

INDEPENDENT EVALUATOR'S SECOND INTERIM REPORT

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Introduction

In accord with the Settlement Agreement reached in A.B. et al v. Hawai'i State Department of Education, et al, CV 18-00477 LEK-RT, this is the second interim report of the Independent Evaluator (“IE”).¹ This interim report details certain efforts taken by the IE from the date of the Settlement Agreement on or about October 9, 2023 until the date of this report.

The separate sections in this report relate to the Settlement Agreement’s Exhibit A, applying primarily to James Campbell High School (“Campbell HS”), and Exhibit B, applying primarily to the Hawai'i Department of Education (“DOE”) and the O’ahu Interscholastic Association (“OIA”). It also includes relevant updates on efforts by Campbell HS, the DOE, and the OIA, particularly regarding evolving roles around compliance efforts shifting from the OIA to the DOE. As described in Section III, some of these efforts differ from the roles historically conducted by the OIA and as contemplated in Exhibit B, but it is my perspective that this shift makes pragmatic sense and will extend the philosophy and compliance structures created for Campbell HS to all the OIA schools and beyond. This, in turn, will allow for greater flexibility to start additional girls’ sports, improve facilities across the schools in a strategic manner, and otherwise operate an equitable athletic program in line with the standards set forth under Title IX of the Education Amendments of 1972 (“Title IX”). I welcome a discussion on any of these points with the parties during our next site visit in May 2025 or before.

This report will be submitted electronically to identified counsel for the parties and I will also request that it be published in accordance with the requirements of the Settlement Agreement. I ask that the parties not discuss the details in this report with the media until it is publicly available. Data containing student identifying information, e.g., rosters shared with the parties in accordance with the Settlement Agreement, should not be published or shared to ensure compliance with the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g, 34 C.F.R. Part 99. The identified counsel for the parties includes the following:

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¹ Phil Catanzano serves as the IE and was not joined by any other staff from his firm, the Education and Sports Law Group, LLC, during the work described in this report. Throughout the report updates will be described in the first or third person in a way that makes practical sense and without being overly formalistic.

I. Data Collection Request and Procedure

The Settlement Agreement states that the “IE shall promptly set up and implement a data collection procedure, and collect all requested data related to each of the relevant categories listed in Section II of this Plan.” See Settlement Agreement, Exhibit A, p. A1. This effort began in 2023-2024 and, as described in the 2024 Annual Report (p. 1), it ran into challenges. Specifically, I created a survey to be completed by each varsity and junior varsity head coach around each of the components of an athletic program and modeled after the data request provided to Campbell HS in the winter of 2023. The survey was created in Microsoft Forms and was estimated to take approximately 45-60 minutes per coach to complete the survey. For reasons that are still unclear, most members of the Campbell HS coaching community could not access the survey despite several attempts to make it accessible. Several members of the coaching staff recounted completing virtually the entire survey (spending approximately 60 minutes working on it) only to realize they could not save and submit their work.² I provided an updated Data Request that was attached as Exhibit A to the 2024 Annual Report. That Data Request was subsequently turned into a Google form survey and for this reporting year, the Campbell HS coaches have had more success. Similarly, several of Campbell HS’ coaches are part time employees who were unavailable following the school year. To address this, I have shifted interviews to all take place during the academic year and preferably soon after the team season at issue is completed.

The data collection remains imperfect. For example, in the current surveys, none of the Campbell HS coaches filled in answers for the final few survey areas involving *Medical and Training Facilities & Services, Publicity & Marketing, Support Services, Generating Interest, and Fundraising*. This indicates that there is a challenge with the survey tool and I will ask Campbell HS and/or the DOE to investigate this issue, rectify it, and ask the coaches to complete those additional survey questions. As described in Section III, the DOE has taken on additional responsibilities around surveys for all OIA schools, including Campbell HS, which is why I will take this concern to both Campbell HS and the DOE. The current survey results will be shared with the parties but I will also follow up with coaches to assess any answers that are unclear.

II. Fall and Winter Sports Rosters

The Settlement Agreement states that the Interim Reports shall include fall and winter sports team rosters. See Settlement Agreement, Exhibit A, p. A1-2. In the first year of this review, there were two challenges with this provision. First, while fall sport rosters were finalized by December, winter sports were only just beginning when the rosters were collected in 2023-24. This year, by agreement of the parties, the due date for this Interim Report was extended until the final Friday in February to provide time to collect more complete rosters after the winter season concluded. I suggest this become the permanent deadline moving forward to ensure more

² While some questions on the survey were optional, the majority required responses. During interviews with coaches, some of the questions were outside of their experience, so they may have not responded to those and, thus, made the survey incomplete. The IE could not troubleshoot this with every coach, but the outcome was the same: ultimately very few coaches could complete the survey.

accurate data is collected for all sports. If there is disagreement on this new deadline, I ask the parties to meet and confer to discuss. If I do not hear from any party by the time of submission of the 2025 Annual Report in July, I will assume the February deadline is appropriate moving forward.

The second issue involving rosters during the 2023-24 year was that the data kept by Campbell HS was inconsistent and confusing, insofar as it included academic eligibility lists, interim rosters, final rosters, and incomplete rosters, all of which overlapped. The annual training I provided in December 2024 and will provide again in May 2025 focused on counting student-athletes and I also worked with AD Pico regarding this issue. As part of the training, it was made clear that student-athletes would "count" if the following conditions were met:

- They received institutionally sponsored support normally provided to athletes (e.g., coaching, equipment, medical and training room services) on a regular basis during a sport's season;
- Participated in organized practice sessions and other team meetings and activities on a regular basis during a sport's season; and
- Were listed on the squad lists and/or roster maintained for each sport.

I then interviewed the majority of fall and winter varsity and junior varsity head coaches via Zoom primarily to discuss their rosters.³ (Additional interviews will be held to discuss the Title IX components related to the teams.) The parties will receive access to those rosters and every participant included on the roster "counted" for Title IX purposes. There were only a handful of teams that described students on their rosters who had been removed from the team for academic purposes. However, these academic removals were limited and occurred *after* the student-athletes had sufficiently participated to count for Title IX purposes, i.e., the academic quarter end led to many of the notifications of academic ineligibility but that was already in the middle of the winter season. Most of the academic removals occurred on boys' teams, but those athletes all remained on the rosters for purposes of this report and regardless if they were academically ineligible for the second half of the season.

In sum, Campbell HS coaches vastly improved in the task of providing rosters that accurately reflected their team participants. I reviewed each of those rosters with the coaches, and there were no athletes removed from a roster because they did not "count." The current Campbell HS fall and winter roster participants include the following:

³ There remain coaches that I must still interview due to prior interviews being rescheduled for various reasons. For example, some coaches could not take part because they were still traveling for playoffs or post-season play during the final interview session offered on Saturday, February 15, 2025. The rosters will be provided to the parties on a shared drive and will be updated as those interviews are completed. My goal is to have one master spreadsheet with each team's roster this year and each year moving forward.

| TEAM | BOYS VARSITY | GIRLS VARSITY | BOYS JV/OTHER | GIRLS JV/OTHER |
|----------------------------|--------------|---------------|---------------|----------------|
| Air Rifle | 7 | 8 | NA | NA |
| Baseball | Spring | NA | Spring | NA |
| Basketball | 14 | 12 | 12 | 9 |
| Bowling | 10 | 6 | NA | NA |
| Cross-Country ⁴ | 14 | 14 | 13 | 5 |
| Football | 66 | NA | 52 | NA |
| Flag Football ⁵ | NA | Spring | NA | Spring |
| Golf | Spring | Spring | Spring | Spring |
| Judo | Spring | Spring | Spring | Spring |
| Paddling | 10 | 9 | NA | NA |
| Soccer | 20 | 24 | 21 | 19 |
| Softball | NA | Spring | NA | 12 |
| Soft Tennis | 6 | 10 | NA | NA |
| Swimming | 20 | 10 | NA | NA |
| Tennis | Spring | Spring | Spring | Spring |
| Track & Field | Spring | Spring | Spring | Spring |
| Volleyball | Spring | 31 | Spring | 14 |
| Water Polo | NA | Spring | NA | NA |
| Wrestling | 26 | 16 | 30 | 11 |
| TOTALS | 193 | 140 | 128 | 70 |

III. Expanded Role of the DOE

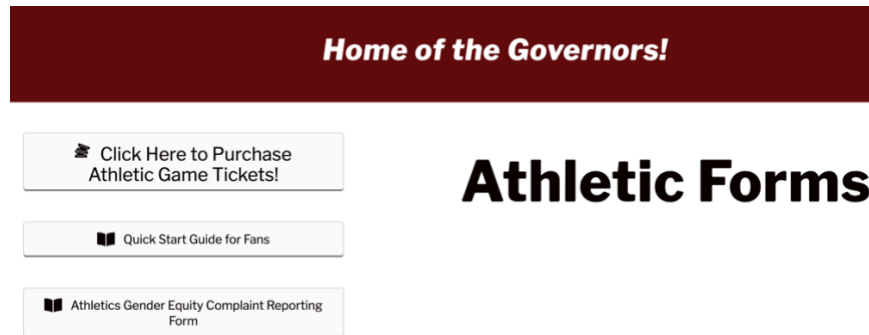
The Settlement Agreement also required the IE to review the OIA’s “governance documents,” including its Constitution, Bylaws, and Handbook. *See Settlement Agreement, Exhibit B, p. B1.* I provided some feedback on this point in the *First Interim Report*, noting that the OIA had not appointed a permanent Executive Director and the DOE had created, but not filled, a role for a gender equity specialist. Both of those roles have now been filled, with Bryce Kaneshiro named Executive Director of the OIA, and Dana Takahara-Dias named as Gender Equity in Athletics Specialist of the DOE’s Civil Rights Compliance Branch. Both individuals have spoken with me frequently and both understand and are supportive of the compliance requirements in the Settlement Agreement. I have also met with Hawai’i Public Schools Superintendent Keith Hayashi and his leadership team several times and will continue to hold such meetings as appropriate upon my return trips to Hawai’i.

⁴ The cross-country coach did not yet sit for an interview because they have taken a new job at a different institution. These roster numbers are based on the lists that best approximated the actual participants.

⁵ Girls flag football was added as a new sport across Hawai’i in 2025. This is the inaugural season and it is shorter than other winter sports so it could begin more quickly following Campbell HS’ interest and ability survey last winter. A component of Title IX’s participation analysis requires a review of competition levels, length of season, opportunities for post-season play, etc. At this point, it is premature to determine how girls flag football will fare under this analysis and it will be reviewed following the season.

The result of these ongoing discussions is that the DOE has taken on an expanded role that includes many of the efforts previously required of the OIA in the Settlement Agreement. These efforts include the following:

- The DOE, through Specialist Takahara-Dias, began surveying every high school athletic program, including their athletic directors and their varsity head coaches, under the purview of the DOE. These efforts began with a training for all member schools conducted by the DOE in August 2024. The assessments include the uniform collection of roster data and data on each Title IX component, as modeled by the data request and survey tools created by the IE for Campbell HS. This data collection has begun at 23 public schools. In subsequent years, the IE will encourage the DOE to include junior varsity coaches in these surveys. Specialist Takahara-Dias is also currently scheduling and conducting school visits to review gender equity issues over a multi-year effort to reach every public high school with an athletic program across Hawai’i. It will also be made a requirement that all schools create online Title IX gender equity complaint reporting forms modeled upon Campbell HS. The following are examples of the gender equity form as posted at Farrington High School and Kailua High School, respectively:



Link to Athletics Gender Equity Complaint Reporting Form at <https://www.farringtonhighschool.org/athletics/>.



[Gender Equity Complaint Reporting click here](#)

Link to Athletics Gender Equity Complaint Reporting Form at <https://www.kailuahighschool.com/> and its Athletics drop-down menu

- The DOE, through Specialist Takahara-Dias, has also assumed the role of conducting student interest and ability surveys at every high school athletic program under the purview of the DOE, including middle schools.⁶ The DOE utilizes the same survey tool used for Campbell HS in 2023-24. Even though Campbell HS conducted an interest and ability survey pursuant to Exhibit A of the Settlement Agreement in the winter of 2023-24, it conducted another survey under the DOE's updated process for all schools. As of February 3, 2025, the DOE had received 943 responses from Campbell HS students, and girls (the underrepresented sex at Campbell HS) had indicated interest in additional levels of volleyball (and potentially beach volleyball), interest in archery, and interest in gymnastics. The DOE collected 7,915 student responses from the OIA schools and those responses are being evaluated by the DOE. The benefits of a coordinated DOE approach is that the DOE can then assess interest across the entire OIA – similar to the way that the OIA could have assessed it – as well as interest in other leagues. This can then lead to the creation of teams across the Islands to allow for appropriate competition, as will be discussed in the next bullet point. Such surveys can and should always be improved. For example, it was identified that the 2024 survey inadvertently left off the increasingly popular sport of pickleball, which will be remedied in future surveys. I will continue to support the DOE in these efforts, insofar as this was an historic charge of the OIA and the Settlement Agreement allows for the IE to work with the OIA-equivalent (the DOE now) to consider additional sports or additional levels of existing sports.
- Related to the prior point, through its survey efforts in 2023-24 Campbell HS determined that girls' flag football was a sport where there existed student interest. However, before a sport should be started, I advised that suitable competition would be needed for that sport to count for Title IX purposes. The DOE leadership, local business and government leaders, and other members of the Hawai'i community joined together to assist in creation of girls' flag football not only at Campbell HS, but across the Islands. The inaugural season will begin in February and conclude with a state championship tournament in April of 2025. As of the date of this report, it is anticipated that 59 schools (including some independent private schools) will host teams to play this year. The DOE received generous financial donations from the National Football League's ("NFL") Las Vegas Raiders & Boyd Gambling, from NFL player and Hawai'i native Marcus Mariota, and from the NFL Foundation, in addition to donations from local business and community leaders (including counsel for the OIA in his personal capacity). Finally, the DOE informed me that the NFL's Las Vegas Raiders and Seattle Seahawks conducted separate high school girls' flag football camps on O'ahu on February 22, 23, and an additional camp will be hosted on March 2.
- The DOE, again through the leadership of Specialist Takahara-Dias, has created the Gender Equity in Athletics Workgroup, which includes high school representatives

⁶ This was previously a role of the OIA and the Settlement Agreement states that the "IE shall develop a student interest survey that will be administered and distributed by the OIA to its member schools, periodically as determined by the IE" and that the "OIA and the IE shall determine sports and additional levels of competition for which there is or may be unmet interest among girls." See Settlement Agreement, Exhibit B, p. B2.

(principals and athletic directors) from O'ahu, Maui, Kauai, and Hawai'i Island. It also includes league executive representatives from the OIA, the Big Island Interscholastic Federation, the Kauai Interscholastic Federation, and the Maui Interscholastic League. I spoke to this group and took part in its first meetings during my last visit to O'ahu in December 2024, and the DOE subsidized the travel expenses of the members. It is anticipated that the Workgroup will offer the DOE suggestions on various improvements, including capital improvements, which can be undertaken to assist in gender equity efforts across Hawai'i. While the first meeting was hosted at the DOE's office on O'ahu, it is anticipated that future meetings would be hosted on other islands to make clear that this is a broad effort. The next meeting will take place on Kauai in early March. I offered to support the Workgroup in these and future efforts. This Workgroup may serve to take the place of the OIA's Title IX Committee, however, I also met with the OIA athletic directors on December 5, 2024 to discuss the need to increase opportunities for female athletes and we discussed specific sports for which the OIA members may have interest, e.g., pickleball, additional forms of volleyball. If the parties are satisfied that the DOE's Workgroup can take the place of the OIA's Title IX Committee, I can continue meeting with the OIA leadership and athletic directors annually to provide a resource around Title IX and gender equity that can be considered in parallel to the DOE's efforts.

- The DOE continues to create training materials and has recorded spots for high profile female Hawai'ian athletes, including Carissa Moore (surfing), Ilima-Lei MacFarlane (mixed martial arts), and Clarissa Chun (wrestling). Other high profile female athletes are coordinating schedules with Specialist Takahara-Dias. While I was supporting this and all the DOE's efforts in the background, given the delay in production of the training video for various reasons, it was recently agreed that I would record the substance of the training video in May when I return to Hawai'i to inspect Campbell HS' athletic facilities. It is anticipated that the training video will mirror the training slides used for Campbell HS but will have added focus on whatever areas the DOE may wish to highlight for its schools. The DOE will then determine how to utilize the training materials, i.e., the timing of the training.

Given these changes, the OIA is no longer conducting interest surveys or collecting related data because it is redundant of the DOE's efforts. Moreover, in place of the OIA's historic "good standing" rating system to encourage gender equity efforts, the DOE will require participation in the DOE's assessment and data collection.⁷ It is anticipated that this will grow more robust and Specialist Takahara-Dias will utilize her role within the DOE to address any school that does not comply with these directives and otherwise advocate for gender equity in athletics.

⁷ The Settlement Agreement states that the IE "shall develop a Title IX assessment form that OIA-member schools shall be required to complete annually to maintain 'Good Standing' as a condition of their continued membership in the OIA" as well as related policies and training materials to effectively complete the forms and/or training. *See Settlement Agreement, Exhibit B*, p. B1.

The Settlement Agreement also states that, “[w]ith the assistance of the IE, the OIA shall create and implement policies and procedures regarding complaints of unequal treatment in athletics and/or retaliation,” that “shall be consistent with any complaint procedure developed by the DOE” and “shall include a process by which a complainant can make an anonymous complaint via a phone hotline and/or online portal.” See Settlement Agreement, Exhibit B, p. B4. Above I referenced that the complaint reporting form used for Campbell HS is being implemented on other high school athletic pages. That data feeds back to the DOE and Specialist Takahara-Dias. Given the new oversight structure, the DOE’s policies will be utilized and the DOE will utilize its existing non-discrimination policies to assess complaints of gender inequity. The IE will further focus on this aspect of the Settlement Agreement in the current year (2024-25).

I also discussed with the OIA improvements for its continuing role regarding scheduling and publicity, including televised events. This discussion included a focus on updating the OIA website, <https://www.oiasports.com/>, as the scheduling feature is not consistently functional. For example, the schedule did not appear functional the week of February 1, 2025, but as of the date of this report it is functional again. The website should also link to the DOE’s gender equity complaint reporting form on or near the home page for easy navigation. I was informed that the local cable provider, Spectrum, currently chooses which sports it televises but the OIA requested that it provide equal access to boys’ and girls’ sports. I requested a schedule of televised events and will monitor this issue. I am also considering how the OIA schools can better utilize digital content providers, like Hudl, to expand the recorded coverage provided to all sports. (The OIA indicated it has little control over what Spectrum ultimately televises at this point but the OIA is working to improve upon any gender inequities found and will advocate with Spectrum. It is hoped that Spectrum will be supportive of the OIA in this regard and I am happy to serve as an intermediary to establish an equitable approach to televising games.)

As this section demonstrates, there has been significant change at the DOE and the OIA during the first year of this review. From my perspective, these changes have been positive and will better position *all* of Hawai’i’s public schools regarding gender equity. It also will provide practical value insofar as the DOE has taken on an expanded compliance role and has already used its enhanced role to assist in creating girls’ flag football, not only at Campbell HS but at 58 additional schools across the Islands. The DOE and OIA’s roles remain somewhat fluid and the IE will continue to work with both groups to ensure that all elements of the Settlement Agreement are substantively satisfied.

IV. Training by the IE and Training Planned by the DOE

I provided Title IX athletics training to Campbell HS athletics leadership, department staff, school administration, and coaches in person on December 3, 2024. See Settlement Agreement, Exhibit A, p. A-11. DOE Specialist Takahara-Dias attended the training session. The training materials were shared with Campbell HS to be used as a resource whenever they wished. It is anticipated that another session will take place in May when I return to Campbell HS. The training materials will be shared with the parties separately.

As referenced above, I have recently agreed to provide the substantive training for the DOE to facilitate that training module and the resulting training for the broader community. My hope remains that my training materials will remain a stopgap until an individual from Hawai'i can be identified to provide the training and who may resound more with the Hawai'ian community.

V. Miscellaneous Issues

The following are additional issues referenced in the Settlement Agreement and/or raised by the parties, as well as my concise responses. These are not addressed in any particular order.

1. The Settlement Agreement states that Campbell HS will “create a reporting mechanism for student-athletes to report any gender equity concerns via a hotline and/or online portal maintained by Campbell High School.” *Id.*, p. A-10. This complaint reporting mechanism was implemented in 2023-24, publicized to students, coaches, and parents on the athletics website, and discussed in the First Interim Report. The mechanism remains active. There were no complaints submitted to Campbell HS between my submission of the Annual Report in August 2024 and the date of this report.
2. Related to the first point, it was suggested that Campbell HS alter the language in its complaint reporting form regarding whether it would be ok to contact any individual who filed a complaint. I have asked Campbell HS to update its reporting form to reflect this requested change. I will also assess the language used by other schools and ask the DOE to provide a consistent update.
3. The parties requested a copy of the survey used by Campbell HS in 2023-24. That will be provided. This survey was administered by Campbell HS, though I provided samples and discussed how Campbell HS should conduct the survey and the additional elements required under Prong Three of the participation component of Title IX, e.g., assessing resources, assessing feeder programs, and assessing local youth sport offerings. The parties also asked if the survey was modified to reflect when it was provided to middle school students as opposed to high school students. Campbell HS staff shared that it was their belief that the middle school administrators did modify the survey to this effect, but I have not seen that survey to confirm. I have asked the DOE to make this distinction clear when conducting future interest and ability surveys that include feeder middle schools and I will provide a copy of the survey used by the DOE currently with this report. I will also assess how frequently these surveys will be conducted by the DOE.
4. In the 2024 Annual Report, I stated that coach compensation rates were set by the DOE pursuant to a pay scale that I provided. I stated that these rates were the same for “both boys’ teams and girls’ teams, with the exception being that the football coaches, both head and assistant, earn more than any other coach. This may be a result of the job requirements for football coaches, and I will assess this with the DOE in my next meeting.” I raised this with the DOE, as promised. The DOE agreed to conduct further research into why these rates were different, e.g., was it based on the length of the season, additional responsibilities, or some other factor related specifically to the sport. If there is

not a legitimate non-discriminatory justification for this pay disparity, I will ask that the DOE address this issue, either by reducing the pay for the football coaching position or increasing the pay for equivalent girls' sport(s).

5. Campbell HS coaches indicated that they typically have one head coach and one official assistant coach per team. Several coaches of boys' and girls' teams indicated that parents and others may also be considered "assistant coaches," but when asked about their roles, there was significant inconsistency. Some coaches explained that these unofficial assistant coaches may only show up to one event or may be a parent keeping score in the stands. While I will continue to assess the gender equity of the programs, this appears to be an area in which there are no firm local rules on who counts as a coach and there seems to be an informal philosophy of not turning volunteers away from any team. I wish to avoid a scenario in which a parent who wishes to support student-athletes – boys or girls – are barred from providing support. At the same time, this practice does not seem consistent enough to demand that Campbell HS automatically compensate additional assistant coaches, which I fear (and have observed at other schools) may lead to a rule barring volunteers to avoid a compliance issue. I have not made any findings in this regard, but I anticipate it will be a challenge to consider in the Annual Report. I ask the parties to also consider this issue in hopes of discussing a creative solution that allows for parent involvement but not to the detriment of any gender. This can be discussed during the May site visit, at which all parties will be represented. If the parties are not interested in discussing, I will make a decision in accord with best practices at the interscholastic level.
6. For the May 2025 facility review at Campbell HS, the DOE has requested to use its own departmental photographer in place of the external vendor used in June 2024 to defray costs. Given that all the attorneys receiving this report have visited Campbell HS and reviewed its facilities several times, I have no objection to this but I will ask the parties for their perspectives. If the DOE does utilize its own photographer, I reserve the right to return to an independent photographer when Campbell HS' new facilities are completed or if the DOE photographer has challenges. I also ask the parties to raise objections as appropriate if they believe the photographer is not accurately capturing any facility subject to this review. My primary concern is that the photographer be located in Hawai'i so as to be able to take such photographs and/or return to the site in a timely manner. The DOE is positioned to do this, and I would also ask that they take and share images and video of the girls' flag football season so they can be shared with the parties.

As in the first year of this review, I am heartened by the efforts made by Campbell HS, the Hawai'i DOE, and the OIA. I hope to see additional improvements in this second year of my review, which I will discuss in future reports. I remain happy to speak with the parties regarding anything in this report to ensure there is no miscommunication and to continue the momentum to increase gender equity in Hawai'i's interscholastic athletic program.