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MERSEREAU SHANNON LLP

*Working, et al. v. Lake Oswego School District*

Case No. 3:16-cv-00581-SB  
Pending in the U.S. District Court for the District of  
Oregon, Portland Division

Settlement Agreement

I. **Definitions.**

A. Agreement Duration.

The Agreement Duration is July 17, 2017 until the end of the 2019/2020 school year, unless the Court's jurisdiction over the Plaintiffs' lawsuit is extended as described in section VI.D. If the Court's jurisdiction is extended past the 2019/2020 school year, the Agreement Duration will be July 17, 2017 until the Court's jurisdiction ends.

ET 9/25/17  
EK 9/25/17

AG 9/25/17  
BF 9/25/17

B. Equity Consultant.

The Equity Consultant is the person mutually selected by the parties as described in section VI.C.

ET 9/25/17  
EK 9/25/17

AG 9/25/17  
BF 9/25/17

C. Mediator.

The Mediator is Debora L. Osgood. The Mediator previously served as the National Enforcement Director with the U.S. Department of Education's Office for Civil Rights, and before that held Office Director and Chief Attorney positions in OCR's regional office in Chicago.

D. Title IX.

Title IX includes the statute, 20 U.S.C. §1681 *et seq.*, Title IX regulation, 34 C.F.R. § 106.41(c)(1), *et seq.*, OCR policies and guidance, the Title IX Investigator's Manual, and controlling Title IX judicial case law.

II. **Recitals.**

The parties to the Agreement are the Plaintiffs, or their parent representatives, and the Defendant or its representative, in a civil lawsuit, captioned as *Working et al. v. Lake Oswego School District*. This lawsuit was filed in the U.S. District Court for the District of Oregon, Portland Division, and was assigned the case number 3:16-cv-00581-SB.

The Plaintiffs are female students at the Lake Oswego High School. In their lawsuit, the Plaintiffs seek to enforce their rights under Title IX of the Education Amendments of 1972. Plaintiffs' lawsuit challenges various aspects of Lake Oswego High School's athletics program under Title IX, and related regulations and administrative directives. The Plaintiffs' lawsuit seeks

injunctive relief. The Defendant in this lawsuit is the Lake Oswego School District, which will generally be referred to from here on as “the District.”

Following a successful mediation, the parties have agreed to settle the Plaintiffs’ lawsuit under the terms described below.

### **III. Effective Accommodation of Interests and Abilities.**

The District will provide participation opportunities for female and male students at Lake Oswego High School that effectively accommodate the athletic interests and abilities of both sexes, consistent with the requirements of Title IX. The District has committed to providing additional athletic participation opportunities to female students that are substantially proportionate to their enrollment in Lake Oswego High School by the end of the 2018/2019 school year. If the District does not reach substantial proportionality by the end of the 2018/2019 school year, then it will assess current interests and abilities of female students at Lake Oswego High School and take steps to add additional participation opportunities as appropriate to meet their interests and abilities, as described in sections III.B and III.C below.

The District will continue to assess current interests and abilities of female students at Lake Oswego High School and take steps to add additional participation opportunities as appropriate to meet their interests and abilities until the District is able to demonstrate that athletic participation opportunities available to female students at Lake Oswego High School are substantially proportionate to their enrollment.

#### **A. Actions to Achieve Substantial Proportionality.**

- i. The District commits to reaching prong one compliance (substantial proportionality) by the end of the 2018/2019 school year at Lake Oswego High School. The District anticipates that it will reach substantial proportionality at Lake Oswego High School by the end of the 2017/2018 school year. The District commits to having a disparity in participation rates by the end of the 2017/2018 school year of no more than 4 percent.
- ii. To help ensure that it reaches the goal of substantial proportionality, the District shall elevate both girls’ water polo and girls’ lacrosse at Lake Oswego High School to the status of an interscholastic sport beginning the 2017/2018 school year.
- iii. The District will also institute a “no cut” policy for girls’ volleyball and girls’ soccer at Lake Oswego High School beginning the 2017/2018 school year. The District may, however, cut female athletes who it determines, at its discretion, cannot safely play a sport because of a lack of experience, athletic ability, or any other reason. For any such decision to cut a female student from the sport of volleyball or soccer, the District must record the reason.

- iv. The District understands that Title IX does not require that it cut teams or reduce opportunities for students who are participating in interscholastic athletics in order to comply with the provisions of Title IX relating to the effective accommodation of the interests and abilities of female students. The District agrees that it will not meet its obligations under this Agreement to effectively accommodate the interests and abilities of female students at Lake Oswego High School to compete in interscholastic athletics by summarily eliminating or reducing the boys' sports or teams.
- v. Effective immediately, if there is a sufficient number of high school female students with sufficient interest and, if applicable, ability to support the addition of a team or multiple teams (e.g., varsity, junior varsity, sophomore), the District will offer additional levels of sport provided that these new levels have sufficient competition within the school's normal competitive region and geographic area. The District will offer a JV softball team unless a sufficient number of female students do not try out for softball.
- vi. Effective immediately, the District will take steps to recruit female athletes for any participation opportunities added, such as those added based on the interests of Lake Oswego High School girls in athletics as revealed in the spring 2017 Lake Oswego High School survey and focus groups, unless the District is in compliance with prong 1.

The Equity Consultant will be responsible for assessing whether Lake Oswego High School has achieved substantial proportionality following the 2018/2019 school year.

#### B. Assessing Interests and Abilities.

If prong one is not reached by the end of the 2018/2019 school year, then the District will assess current interests and abilities at Lake Oswego High School as described in this section.

The District has conducted an assessment of the students at Lake Oswego High School and the middle school which feeds into it to determine the existence and/or scope of any unmet athletic interests of female students, and has supplemented the results of the survey with focus groups.

To determine whether there is unmet interest and ability among female students in participating in interscholastic athletics at Lake Oswego High School the District will take the following actions:

- The District will administer a similar survey as it recently completed, and will conduct supplemental focus groups as necessary, every other school year;
- The District will maintain records showing enrollment numbers broken out by sex, and records showing the numbers of students participating in athletics, broken out by sex and by sport;

- The District will maintain and review data concerning female students' rates of participation in interscholastic sports at Lake Oswego High School, and any non-mandatory or elective physical education classes offered at Lake Oswego High School;
- The District will review any requests (whether oral, written, formal or informal) made beginning the 2017/2018 school year to school board members, District administrators, coaches, or staff by or on behalf of female students at Lake Oswego High School to add a particular sport, squad, or level of sport, or to elevate an existing club sport to interscholastic sport status;
- The District will identify all viable girls' teams that have been eliminated at Lake Oswego High School in the past ten school years;
- Each school year, beginning with the 2017/2018 school year, the District will review the number of female students who were cut from each team at the Lake Oswego High School, including in prior years, and the reasons they were cut, to assess whether any of those students had or have the ability to compete in that sport and whether sufficient numbers of students were cut to sustain another level in that sport (e.g., junior varsity);
- The District will identify the sports, squads, and levels of sports for female students that are not currently offered at Lake Oswego High School, but are offered either by schools that compete within the league or leagues in which Lake Oswego High School competes, or by schools that are within Lake Oswego High School's normal competitive region and geographic area; and
- The District will assess girls' interest in youth and community sports in the Lake Oswego area, including, but not limited to, new and emerging sports.

C. Actions to Increase Athletic Opportunities.

If prong one is not reached by the end of the 2018/2019 school year, then the District will take steps to add additional participation opportunities as appropriate to meet interests and abilities as described in this section.

If, through the above-described assessment, Lake Oswego High School identifies a sport in which there is sufficient but unmet interest and, as applicable, ability of female students to participate at the interscholastic level at Lake Oswego High School, then the school will add athletics opportunities as described below.

For purposes of this provision, "sufficient interest" is defined as the minimum number of athletes needed to support a team. For "sufficient ability," it is sufficient that interested students and admitted students have the potential to sustain an interscholastic team; students will not be required to demonstrate they have sufficient ability in a new sport or team if students participating in existing sports or teams are not required to demonstrate through try-outs or some other process that they possess sufficient ability to participate in the specific sport or at the particular level of competition (varsity, junior varsity, etc.) in which they have expressed interest.

i. *Sports Currently Offered.*

The District will determine, for sports that are currently offered as interscholastic sports at Lake Oswego High School, whether there is a sufficient number of female students with the interest and, as applicable, ability to support the creation of additional levels of competition or multiple squads at the same level of competition, and sufficient competition within the school's normal competitive region, to support additional levels of competition or multiple squads at the same level of competition in those sports. If so, the school will add additional levels of competition or squads at the same or a lower level of competition at the school in those sports beginning the next competitive season. Lake Oswego High School does not have to maintain any additional levels of competition or squads if the minimum number of athletes needed to support the additional team level or squad do not materialize in a reasonable time.

In order to increase the competitive participation opportunities for female students, the District will consider expanding the squad sizes for interscholastic sports currently offered at Lake Oswego High School, consistent with the nature of each sport, so as to ensure a sufficient amount of practice and playing time for each player, and the level of interest in each sport. The District will increase the size of each squad where determined to be appropriate. If necessary, the District will provide sufficient coaching staff to support the addition of new athletes to any given squad and take any other steps necessary to ensure that the new athletes on each expanded squad are provided meaningful opportunities to participate in interscholastic athletics.

ii. *Response to Developing Interests and Abilities.*

For any sport that is not currently offered at Lake Oswego High School where there is a sufficient number of female students who have sufficient interest and, if applicable, ability in that sport, but where the District determines that there is not sufficient competition within the school's normal competitive region, then the District will take ongoing steps to develop students' interests and abilities. These steps may include establishing intramural or club sports, exploring the feasibility of establishing competition in Lake Oswego High School's normal competitive region and geographic area, and elevating such sports to interscholastic status when competition becomes available.

iii. *Sports Not Currently Offered.*

The District will determine whether there is a sufficient number of female students at Lake Oswego High School with sufficient interest and, as applicable, ability to support the addition of a team or multiple teams in sports not currently offered by Lake Oswego High School as interscholastic sports, and whether there is sufficient competition within the school's normal competitive region and geographic area for those teams/sports. If so, the District will add a team or multiple teams in those sports at the School.

iv. *Encouraging Participation.*

The District will take steps to encourage female students at Lake Oswego High School to participate in an interscholastic sport or sports, such as by hosting informational meetings regarding current and prospective athletic offerings.

D. Additional Commitments to Improve Athletic Opportunities.

Regardless of whether the Lake Oswego High School achieves substantial proportionality, the District commits to the following:

The District will develop a process or procedure for students or other interested parties, such as coaches or parents, to use in requesting the addition of new sports or levels of sports at Lake Oswego High School. The procedure will be written. Notice of the procedure will be published in Lake Oswego High School's Student Handbook and available on the Lake Oswego High School athletics web page. The individual responsible for responding to any requests, along with their contact information, will be identified by name.

At the beginning of each school year, the District will provide written notice to all coaches, physical education teachers, guidance counselors and the principal of Lake Oswego High School of all sports offered at the school, specifying which sports are available to female and male students, what students should do if they wish to participate in a sport, as well as all relevant deadlines. This information will also be posted on the athletics page of Lake Oswego High School's website.

At the beginning of each school year, the District will distribute a written description of all sports offerings at Lake Oswego High School to all students, what students should do if they wish to participate in a sport, and the relevant deadlines. The written description will include the phrase "students with no prior sports experience are welcome to try out for any and all sports." This information will also be posted on the athletics page of Lake Oswego High School's website.

The District will maintain squad lists for the interscholastic sports offered at Lake Oswego High School, which shall reflect the participation numbers for each sport. These records will not be destroyed or otherwise altered for the Agreement Duration so that they can be submitted to the Equity Consultant and Plaintiffs' counsel as part of quarterly reporting consistent with the terms of the Agreement.

E. Support for Athletics Teams:

To the extent that the District adds any sports or additional levels of teams at Lake Oswego High School, the District shall provide those new teams or new levels, in a manner comparable to other interscholastic programs and teams, and with the equivalent level of funds to cover expenses including but not limited to the provision of coaches, equipment and supplies, and publicity and support services. The District will also publicize any new sports or additional levels of teams through written notices, verbal announcements and postings on the Lake Oswego High School's website.

#### **IV. Equal Treatment and Benefits.**

Subject to the Equity Consultant's approval, the District will develop and implement a plan to ensure that it provides equal athletic opportunities at the high school for members of both sexes with respect to areas listed below.

In assessing compliance, the District will compare the availability, quality and kinds of benefits, opportunities, and treatment afforded to the District's male and female athletes at the high school.

- the provision of practice and competition facilities and locker and team rooms, including softball;
- the provision of equipment and supplies;
- scheduling of games and practices times, including opportunities to compete in "prime time" and in pre- and post-season competition;
- coaching;
- travel;
- medical and training facilities and services; and
- publicity.

##### A. Locker Rooms, and Practice and Competition Facilities.

###### *i. Softball Field and Related Facilities.*

Currently the Lake Oswego High School softball team is assigned to practice and play on the so-called "lower turf field," and to the so-called "hitting barn" next to the lower turf field. The softball team shares this field with the baseball team and other teams. Meanwhile, the softball team still has access to the softball field at Lake Oswego Junior High School, where it was previously assigned, and may use it whenever it chooses. The softball team also has access to a hitting facility installed in Lake Oswego High School's old gym. As described below, the District will install a turf field on the softball field at Lake Oswego Junior High School, and other facilities, and the softball team will be assigned to the softball field at Lake Oswego Junior High School.

###### *ii. Artificial Turf Field.*

The District will install an artificial turf field on the softball field at Lake Oswego Junior High School that will be in place by the start of the 2017/2018 softball season. During the softball season, the Lake Oswego High School softball program will have priority use of the softball field at Lake Oswego Junior High School; the community youth girls' softball program will have secondary priority use of the field. During the off-season, the Lake Oswego High School softball program and the community youth girls' softball program will have use of the field in accordance with the District's intergovernmental agreement with the City of Lake Oswego, which requires the District and the City to work collaboratively to meet the needs and interests of athletes, and which affords the District's high school sports tier one priority.

iii. Hitting Facility and Other Softball Facilities.

The District will construct a hitting facility immediately outside the right field fence at the softball field at Lake Oswego Junior High School that will be in place by the start of the 2018/2019 softball season. The hitting facility afforded to the Lake Oswego High School softball program will be equivalent to the hitting barn next to the lower turf field (at LOHS) and provided to the members of the baseball program. In addition, the softball hitting facility will include an elevated press announcer's box and concessions stand area, and will have a team room/locker room.

By the start of the 2018/2019 softball season, or sooner if possible, the District will ensure that the softball field at the Lake Oswego Junior High School has the following amenities, which will provide benefits to the members of the softball program that are equivalent to the benefits that similar amenities provide to the members of the baseball teams:

- PA system;
- Cinder block dugouts;
- Bullpens (one for home and one for visitor with preference for location on first base side and on third base side);
- Lights;
- Electronic scoreboard;
- Flag pole;
- Foul poles;
- Hitting markers and space for sponsors on the outfield fence;
- Warning track;
- Markings, color, and painting appropriate and typical for a softball field;
- Proper drainage;
- Bleachers on concrete slabs;
- Power outlets at the field;
- Drinking fountain at the field.

iv. Other Provisions For Softball.

By the start of the 2017/2018 softball season, the District will ensure that the softball field at Lake Oswego Junior High School is locked, and that the field is maintained in a manner equivalent to the lower turf field. To reduce the amount of gear the softball players may have to transport from Lake Oswego High School, the District will store district-owned gear for home practices and games at the softball field at Lake Oswego Junior High School beginning the 2017/2018 softball season, providing the necessary keys/access codes to the softball program. In addition, the District will ensure that the trainer for Lake Oswego High School is available and on call for home games and practices, and that the trainer can be reached by a communications device if needed.

v. Locker Rooms, and Practice and Competition Facilities



Effective immediately, the District will monitor the shared facilities at Lake Oswego High School, including the facilities shared by the softball and baseball teams, to ensure that boys' and girls' teams have appropriate and equitable access. The District will designate the Athletic Director and Title IX Coordinator to be point persons for any concerns about the shared usage of facilities.

The District agrees to provide equal athletic opportunities to participants of both sexes in its interscholastic athletics program with respect to the provision of locker rooms, practice and competitive facilities, at Lake Oswego High School as required by Title IX. In this regard, the District will assess its compliance with the requirements of this program component through a facilities review of Lake Oswego High School and share the results in a report to the Equity Consultant. The District will then develop and implement a plan, to be implemented by or before the end of the 2017/18 LOHS school year, subject to the Equity Consultant's approval, to resolve any identified compliance concerns to ensure the provision of equal athletic opportunity to participants of both sexes in its interscholastic athletics program. The District may retain the Equity Consultant to conduct the assessment and develop a plan.

By January 1, 2018, the District, will complete its comprehensive assessment of all locker rooms, team rooms, practice fields and facilities, and competition fields and facilities assigned to the boys' and girls' athletic teams at Lake Oswego High School to ensure the equivalent provision of locker rooms, and practice and competition facilities. The assessment will be documented in a report with the appropriate supporting documentation. The report shall include, at a minimum, an evaluation of the following: the quality, availability, and use of the facilities provided for practice and competitive events for each athletic team at Lake Oswego High School; the quality, availability, the use of the locker rooms and team rooms at the school; the maintenance of practice and competitive facilities; and the preparation of facilities for practice and competitive events; and the number and percentage of male and female athletes that have access to each facility or amenity. Except as specified, the report will be done in a manner directed by the Equity Consultant.

The assessment of the above-listed factors shall include the following: a list of all locker rooms, practice fields and facilities, and competitive fields and facilities, including proximity of locker rooms to the practice and competitive facilities; quality of each facility (including, but not limited to, any identified issues related to field drainage, field lighting, etc.); amenities for each locker room (showers, laundry service, available trainers, accommodations for visiting teams); use of locker rooms; amenities for each practice and competitive field (concession facilities, public address systems, electronic scoreboards, seating at each field, maintenance of each facility, preparation of each practice and competitive field); the age of each facility, and whether it is on or off-campus; and whether certain teams or programs have exclusive use of the facility, including a schedule showing when facilities are used for practice and competition and how long the locker rooms are assigned for use by each athletic team Lake Oswego High School.

If boys' and the girls' athletic teams at Lake Oswego High School are not receiving comparable benefits and opportunities with respect to locker rooms, practice fields and facilities, and

competitive fields and facilities, then the District will develop and implement a plan to ensure that female and male student athletes are provided with equivalent benefits and services in this area at Lake Oswego High School. Once the District has implemented this plan, the District will include in its quarterly reporting its remedial efforts. The Equity Consultant will then determine whether the District has remedied any previously identified inequality. Quarterly reports will identify any outstanding issues with respect to the provision of facilities in Lake Oswego High School's interscholastic athletics program.

#### B. Equipment and Supplies.

The District agrees to equitably treat participants of both sexes in its interscholastic athletics program with respect to the provision of equipment and supplies at Lake Oswego High School as required by Title IX. In this regard, the District will develop a plan to ensure that it provides equal athletic opportunities at Lake Oswego High School for members of both sexes in the provision of equipment and supplies, to include uniforms and storage space for such equipment and supplies. The District will immediately commence implementation of the plan as applicable beginning the 2017/2018 school year. The Equity Consultant will review, and as necessary recommend changes.

The District will assess whether the girls' interscholastic athletic teams at Lake Oswego High School are provided with uniforms, equipment, supplies, and storage that are comparable in quality, relative amount, suitability, maintenance, and replacement, and availability to the equipment and supplies provided to the boys' interscholastic athletic teams at the school.

To that end, if it has not already done so, the District will complete a comprehensive inventory of all equipment and supplies, which includes uniforms and any related storage spaces, assigned to the boys' and girls' athletic teams at Lake Oswego High School to ensure the equitable provision of equipment and supplies. The inventory will be documented, updated annually, and in the next quarterly report. The report shall include, at a minimum, a detailed listing and evaluation of the equipment and supplies provided to each athletic team; the relative quality or condition of the equipment and supplies; the source of funding for the equipment and supplies; the date the equipment and supplies were acquired, if known; the date they are scheduled to be replaced, if applicable; and their current value and replacement cost, if known and applicable.

The District will take all reasonable steps to ensure the equitable provision of equipment and supplies to male and female athletes. If the Equity Consultant determines that the provision of equipment and supplies is not equitable then the Equity Consultant will create a plan to remedy the inequality to be provided to all parties. The plan will include a description of specific actions needed to ensure the inequality is remedied.

#### C. Scheduling of Games and Practice Times.

The District agrees to equitably treat participants of both sexes in its interscholastic athletics program with respect to scheduling of games and practice times, as well as tournament opportunities, at Lake Oswego High School as required by Title IX. In this regard, the District

will assess that the District's girls' interscholastic athletic teams at Lake Oswego High School are provided with comparable opportunities as provided to the boys' interscholastic athletic teams at the same school in the number of competitive events per sport, number and length of practice opportunities, time of day competitive events are scheduled, time of day practice opportunities are scheduled, and opportunities to engage in available pre-season and post-season competition. The practice and game schedules the District creates for Lake Oswego High School will be included in quarterly reporting in their most current or complete form at the time of the report. If the Equity Consultant determines that the schedule is not equitable, then the District will then develop and implement a plan, subject to the Equity Consultant's approval, to ensure that the scheduling of game and practice times in the future is equitable. Reports submitted will include a compilation of the game and practice schedules from Lake Oswego High School dating back one year.

#### D. Coaching.

The District agrees to equitably treat participants of both sexes in its interscholastic athletics program with respect to quality and quantity of coaching at Lake Oswego High School as required by Title IX. In this regard, the District will provide equal athletic opportunities to participants of both sexes in the interscholastic athletics program at Lake Oswego High School with respect to the opportunity to receive coaching and the assignment and compensation of coaches, as required by Title IX. The District will assess its compliance with the requirements of this program component at Lake Oswego High School and share the results in quarterly reports. The assessment will specifically consider and address any actions taken or support provided by booster clubs, with particular emphasis on how such outside funding is used to provide stipends for part-time and volunteer coaches. The District will then develop and implement a plan to resolve any identified compliance concerns to ensure the provision of equal athletic opportunity to participants of both sexes in its interscholastic athletics program.

The District will complete a comprehensive assessment of the availability, experience, assignment, and compensation of coaches in its interscholastic athletics program at Lake Oswego High School to ensure that participants of both sexes are provided coaching benefits that are equivalent or equivalent in effect. The assessment will be documented in quarterly reports and shall include information about the Lake Oswego High School athletics program for the relevant school year. The assessment will also include plans the District has to ensure that inequalities in the availability of coaching do not arise as the number of athletes participating in sports fluctuates. Such reporting shall further include, at a minimum, an assessment of the following factors: the number of participants for each team at Lake Oswego High School; a review of the number of full-time coaches, part-time coaches, assistant, and volunteer coaches at the school assigned to each sport; and a review of the compensation of coaches, including their rate of compensation (per sport, per season), and the qualifications of each coach.

#### E. Medical and Training Facilities and Services.

The District agrees to equitably treat participants of both sexes in its interscholastic athletics program at Lake Oswego High School with respect to quality and quantity of medical and

training services as required by Title IX. In this regard, the District will assess its compliance with the requirements of this program component at Lake Oswego High School and share the results in its quarterly reports. The assessment will specifically consider and address access to the weight room and training services, including whether the weight room provides female athletes with appropriate weights and training equipment, as well as scheduled access, in a manner comparable to males. The District will then develop and implement a plan, subject to the Equity Consultant's approval, to resolve any identified compliance concerns to ensure the provision of equal athletic opportunity to participants of both sexes in its interscholastic athletics program.

F. Travel and Transportation.

The District agrees to equitably treat participants of both sexes in its interscholastic athletics program at Lake Oswego High School with respect to the provision of travel and transportation benefits to male and female athletes as required by Title IX. In this regard, the District will assess its compliance with the requirements of this program component at Lake Oswego High School and share the results in its quarterly reports. The District will then develop and implement a plan to resolve any identified compliance concerns to ensure the provision of equal athletic opportunity to participants of both sexes in its interscholastic athletics program.

G. Publicity

The District agrees to equitably treat participants of both sexes in its interscholastic athletics program at Lake Oswego High School with respect to publicity as required by Title IX. In this regard, the District will assess its compliance with the requirements of this program component at Lake Oswego High School and share the results in its quarterly reports. The assessment will specifically consider and address access to, contracts with, and work performed through Game Day media, the student newspaper, daily announcements (written/verbal), and daily/weekly Lake Oswego High School and/or the District bulletins. The District will then develop and implement a plan to resolve any identified compliance concerns to ensure the provision of equal athletic opportunity to participants of both sexes in its interscholastic athletics program.

H. Funding and Fundraising.

Subject to the Equity Consultant's approval, the District will create and implement, if it has not already, a comprehensive policy to oversee booster club funding and any other private donations flowing into the athletic program at Lake Oswego High School. The policy will ensure that if booster clubs or other outside sources provide benefits and services to athletes of one sex that are greater than the benefits and services provided to the other sex at Lake Oswego High School, or if any funding results in such an inequality, then the District will take action to ensure that the benefits and services are equivalent for both sexes. The District will remedy any such inequality even if it was not aware at the time it was given that a booster club or other outside source provided a benefit, service, or funding. The budget for each team (including funding from all sources) will be included in its quarterly reports.

I. Elimination or Reduction of Program Components.

The District understands that Title IX does not require that it eliminate or reduce any program component in order to comply with the provisions of Title IX which provide for equal treatment and benefits between the sexes in any offered interscholastic athletics. The District agrees that it will not meet its obligations under this Agreement to treat female students at Lake Oswego High School equally in any offered interscholastic athletics by summarily eliminating or reducing any program component offered to male athletes.

V. **Additional Requirements.**

A. Public Statement of Commitment.

Within 30 days of this Agreement's execution, the District's Superintendent, and the Principal and Athletic Director of Lake Oswego High School, will issue a public statement of the District's commitment to complying with Title IX and its implementing regulations. The statement will specifically state that the District and Lake Oswego High School are committed to effectively accommodating the athletic interests and abilities of members of both sexes with respect to the opportunity to participate in the interscholastic athletics program at Lake Oswego High School and to providing equal opportunity for all students to receive the benefits and services in Lake Oswego High School's interscholastic program. The statement will also include an affirmation that the District supports the Lake Oswego High School softball program, and all female athletes at Lake Oswego High School.

B. Task Force on Gender Equity in Interscholastic Athletic Programs.

Within 30 days of this Agreement's execution, the District will establish a volunteer task force comprised of members of the community to provide input on gender equity issues at Lake Oswego High School, including implementation concerns relating to the Agreement. The District will also work collaboratively with the task force in planning, designing, and installing the artificial turf field and related facilities at the softball field Lake Oswego Junior High School. The task force will include at least one of the Plaintiffs, Andrew Glascock, the Lake Oswego High School Title IX Coordinator, and the Lake Oswego Athletic Director. This task force will remain in place during the Agreement Duration.

C. Title IX Coordinator.

The District will designate a Title IX coordinator to coordinate its efforts to comply with and carry out its responsibilities under Title IX at Lake Oswego High School. The coordinator's responsibilities will include investigating complaints alleging noncompliance with Title IX in the area of interscholastic athletics at Lake Oswego High School. The Coordinator's name and contact information will be posted on the Lake Oswego High School web site.

D. Title IX Annual Training.

The District will provide annual Title IX training for District employees and all Lake Oswego High School coaches involved in the interscholastic athletics program.

E. Non-Retaliation Policy.

The District will not retaliate against anyone for their participation in the lawsuit or for their advocacy on behalf of female athletes. The word “retaliation” here has the normal meaning ascribed to it in the context of a retaliation claim brought under Title IX.

**VI. Monitoring and Enforcing the Settlement Agreement**

The Agreement requires the parties to comply with some of its terms both now and for a period in the future. The parties therefore agree to the following provisions regarding how the parties’ implementation of the terms of the Agreement will be monitored and enforced.

A. Reports.

The District will provide quarterly reports to the Equity Consultant, and the Plaintiffs (through their counsel) on the District’s implementation of the Agreement beginning October 15, 2017, followed by reports on January 15, April 15, and July 15 and continuing for the Agreement Duration. The quarterly reports will be in the manner and form prescribed by the Equity Consultant, except where the manner and form of those reports are specified in the Agreement.

The quarterly reports will include enrollment numbers broken out by sex, and the numbers of students participating in athletics, broken out by sex and by sport. The quarterly reports also will include the District’s assessment of the progress made at Lake Oswego High School in adding teams and team levels as required in this Agreement.

The quarterly reports will include the results of the survey and focus groups, including other steps to assess interest at Lake Oswego High School, including conducting an analysis of the competitiveness and feasibility of starting various teams in its geographic region.

The quarterly reports will detail any efforts it has made to create new opportunities for female students in response to the information it has collected, including whether it has added new sports, or levels of sports. The quarterly reports will detail the District’s plan to create to create new opportunities for female students in response to the information it has collected, including whether it has added new sports, or levels of sports.

The quarterly reports will include any information or data the District amasses to comply with the requirements of all sections of this Agreement.

B. Monitoring and Implementing the Settlement Agreement.

With approval of both parties, the District will retain a mutually-agreeable Equity Consultant to oversee and monitor the implementation of the Agreement for a period of at least three (3) years

from the execution of the Agreement. The District will provide the Equity Consultant with access to its facilities and data and, with appropriate notice, personnel and students, for the purpose of assessing the District's compliance with the Agreement. The parties agree to work in good faith with one another and with the Equity Consultant to resolve any differences regarding the implementation of the Agreement.

If the Equity Consultant determines that the District has failed to comply with the Agreement after notice to the District and an opportunity to take appropriate action to address the non-compliance, then the Equity Consultant will inform the parties in writing of the failure to comply with the Agreement. The parties agree they will not seek court intervention regarding the implementation of the Agreement unless and until the Equity Consultant and the Mediator has informed them in writing of the failure to comply with the Agreement.

#### C. Selection of Equity Consultant.

The District will retain an Equity Consultant with expertise in Title IX's provisions as they apply to interscholastic athletics who, as described in the Agreement, will oversee and monitor the District's implementation of the terms of the Agreement which relate to Lake Oswego High School's athletics program. The Equity Consultant will serve for the Agreement Duration. The District will pay the Equity Consultant's cost.

The parties shall exchange proposed names and qualifications for the Equity Consultant within 30 days of the execution of this Agreement and shall then endeavor to agree upon a candidate. If the parties cannot mutually agree on an Equity Consultant, then one will be selected by the Mediator with consideration of the parties' input. The District and the Plaintiffs shall not have to accept an Equity Consultant if/they has/have previously rejected.

#### D. Continuing Court Jurisdiction.

The parties agree to request that the District Court retain jurisdiction of the federal lawsuit, including jurisdiction to enforce the Agreement and, as necessary, to address any issues raised by the Court relating to the proposed Class, for a period of three (3) years from the Agreement's execution. Plaintiffs agree that Defendant may seek to petition the court to end jurisdiction should all obligations of the Agreement be met, including the full construction of the new softball complex. Plaintiffs may seek attorneys' fees and costs for prevailing in any such petition regarding termination of the Court's jurisdiction. Consistent with the process outlined in Section VI.B above, Plaintiffs may petition the court to extend the term of the Agreement should Defendant not substantially comply with the Agreement.

Within 5 business days of the signing of the Agreement, the parties will jointly file this Agreement with the United States District Court for the District of Oregon in the matter captioned as *Working et al. v. Lake Oswego School District*, case number 3:16-cv-00581-SB. The joint motion shall ask that the Court enter this Agreement as an order of the Court pursuant to Federal Rule of Civil Procedure 41(a)(2), and conditionally dismiss the complaint in this action without prejudice pursuant to Rule 41(a)(2), while retaining jurisdiction to enforce the

Agreement. The parties will ask the Court to place the case on the Court's inactive docket subject to recall to the active docket should it be necessary for either party to move the Court for an order to enforce a term or terms of the Agreement.

If the Court requires this Agreement to be changed before it will enter it as an order of the Court and conditionally dismiss the Plaintiffs' complaint, then the parties agree that they will work together in good faith with the Mediator to make the necessary changes. If the Court requires this Agreement to be changed, the Agreement will remain in effect except any part of the Agreement that is changed. Any changes to the Agreement required by the Court will become part of the Agreement and will be binding on the parties. The parties also agree that they will work together in good faith, with the Mediator if necessary, to resolve any other issues the Court may raise before it will enter this Agreement as an order of the Court and conditionally dismiss the Plaintiffs' complaint.

If the Court grants the parties' motion for a conditional dismissal, then a conditional dismissal will be followed by a final dismissal with prejudice either on performance of the terms of the Agreement, at the end of 2019/2020 school year, or as stipulated to by the parties unless the Plaintiffs successfully petition to extend the term of the Agreement. If the Plaintiffs successfully petition the Court to extend its jurisdiction over the terms of the Agreement as described in paragraph one of this section, such an extension shall be limited to those provisions of the Agreement that Plaintiffs successfully petitioned to have extended rather than the entire agreement.

If the District has fulfilled all its obligations under the Agreement before the end of the 2019/2020 school year, then the District may move the Court for a final dismissal with prejudice. The Plaintiffs may oppose the District's petition to end the Court's jurisdiction. If the Plaintiffs prevail in their opposition, then the Plaintiffs may petition the Court for the fees and costs they incurred in opposing the District's petition to end the Court's jurisdiction.

If the Court finds the District is not in compliance with this Agreement, but that noncompliance was beyond the reasonable control of the District, the District shall not be in breach of this Agreement. However, if the noncompliance was beyond the reasonable control of the District, the parties agree that the Court may exercise its equitable powers to devise an appropriate remedy or modification of this Agreement to accomplish the same result as that intended by the portion of the Agreement with which noncompliance was found, provided the parties cannot reach Agreement on the remedy or modification.

## **VII. Fees and Costs.**

### **A. Attorneys' Fees and Costs.**

Within 30 days of the date the Agreement is executed, the District will pay to the Plaintiffs' attorneys—Andrew Glascock and Legal Aid at Work—the amount of \$262,500, representing their fees and costs.



B. Mediator's Costs.

The District shall pay any and all costs for the Mediator for conducting and finalizing the mediation.

C. Future Fees and Costs.

Except as provided otherwise in this Agreement, the parties will bear their own fees and costs incurred during the Agreement Duration.

**VIII. Negotiation and Drafting.**

For the purposes of resolving any ambiguities that may later arise in interpreting this Agreement, neither party will be deemed to have drafted this Agreement so that neither party will be entitled to have any terms of this Agreement construed in its favor by default.

Likewise, the parties aver that they were all represented by competent attorneys throughout the mediation process and the negotiation of this Agreement.

Approved and agreed to on:

*For the Plaintiffs:*

\_\_\_\_\_  
LAUREN WORKING

\_\_\_\_\_  
Date

\_\_\_\_\_  
BRIONNA GEREB,  
By her next friend DREW GEREB

\_\_\_\_\_  
Date

\_\_\_\_\_  
LILLIAN HARWOOD,  
By her next friends TYE HARWOOD  
and JAMIE HARWOOD

\_\_\_\_\_  
Date

\_\_\_\_\_  
KELSEY DEOS,  
By her next fiends KELLY DEOS  
and LAURA DEOS

\_\_\_\_\_  
Date

\_\_\_\_\_  
MORGAN JONES,  
By her next friends DAVID JONES  
and SHELLY JONES

\_\_\_\_\_  
Date

\_\_\_\_\_  
ANNA TOMITA,  
By her next friends TODD TOMITA  
and MARNA TOMITA

\_\_\_\_\_  
Date

\_\_\_\_\_  
MARIN PENNEY,  
By her next friends DARIN PENNEY  
and MARIE PENNEY

\_\_\_\_\_  
Date

\_\_\_\_\_  
LAYNEY LOMBARDO,  
By her next friend HEIDI JONES

\_\_\_\_\_  
Date

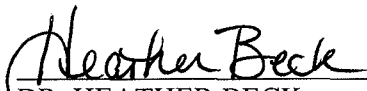
\_\_\_\_\_  
VIVIAN RITTENOUR,  
By her next friends PETER RITTENOUR  
and DAMARI RITTENOUR

\_\_\_\_\_  
Date

\_\_\_\_\_  
KIANA WILLIAMS,  
BY her next friends ANDREW CHOO  
and LINDA LATTO

\_\_\_\_\_  
Date

*For the Defendant:*

  
\_\_\_\_\_  
DR. HEATHER BECK  
Superintendent  
Lake Oswego School District

\_\_\_\_\_  
9/26/17  
Date

*Attorneys for the Plaintiffs*

\_\_\_\_\_  
GLASCOCK, STREET AND WAXLER, LLP  
Andrew Glascock

\_\_\_\_\_  
Date

\_\_\_\_\_  
THE LEGAL AID AT WORK  
Elizabeth Kristen  
Kim Turner

\_\_\_\_\_  
Date

*Attorneys for the Defendant*

\_\_\_\_\_  
MERSEREAU SHANNON LLP  
Karen M. Vickers  
Blake H. Fry

\_\_\_\_\_  
Date