

Title IX and Athletics

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Introduction

- What is Title IX
- Legislative and Legal History of Title IX
- Athletic Compliance
- Three Prong Test
 - Participation
 - Scholarship/ Title IX Athletics Financial Aid
 - Other Benefits (the laundry list)
- FAQs (Title IX myths)
- Accomplishments

What is Title IX:

<http://www.youtube.com/watch?v=M2yOH0C1PVA>

Title IX of the Education Amendments of 1972 to the 1964 Civil Rights Act :

"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."

What is Title IX

- Title IX was not passed to address inequities in athletics. It is anti-discrimination law intended to address civil rights and access to education
- Admissions
- Financial Aid
- Sexual Harassment
- Employment Discrimination

Legislative and Judicial History

- 1969 Bernice “Bunny” Sandler files complaints of discrimination against over 200 universities and compiles a report, a copy of which is sent to Congresswoman Edith Green
- 1971 Senator Birch Bayh introduces proposal to ban sex discrimination in schools; not approved because it would have opened The Citadel to women.
- 1971 House approves Amendment which includes Title IX. Authored by Congresswoman Patsy Mink.
- 1972 Senate approves Amendment but exempts Military Academies.

History...

- Passed in 1972 with Compliance Date of 1978
 - 1974 Amendment to exempt revenue-producing sports from Title IX rejected.
 - 1975 Bills to alter Title IX athletics coverage die in committee.
 - 1975 HEW issues final regulations, reviewed by Congress, signed into law with provisions banning sex discrimination; and establishes 3-year time frame to be compliant.
 - 1975 & 1977 Senate refuses to act on bills to curtail Title IX enforcement.
- Assigned to Department of Education/Office for Civil Rights
- Suspended Operation 1984-1988
 - *Grove City v. Bell* - Title IX does not apply to programs that do not directly receive federal aid, essentially ending its application to athletics.

History...

- Civil Rights Restoration Act of 1988 by approved Congress
 - Override of Regan veto
 - Mandates that civil rights law applies to all operations of any school that gets federal funds
 - Effectively overrides *Grove City*
- Franklin v. Gwinnett County
 - 1992, Supreme Court allows monetary damages to be awarded in Title IX cases.
 - This opens the door to more suits by female athletes.

History...

- **Cohen v. Brown University**

- 1996, Brown downgraded women's volleyball and gymnastics from varsity funded to donor funded status (2 mens programs also downgraded)
- Brown was 2nd in country for offering opportunities – if they are not compliant, no college is compliant
- Lawsuit attacked all 3 prongs of test – Brown failed all 3
- 60% of M and 40% of W impacted by decision
- 36% of athletic opportunities afforded to women
- Brown argued that proportionality was related to the gender ratio of qualified athletes, NOT general student population
- 1st Circuit Court of Appeals rejects Browns argument that men were more interested than women in sports
- Supreme Court refuses to hear case and in reaffirms ruling

History...

- 1996 OCR issues clarification letter regarding the 3 Prong test as well as examples
- 1999: Cal State-Bakersfield loses a claim that capping the number of athletes on men's teams is reverse discrimination
- '01 Revised Sexual Harassment Guidance Issued
 - Further defines harassment and “effective response”
- 2002-03 Commission on Opportunity in Athletics
 - Comprised of members from professional and collegiate athletics
 - Failed attempt to reform the law after 8 months of hearings
 - 1) reaffirm commitment to equal opportunity; 2) Aggressively enforce Title II; 3) Equal weight to each prong of 3 prong test; 4) Cutting programs is not a favored way to comply with Title IX

History...

- 2003 OCR Letter
 - Clinton Administration
 - Title IX isn't broken and doesn't expect or encourage reduction of men's programs
- 2005 OCR Letter
 - Bush Administration
 - Allowed institutions to use only Internet or e-mail surveys to meet the interests and abilities (third prong) option of the three-part test for Title IX compliance, including classifying a non-response as a lack of interest in sports participation.
 - Controversial and considered to be a backdoor attempt to reduce the effectiveness of Title IX; rejected by the NCAA

History...

- 2010 OCR Letter
 - Reverses 2005 guidelines
 - Number of recommendations for gathering student interest
 - Gender equity plan, sports addition elevation policy, Title IX Committee, Documentation, Club, requests, HS participation, Interviews, Surveys
- 2010 Enforcement
 - Hundreds of Title IX athletic cases filed in late fall
 - OCR is issuing harassment guidelines in next few months
- Delaware State University
 - DSU moved to eliminate equestrian program
 - Cutting program violated opportunity prong
 - Cannot cut program if school is out of compliance

What Title IX Means to Me...

- <http://www.youtube.com/watch?v=FJwrHnFq1HU&feature=channel>

Athletic Compliance

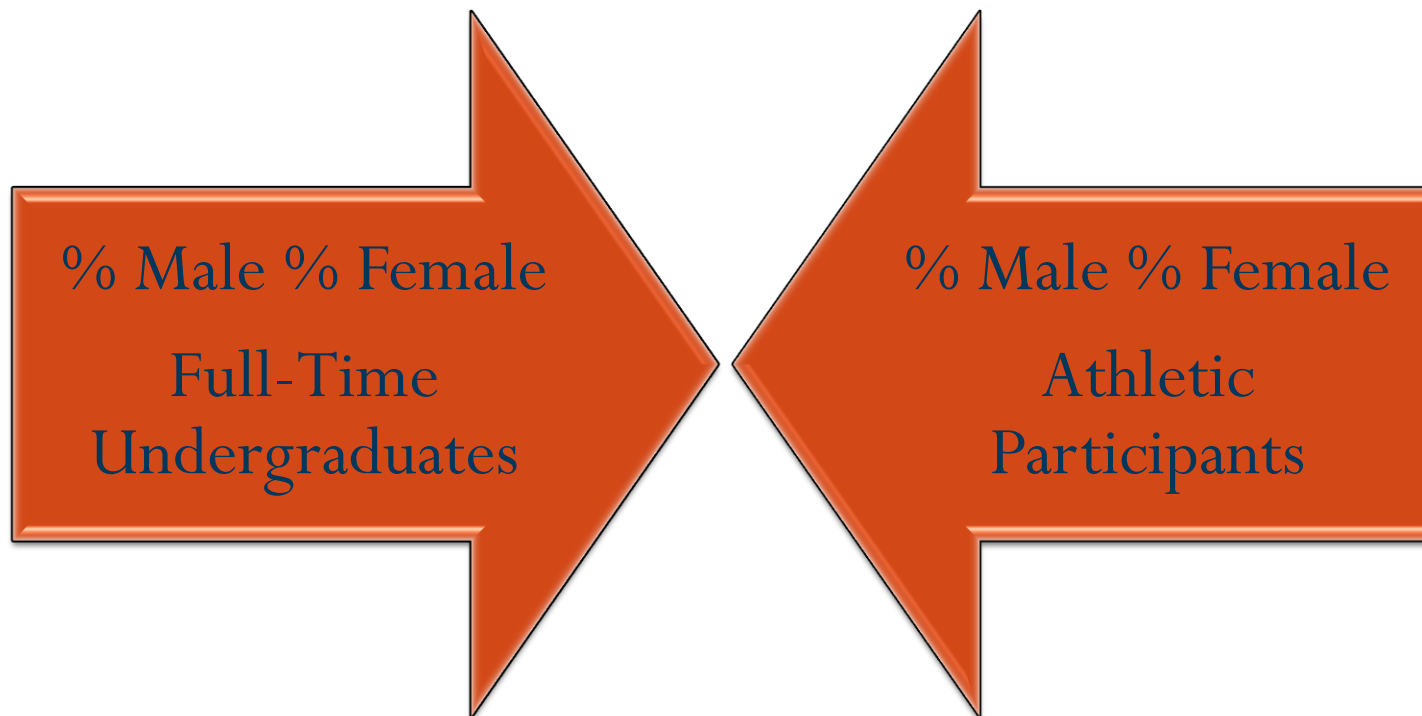
- Participation Opportunities
 - Prong 1: Substantially proportionality
 - Prong 2: History and Continuing Practice of Program Expansion for Underrepresented Sex in Athletics
 - Prong 3: Meeting interests and abilities (2/3 schools use this prong)
- Scholarship/Title IX Athletics Financial Aid
- Benefits

How does an institution comply with Title IX: Participation opportunity requirements

Any one part of the Three Prong Test:

- Prong One: “Provide participation opportunities for women and men that are substantially proportionate to their respective rates of enrollment as full-time undergraduate students.”
- Prong Two: “Demonstrate a history and continuing practice of program expansion for the underrepresented sex.”
- Prong Three: “Fully and effectively accommodate the interests and abilities of the underrepresented sex.”

Prong 1: Substantial Proportionality



OCR cites the following examples of substantial proportionality:

- (1) exact proportionality;
- (2) a disparity of one percent caused by an increase in the current year's enrollment after a year of exact proportionality; and
- (3) an institution's pursuit of proportionality over a five-year period and in the final year – when proportionality would otherwise have been reached – enrollment of the under-represented sex increased so that there was a two percent disparity.

Prong 2: History and Continuing Practice of Program Expansion for Underrepresented Sex in Athletics

History

- Record of adding intercollegiate teams by sex
- Record of upgrading teams to intercollegiate status by sex
- Record of increasing the number of participants of the under-represented sex
- Affirmative responses to requests by students or others to add or elevate sports

Continuing Practice

- Current implementation of a policy/procedure for requesting the addition of sports that includes the elevation of club or intramural teams
- Effective communication of that policy or procedure to students
- Current implementation of a plan/program expansion responsive to developing interests and abilities of the under-represented sex
- Demonstrated efforts to monitor developing interests and abilities (and timely reaction to the results of those efforts)

Prong 3: Meeting interests and abilities

- Could a viable team could be fielded?
- Likelihood of Competition (this is *not* likelihood of *successfully* competing)?
 - Factors :
 1. The athletics experience and accomplishments in interscholastic sports;
 2. Club or intramural competition;
 3. Opinions of coaches, administrators and athletes at the school as to whether interested students and admitted students have the potential to sustain a varsity team; and
 4. If the team has previously competed at the club or intramural level, whether the competitive experience indicates that team has potential to sustain an intercollegiate team.
- In addition to interest and ability, prospective teams must also have a reasonable expectation of intercollegiate competition in the institution's normal competitive region. The following factors should be taken into account:
 1. The competitive opportunities offered by other schools against which the institution competes; and
 2. The competitive opportunities offered by other schools in the institution's geographical area.

Title IX Athletics Financial Aid

- Compare the Scholarship Dollars Spent on Male and Female Athletes in the Current Athletic Program
- Count All Athletes One Time Only – No matter how many sports they may play
- Standard expectation is to be within 1% of student-athlete participation ratios

Men's Program

100 Men Participate

50% Athletes are Male

Men should get

49-51% Scholarship \$\$



Women's Program

100 Women Participate

50% Athletes are Female

Women should get

49-51% Scholarship \$\$

DOCUMENT, VERIFY AND BE ABLE TO EXPLAIN ALL VARIABLES

Other Benefits and Opportunities

- <http://vimeo.com/2180913>

Other Benefits & Opportunities

The “Laundry List”

Men’s Program

Equipment and Supplies
Scheduling
Travel & Per Diem
Tutors
Coaches
Facilities
Medical & Training Services
Housing
Publicity
Support Services
Recruiting



Women’s Program

Equipment and Supplies
Scheduling
Travel & Per Diem
Tutors
Coaches
Facilities
Medical & Training Services
Housing
Publicity
Support Services
Recruiting

Institutional Self Study Guide

- Gender Equity Committee formation
 - Mandatory requirement of NCAA DII
- Gender Equity Plan
 - Assessment tool for annual review
- Future Committee Structure will be for minority opportunities and other areas of potential discrimination

Title IX FAQs

- What are ways to balance Title IX?
 - Eliminate men's programs; add women's programs
 - Eliminate men's programs; maintain women's programs
 - Maintain men's programs; add women's programs
 - Maintain men's programs at minimal participation level; increase the number of participants on women's teams
- Does Title IX require equal dollars be spent?
 - No, only when it comes to scholarships
 - Otherwise it is equal treatment or benefits

FAQs...

- What about boosters?
 - If the school permits an individual or group to donate funds for the benefit of a specific gender or sport, it must also make sure that benefits and services are equivalent for both sexes
- Why doesn't the same dollar amount need to be spent?
 - The Jarvis Amendment allows for legitimate and justifiable discrepancies for nongender related differences in sports to be taken into account

FAQs...

- Does Title IX decrease opportunities for men?
 - Designed to create opportunities
 - 2/3 of the schools that added women's sports to comply with Title IX did not eliminate men's programs from 1972-2001
 - Men's sports which are cut are low in popularity – wrestling, gymnastics, water polo

FAQs...

- Men's Teams Discontinued
 - Wrestling 171
 - Tennis 84
 - Gymnastics 56
- Women's Teams Discontinued
 - Gymnastics 100
 - Fencing 31
 - Field Hockey 28
- Men's Teams Added
 - Soccer +135
 - Baseball + 85
 - Basketball + 82
- Women's Teams Added
 - Track +243
 - Lacrosse +108
 - Swimming +101

FAQs...

- Title IX is going to bring an end to collegiate football programs
 - No, programs have been cut, but mostly because of the cost of the program
 - Only 5 DI football programs in the country make a profit on college football program, the other 112 lose money
 - Example: University of Wisconsin, which, as winner of the 1998 Rose Bowl, received a payout of \$1.1 million. Despite this, they lost \$286,700 on the trip. This was largely the result of paying for 832 people to attend, including players, band members, boosters, and university administrators

Accomplishments: Education

- Education:
 - 1971 18% of HS graduates who completed 4 years of college were women compared to 26% of men – no longer have disparity
 - 1972, W earn only 7% of all law degrees, 9% of all medical degrees, and 13.3% of all doctoral degrees
 - 2001 47% of law degrees, 43% of medical degrees, 50% doctoral degrees
 - However – W earn 65% of doctoral degrees in education, but only 17% of all engineering and 18% of computer science

Accomplishments: Athletics

- Participations Rates:
 - 1972, 1 in 27 played HS sports, now 1 in 2.5 (2.8 million girls)
 - 1927, 32,000 W played intercollegiate athletics, 150,000 today
- Scholarship:
 - Before the passage of Title IX, athletic scholarships for college women were rare, no matter how great their talent.
 - After winning two gold medals in the 1964 Olympics, swimmer Donna de Varona could not obtain a college swimming scholarship: for women, they did not exist.
 - Currently over \$1 Million in scholarships for W at DI schools

The Law in “Practice”

- <http://www.youtube.com/watch?v=Y1BzwQR6ops>