equal athletic treatment is not a luxury. It is not a luxury to grant equivalent
11 benefits and opportunities to women. It is not a luxury to comply with the law.
12 Equality and justice are not luxuries. They are essential elements which are woven
13 into the very fiber of this country. They are essential elements now codified under
14 Title IX.

15 *Cook v. Colgate Univ.*, 802 F. Supp. 737 (N.D.N.Y. 1992) (holding that university's unequal
16 treatment of men's and women's ice hockey teams violated Title IX), vacated as moot, 992 F.2d
17 17 (2d Cir. 1993).

18 A recent assessment of the impact of Title IX suggests:

19 Although Title IX has gone a long way in increasing the status and respect for
20 female athletes, discrimination endures. Title IX has not ended the long history of
21 discrimination against females in sport programs; many educational institutions
22 continue to place male sport programs in a position of superiority. *See McCormick
v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 296 (2d Cir. 2004) ("Despite
23 substantial progress in attitudes about women and sports, the competitive
24 accomplishments of male athletes may continue to be valued more than the
25 achievements of female athletes.").

26 *Parker.*, 2012 WL 266870, *4.

27 Because of the defendant's long-standing and continuing overall violations of Title IX
28 with respect to the treatment and benefits accorded female athletes compared to male athletes,
and the fact that interim remedies have not completely and irrevocably eradicated the effects of
these violations, this action is not moot.

29 Based on the foregoing, plaintiffs are entitled to injunctive relief. Defendants are required
30 to comply with Title IX in all aspects of its athletic programs and activities at CPHS and

1 violations identified through this action be corrected.

2 The parties are directed to jointly prepare a proposed compliance plan to include the
3 Court's continuing jurisdiction and the monitoring of defendants' athletic programs and
4 activities. The parties shall submit the proposed compliance plan within 45 days of the filing of
5 this Order.

6 **IT IS SO ORDERED.**

7 DATED: February 9, 2012

8 
9 M. James Lorenz
United States District Court Judge

10 COPY TO:

11 HON. WILLIAM McCURINE, JR.
12 UNITED STATES MAGISTRATE JUDGE

13 ALL PARTIES/COUNSEL

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