

Note: This document illustrates an example of one of the options for how you might take notes as you work through the MPT packet. With this option, you create your document as you outline. Alternatively, you may choose to create a less detailed outline on scratch paper to use as a guide when crafting your final document.

Preliminary Information from Task Memo

- **Client:** Annie Whitford
- **Task:** Closing argument in a bench trial
- **Issue:** The school district rule violated Title IX, and the court should issue an order requiring the school district to permit Annie to try out for the Newberry volleyball team
- **Posture:** Persuasive

I. Introduction	
<ul style="list-style-type: none"> • Annie Whitford is a seventh-grade student at Newberry Middle School • Annie has played for five years on successful co-ed teams • Annie has won several awards and aspires to play competitively in college and in the Olympics • The district prohibits boys and girls from participating in interscholastic sports as mixed teams • Annie was prohibited from trying out for the boys-only volleyball team, which is the only school volleyball team • Annie alleges that the district rule violates Title IX and seeks an order requiring the district to let her try out for the team 	
II. Main Argument	
<p>A. Under Title IX, girls must be permitted to try out for the boys-only volleyball team because the school does not have a girls-only team, volleyball is not a contact sport, and athletic opportunities for girls have previously been limited in the school</p>	
Rules	<ul style="list-style-type: none"> • Under Title IX, “[n]o person in the United States shall, on the basis of gender, be excluded from participation in . . . any education program or activity receiving Federal financial assistance.” • Under 34 C.F.R. § 106.41(b), “a recipient may operate or sponsor separate teams in a particular sport for members of each gender where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one gender but operates or sponsors no such team for members of the other gender, and athletic opportunities for members of that gender have previously been limited, members of the excluded gender must be allowed to try out for the team offered unless the sport involved is a contact sport.”

(1) Volleyball is not a contact sport	
Rule	Under 34 C.F.R. § 106.41(b), a contact sport is a sport “the purpose or major activity of which involves bodily contact”; volleyball is not listed in the regulation
a. Purpose of volleyball	
<u>Metcalfe</u> (U.S. Court of Appeal, 15 th Cir. 1998)	
Holding	The school was not required to allow male student to try out for the school’s girls’ field hockey team under Title IX because field hockey is a contact sport based on both the number of protective rules and the inevitability and frequency of bodily contact
Rule	Important considerations are whether the rules of the sport penalize bodily contact and the frequency of bodily contact
File (hearing transcript)	<ul style="list-style-type: none"> • Neither party introduced evidence of the purpose • U.S. Volleyball League rules state that volleyball is a non-contact sport and contact between opposing players will result in a penalty • Purpose of volleyball is to land the ball in the opponent’s court without it being returned • Wallenstein testified that intentional or threatened contact can result in a penalty against the player and the team • The boy who injured Annie at summer volleyball camp was penalized • District rep Huang testified that the district concluded volleyball is a contact sport
b. Major activity	
<u>Metcalfe</u>	
Rule	Consider the inevitability and frequency of bodily contact; a high number of protective rules suggests bodily contact occurs frequently
Rule Explanation	Protective rules in field hockey (players wear mouth and shin guards and cannot wear spiked shoes or jewelry) indicated bodily contact occurs frequently
File	<ul style="list-style-type: none"> • League rules do not require protective equipment or prohibit jewelry • Annie has suffered only two injuries in all the years she has played (Whitford testimony) • Collisions are infrequent (Whitford testimony; Wallenstein testimony) • Rarely, a player may strike another when spiking the ball over the net (Wallenstein testimony)

2. Athletic opportunities for girls at Newberry were previously limited	
<u>Milley</u> (U.S. Court of Appeal, 15 th Cir. 2000)	
Holding	The district court applied an incorrect standard when it granted summary judgment to a female student who had been prohibited from trying out for a boys' baseball team where there had never been a girls' baseball team because the test under Title IX is not whether opportunities for a gender in a specific sport have been limited; the standard is applied to the institution's sports program as a whole
Rule	<ul style="list-style-type: none"> • “[T]he obligation of an educational institution in complying with the requirements of Title IX in [interscholastic athletics] cannot be measured only by comparing types of teams available to each gender, but instead must turn on whether disparities of a substantial and unjustified nature exist in the benefits, treatment, services, or opportunities afforded male and female athletes in the institution's sports program as a whole.” • 10 factors under 34 C.F.R. § 106.41(c): <ul style="list-style-type: none"> (a) Whether the selection of sports and levels of competition effectively accommodates the interests and abilities of members of both genders <ul style="list-style-type: none"> o File (hearing transcript): <ul style="list-style-type: none"> - Girls and parents had previously tried to get Newberry to start a girls' team, but the district denied the requests for monetary and logistical reasons such as coaching expenses and extended facilities - 60% of the students at Newberry are female - None of the 10 interscholastic sports teams are co-ed - Approx. 100 girls play on four all-girls' teams while approx. 200 boys play on six all-boys' teams (Huang and Wallenstein testimony) - 70% of the athletic budget is spent on boys' teams, including coaches' salaries, facilities, equipment and uniforms, athlete transportation, and publicity

<p>Rule (continued)</p>	<ul style="list-style-type: none"> (b) The provision of equipment and supplies <ul style="list-style-type: none"> o File (transcript): <ul style="list-style-type: none"> - 70% of the athletic budget is spent on boys’ teams, including coaches’ salaries, facilities, equipment and uniforms, athlete transportation, and publicity (c) Scheduling of games and practice times <ul style="list-style-type: none"> o File: <ul style="list-style-type: none"> - No information (d) Travel and per diem allowance <ul style="list-style-type: none"> o File (transcript): <ul style="list-style-type: none"> - 70% of the athletic budget is spent on boys’ teams, including coaches’ salaries, facilities, equipment and uniforms, athlete transportation, and publicity (e) Opportunity to receive coaching and academic tutoring <ul style="list-style-type: none"> o File (transcript): <ul style="list-style-type: none"> - 70% of the athletic budget is spent on boys’ teams, including coaches’ salaries, facilities, equipment and uniforms, athlete transportation, and publicity (f) Assignment and compensation of coaches and tutors <ul style="list-style-type: none"> o File (transcript): <ul style="list-style-type: none"> - 70% of the athletic budget is spent on boys’ teams, including coaches’ salaries, facilities, equipment and uniforms, athlete transportation, and publicity (g) Provision of locker rooms and practice and competitive facilities <ul style="list-style-type: none"> o File (transcript): <ul style="list-style-type: none"> - 70% of the athletic budget is spent on boys’ teams, including coaches’ salaries, facilities, equipment and uniforms, athlete transportation, and publicity (h) Provision of medical and training facilities and services <ul style="list-style-type: none"> o File: <ul style="list-style-type: none"> - No information (i) Provision of housing and dining facilities and services <ul style="list-style-type: none"> o File: <ul style="list-style-type: none"> - No information (j) Publicity <ul style="list-style-type: none"> o File (transcript): <ul style="list-style-type: none"> - 70% of the athletic budget is spent on boys’ teams, including coaches’ salaries, facilities, equipment and uniforms, athlete transportation, and publicity
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III. Conclusion

- Evidence supports Annie’s claim that the district’s refusal to let her try out for the boys-only volleyball team violates Title IX
- Volleyball is not a contact sport because neither the purpose nor major activity of volleyball involves bodily contact
- Athletic opportunities for female students at Newberry have previously been limited
- The court should issue an order requiring the district to allow Annie to try out for the interscholastic volleyball team