

Sent by certified mail

May 31, 2017

Kent Scribner, Ph.D., Superintendent
Fort Worth ISD
100 N University Drive
Fort Worth, Texas 76107

Re: Title IX Issues & Rugby as Varsity Sport for Female Students

Dear Dr. Scribner:

We are female students enrolled in the Fort Worth Independent School District ("the District", "FWISD"). We are writing to formally express our interest in adding rugby as a female varsity sport. Further, we write to express our concern and dissatisfaction that the proposal submitted by Mr. McCulloch, HST Teacher and Student Rugby Club Sponsor at Trimble Technical High School, on our and others behalf to various upper leadership in the District to add rugby as a female varsity sport has not been adequately addressed.

We have become aware that the District has systemically violated Title IX of the Education Amendments of 1972. The inequities detailed below highlight that the District is not providing its female students with equal opportunities to play sports and that it does not provide those females who play sports with benefits similar to those afforded male participants in UIL and non-UIL sports.

Title IX

As you are no doubt aware, Title IX (enacted in 1972) provides in relevant part:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. 20 U.S.C. § 1681(a).

The Civil Rights Restoration Act of 1987 made it clear that the terms "program or activity" apply to all programs and activities of an institution as long as any part of the relevant institution receives Federal funds. Thus, FWISD athletic programs are subject to Title IX.

The regulations implementing Title IX expressly state that:

No person shall, on the basis of sex, be excluded from participation in, be denied 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)

And,

A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. 34 C.F.R. § 106.41(c)

In 1979, the Office for Civil Rights of the U.S. Department of Education issued a policy interpretation of the Title IX's athletics regulations (the "Policy Interpretation") that mandates compliance in three general areas: (1) participation opportunities, (2) athletic scholarships, and (3) treatment and benefits.¹

To demonstrate that it offers equal opportunities for both males and females to play sports, a school or other entity subject to Title IX must demonstrate one of the following three things (the "Three-Part Test")²:

- Participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
- A history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of the underrepresented sex; or
- The interests and abilities of the members of the underrepresented sex are being fully and effectively accommodated by the present program.

Determining whether FWISD or a school is treating female and male athletes equally requires a comparison of the benefits and services provided to male and female athletes and an analysis of whether the necessary resources are provided to ensure equal opportunities.³ While a disparity in the funding of male versus female teams is not itself a violation of Title IX, it is highly relevant to determining whether the necessary resources are being allocated to ensure equal benefits and services. Financial and "in-kind" contributions from outside groups – including parents, booster clubs, and other donors – to school athletics programs are not exempt from this analysis.⁴ Thus, while schools are free to accept donations from outside groups, such donations do not excuse any resulting gender inequities. School officials bear the ultimate responsibility for ensuring that male and female athletes are afforded equal benefits, services, and treatment overall.⁵

The District's Title IX Problems

An initial investigation into the District's compliance with Title IX obligations strongly suggests that the District has an extended history of non-compliance with the athletic requirements of the law. The following are merely examples of the problems identified to date.

Lack of Appropriate Oversight & Training

Since January 2016, the District has demonstrated an inability to address Title IX concerns related to the administration of its athletic program. The following highlights gross negligence by the school district to meet its oversight obligations.

¹ Office of Civil Rights, United States Department of Health, Education and Welfare, Title IX of the Education Amendments of 1972: A Policy Interpretation; Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71,413 (December 11, 1979).

² Policy Interpretation, at 71,418

³ Policy Interpretation, at 71,415-71,417; 34 CFR § 106.41(c).

⁴ Office of Civil Rights, United States Department of Education, Title IX Athletics Investigator's Manual (1990).

⁵ Id.

On January 11, 2016, a group email was sent by Mr. McCulloch to Dr. Kent Scribner, Superintendent, all School Board members, and Mr. Kevin Greene, Executive Athletic Director, for the District. That email stated that there has been both an extended history and expansion of interest in playing rugby among female students within FWISD. The email also indicated possible discriminatory actions, such as denial of facilities, which have hampered further female participation. Only a "thank you" reply from Ms. Tobi Jackson, School Board member, was received.

On June 6 and 10, 2016, Mr. McCulloch sent emails to Ms. Ashley Paz, the School Board member representative for Trimble Technical HS, requesting a meeting to present our Title IX concerns and discuss rugby as a female varsity. No reply was received.

On June 22, 2016, Mr. McCulloch, sent an email to Mr. Mendoza, FWISD's Title IX Coordinator, and Mr. Greene, FWISD Executive Athletic Director, requesting a meeting to present Title IX concerns as well as a proposal to include rugby as a varsity sport to bring FWISD Athletics Program closer into compliance with Title XI requirements. After a four-month period without a reply, an email was sent to Dr. Scribner stating that no response had been received from Mr. Mendoza or Mr. Greene. This email presented the case for the inclusion of rugby and an attachment of the proposal sent to Mr. Mendoza or Mr. Greene.

On December 12, 2016, Mr. McCulloch emailed Ms. Cherie Washington, Chief of Secondary Schools, and Ms. Sherry Breed, Chief of Equity & Excellence, explaining that there is significant interest among female students to play rugby as a varsity sport and that the District's athletic program is not in compliance with Title IX. They were also informed that a response had yet to be received from previous emails sent to various upper leadership positions in the school district. Ms. Washington replied that day stating she would review the attached proposal and thanked Mr. McCulloch for his advocacy.

On December 23, 2016, Mr. Greene telephoned Mr. McCulloch. During their brief conversation, information and positions of thought were exchanged. Both agreed to meet again to allow Mr. Greene time to review athletic data and information. On January 16, 2017, Mr. Greene and Dr. Langston, FWISD Athletic Director, meet with Mr. McCulloch at Trimble Technical High School. In the meeting, Mr. Greene suggested rugby be offered as a school sponsored club activity in late Spring after soccer season was over.

It was brought to Mr. Greene's and Dr. Langston's attention that this option held a number of disadvantages. First, female sports are already stacked towards the Spring, which would limit participation for many cross-over female athletes. Second, a majority of female students informally surveyed at a sampling of high schools have repeatedly stated that a Fall competitive season is preferable to avoid conflicts with basketball, wrestling, soccer, softball, and track & field. All spring semester sports. And third, not having varsity status means girls' rugby would never gain fair access to quality facilities, coaches, or other benefits and services. Even as a late spring school-based club sport, Mr. Greene could not guarantee girls' rugby would not be disrupted if a football coach decides to hold Spring football practices.

Mr. Greene stated that the inclusion of rugby as a female varsity sport would require the backing of Mr. Mendoza as a means of addressing Title IX compliance as well as getting the school board to allocate monies to appropriately support it. Mr. Greene then requested that Mr. McCulloch reduced the proposal submitted down to a document focused on the Title IX issues so that he could discuss them with Mr. Mendoza.

In early March 2017, prior to Spring break, Mr. Greene informed Mr. McCulloch (by telephone) that Mr. Mendoza was forwarded the PowerPoint and supporting data tables created by Mr. McCulloch and that he had attempted a number of times to schedule a meeting with Mr. Mendoza. On March 28, 2017, Mr. McCulloch also emailed Mr. Mendoza the documents as well as providing information from a number of recent legal cases directly related to Title IX and interscholastic athletics.

As of the date of this letter, no reply has been provided to Mr. McCulloch by Mr. Mendoza or any other upper-level leadership as to how or when FWISD will address its obligations under Title IX to provide equal athletic opportunities and treatment for its female students.

In addition to a lack of responsiveness by the District's upper-level leadership, we assert that the District has provided insufficient training for campus-level school administrators regarding Title IX and the obligations it creates for gender equality in sports opportunities.

While one administrator, Mr. Ramos, principal at Trimble Technical HS, did contact the Executive Athletic Director in the Fall of 2016 to see about adding rugby as a girls' varsity sport, administrators at three other schools told students or a teacher advocate that rugby could not be supported at their respective high school. Reasons given ranged from "our school budget won't allow it" to "it's too dangerous" to "it conflicts with football". Furthermore, while principals at a few other campuses have shown interest in making rugby available at their campus, the majority of principals have been non-responsive to emails by Mr. McCulloch that communicated that female interest has spread to most high school campuses in the District. Unfortunately, Mr. Ramos was informed by the athletic department that rugby could not be supported as a varsity sport because it was not an UIL sport.

Large and Wide Spread Gaps Proportional Representation in Athletic Participation

While females represent 49-50% of the high school student population in FWISD, they are not proportionately represented in high school athletics. In the 2015-2016 academic year, female athletes composed 40.1% of the District's varsity sports participants. This left a 9.2% gap between female student enrollment and athletic participation District-wide. This was essentially the same participation as the prior year and only a 1% improvement from the 2013-2014 academic year.

Of the 16 high schools offering varsity sports in 2015-2016, eight schools had gaps over 10%, three had gaps between five and ten percent (5-10%), and two schools were between one and five percent (1-5%). The Office Civil Rights has stated that a 1% or 2% gap is only acceptable when, respectively, there is an increase in female enrollment for the current year or in the final year of a five-year pursuit to bring equitable representation.⁶ Further, the courts have stated that gaps of 10% or higher illustrate a considerable lack of trying by school administration to bring equity in sports participation.⁷ The following eleven high schools have consistently approached or exceeded a 10% gap of the past four years:

- **Arlington Heights High School (over 10% for the past 4 years)**

⁶ Judge, J., & O'Brien, T. (2011). *Equity and Title IX in intercollegiate athletics: a practical guide for colleges and universities - 2011*. National Collegiate Athletic Association.

⁷ Morrison, A., Chaudry, N., & Gallagher-Robbins, K. (2015, June 23). *Girls, Sports, and Equality: A State-by-State Ranking on Title IX*. Retrieved from National Women's Law Center: <http://nwlc.org/girls-sports-and-equality-state-state-ranking-title-ix/>

- Benbrook High School
- Dunbar High School (over 10% for 3 of the past 4 years)
- Eastern Hills High School (over 10% for 3 of the past 4 years)
- North Side High
- **Paschal High School (over 10% for the past 4 years)**
- Polytechnic High School
- Southwest High School (over 10% for 3 of the past 4 years)
- Trimble Technical High School
- **Western Hills High School (over 10% for the past 4 years)**
- OD Wyatt High School

Such poor participation among female students in varsity sports raises serious Title IX concerns. At the very least, this data would require schools to evaluate whether they are meeting either of the other two prongs of the OCR three-part test to demonstrate compliance with Title IX. To our knowledge, FWISD has continually overlooked the interest of its female students to play a full-contact, tackle sports like rugby or football. Had the District appropriately monitored female participation in rugby activities provided through its own after school programming since 2007 and periodically surveyed female athletic interests, it would have most likely found that female interest in playing rugby was not only spreading across the District's high schools but that interest is considerable at a number of schools.

In sum, it is not that girls do not want to play tackle sports; the majority of females and their parents just don't want them to play against males. Sadly, men's football is currently the only option available.

Unfair Benefits & Services Provided to Non-UIL Male Sport

While FWISD has maintained a position that it does not support non-UIL sports, the District, individual schools, and booster clubs do provide support for 7-on-7 football as an "off-season" activity for varsity football athletes. This support has been in place for at least the past ten years. Unlike student-club sports, such as girls' rugby, 7-on-7 football is often granted preferential use of fields for practices and competitions in the late-Spring and Summer months. These male athletes, except maybe one female participant in 2015-2016, were supplied equipment, a basic uniform and coaching services coordinated through the athletic programs at the campus level. They also have unencumbered access to the school athletic trainer and associated physicians, whereas other individuals injured in non-UIL / school club sports are frequently turned away. Furthermore, in the case of injury, 7-on-7 football participants are eligible for financial assistance under Fort Worth ISD's "secondary" and "catastrophic" insurance policy. No female non-UIL sport, such as girls' rugby, is provided such a benefit.

The forging is not an exhaustive list of concerns that could be raised in regards to equitable treatment for female athletes and students under Title IX. Our letter, as well as prior documents submitted by Mr. McCulloch, does, however, provide significant evidence that Fort Worth ISD has not and is not meeting its obligations under Title IX in regards to athletic opportunities and programming for its female students. We believe that this situation must be addressed and remedied immediately.

In order to achieve our desired goal to have rugby supported as a varsity sport for female students without having to pursue litigation, we are willing to offer FWISD the opportunity to enter into a

settlement agreement to address the Title IX issues presented above. However, if we are not able to accomplish this in the near term, we are prepared to consider our alternatives. Accordingly, we would request a response as to how FWISD would like to proceed no later than end of business, Friday, June 16, 2017.

Please send your response to Gerardo Villegas, Esq, who has been retained as legal counsel.

Gerardo Villegas, Esq,
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682-738-5759

Thank you for your expedient attention to this matter. We look forward to hearing from you.

Respectfully,

Antzini Macedo
Rachel Jaloma
Michelle Jaloma
Bren-Dhia Gortey
Danielle Jalome
Ulexus Martinez

FWISD Female Students

Cc: Jacinto Ramos, Jr., Board President
Valerie Carrillo, Chief Legal Counsel
Rufino Mendoza, Executive Director for Employee Relations, Title IX Coordinator
Kevin Greene, Executive Athletic Director