

# Athletics

## TITLE IX AT 35: BEYOND THE HEADLINES

---

### **Education Chief Paige May Allow Proportionality Changes**

*Chicago Tribune, February 26, 2003*

### **Ex-Members of Title IX Panel Urge Against Use of Surveys**

*USA Today, October 17, 2005*

### **Diversity Lacking Among College Coaches**

*Rochester Democrat and Chronicle, February 18, 2007*

### **Civil Rights Commission Turns into Heated Debate on Title IX**

*CBS Sportsline.com, May 11, 2007*

---

For many, Title IX is synonymous with expanded opportunities in athletics. Before Title IX, women and girls were virtually precluded from taking advantage of most athletic opportunities in schools, but they are now active participants. Women's and girls' increased participation and achievement in sports, the stunning advances in each Olympic Games, and the creation of nationally televised professional women's sports leagues in recent years provide evidence of Title IX's success. These achievements are the result of years of female athletes' increased access to quality coaching, sports facilities, competition, and athletic scholarships.

However, Olympic medals and professional sports contracts are not what Title IX is all about. Rather, the quest for equal opportunity in school sports has always been about the educational, physiological, sociological and psychological benefits of sports and physical activity. Research studies have found that girls who play sports are more confident, have higher self-esteem<sup>17</sup> and better body images,<sup>18</sup> are less likely to get pregnant<sup>19</sup> or be involved with drugs,<sup>20</sup> and are more likely to graduate from high school than girls who do not play sports.<sup>21</sup> Furthermore, sports participation reduces the risk of developing heart disease and helps control weight, builds lean muscle, reduces fat<sup>22</sup> and prevents osteoporosis.<sup>23</sup> As little as two hours of exercise a week on the part of a teenage girl can reduce her lifelong risk of breast cancer.<sup>24</sup>

Despite the substantial benefits of participation in sports and Title IX protections against sex discrimination in athletics, the playing field is still not level for girls. Girls are twice as likely to be inactive as boys,<sup>25</sup> and girls have nearly 20% fewer opportunities to participate in both high school and college sports than boys.<sup>26</sup> Improved enforcement of Title IX and diligent efforts to advance women and girls in sports are still necessary to achieve truly equal opportunity on the playing fields.<sup>27</sup>

### **Title IX's Athletics Requirements**

Title IX requires that schools treat both sexes equally with regard to three distinct aspects of athletics: participation

opportunities, athletics scholarships and treatment of male and female teams. These requirements are set forth in the Title IX regulations, and in agency interpretations and guidances.<sup>28</sup> The regulations were promulgated in 1975, and were accepted by Congress.<sup>29</sup>

*Participation.* The Department of Education has adopted the "three-part test" to evaluate schools' compliance with Title IX's requirement that male and female students be provided equal opportunities to participate in athletics. This test was set forth in a Policy Interpretation issued by OCR in 1979.<sup>30</sup>

After holding hearings on athletics in May 1995, some Members of Congress asked OCR to revisit its 1979 Policy Interpretation and consider whether it should weaken its enforcement standards, particularly the participation requirement. In response, OCR strongly affirmed its longstanding interpretation through a 1996 Policy Clarification, which provides detailed guidance for schools on how to comply with each prong of the three-part test.<sup>31</sup>

**Under the three-part test, schools will be in compliance with the law if:**

- males and females participate in athletics in numbers substantially proportional to their enrollment numbers; or
- the school has a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of members of the underrepresented sex; or
- the institution's existing programs fully and effectively accommodate the interests and abilities of the underrepresented sex.

*Athletic Financial Assistance:* Title IX requires that scholarships be allocated in proportion to the number of female and male students participating in intercollegiate athletics.<sup>32</sup> The Office for Civil Rights (OCR) has made clear that schools will be found in compliance with this requirement if the percentage of athletic scholarships received by athletes of each sex is within one percent of their levels of participation. In other words, if women comprise 43% of the athletes on campus, the school must provide between 42% and 44% of its athletic scholarship dollars to those athletes.<sup>33</sup>

*Equal Treatment of Athletes:* Title IX also requires equal treatment of male and female teams. While funding for women’s and men’s programs need not be the same, a significant disparity in funds may be evidence of disparities in com-

ponents of the programs.<sup>34</sup> Title IX does not require that each men’s and women’s team receive exactly the same services and equipment, but it looks at the entirety of the treatment that programs receive under criteria ranging from locker rooms and practice and game facilities, to recruitment, academic support and publicity.<sup>35</sup>

### The Impact of Title IX

Opportunities for girls and women in athletics have increased exponentially since the passage of Title IX. Before Title IX, only 294,015 girls participated in high school athletics; in 2006, that number was nearly 3 million, a 904% increase.<sup>36</sup> At the college level, prior to Title IX, only 29,977 women participated in athletics compared with 166,728 in 2006, a 456% increase.<sup>37</sup>

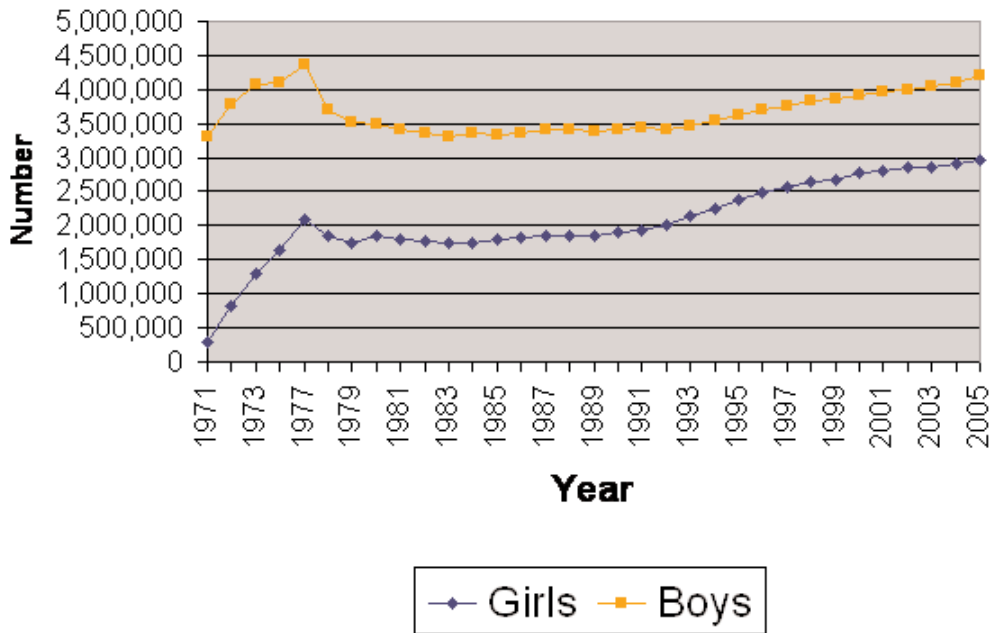
<b>High School Participation</b>			
<b>Year</b>	<b>1971-1972</b>	<b>2005-2006</b>	<b>Percent Increase</b>
<b>Female</b>	294,015	2,953,355	904%
<b>Male</b>	3,666,917	4,206,549	15%

—National Federation of State High School Associations, 2006

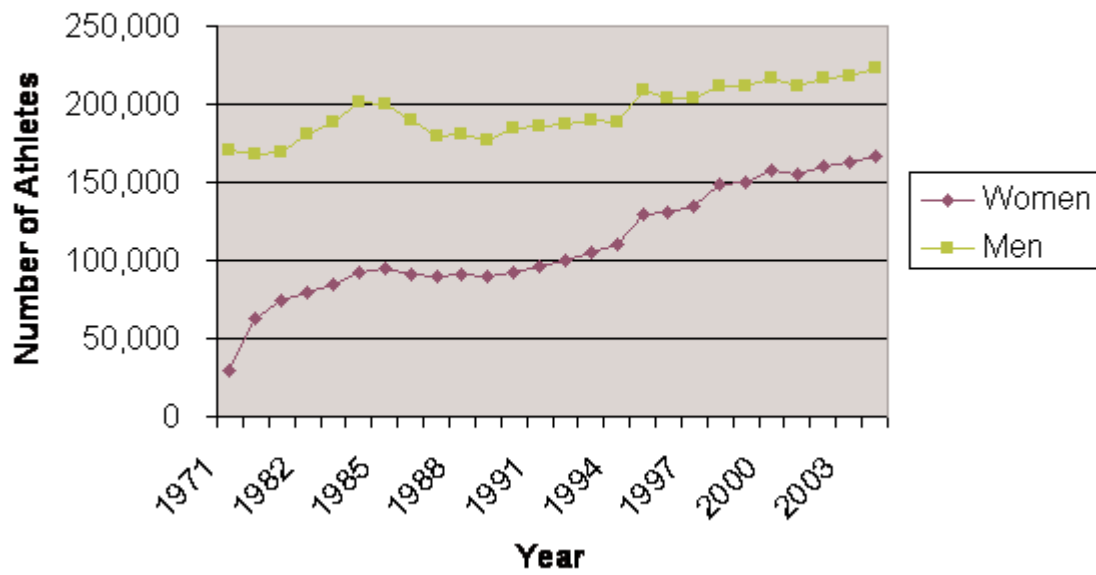
<b>Collegiate Participation</b>			
<b>Year</b>	<b>1971-1972</b>	<b>2004-2005</b>	<b>Percent Increase</b>
<b>Female</b>	29,977	166,728	456%
<b>Male</b>	170,384	222,838	31%

—NCAA Sports Sponsorship and Participation Report, 1981-82—2004-05

## High School Athletics Participation 1971-2005



## NCAA Athletics Participation 1971-2004



As the charts demonstrate, girls' gains have not come at boys' expense. A recent GAO study confirms that male participation in college athletics has continued to increase since Title IX's enactment.<sup>38</sup> The same is true for high school sports. In the vast majority of schools, males continue to have more opportunities to participate in sports than females. While women now have 166,728 NCAA athletic participation opportunities, men have 222,838.<sup>39</sup> High school girls have 2,953,355 athletic participation opportunities, while high school boys have 4,206,549.<sup>40</sup> Disturbingly, over the last five years, the girls' high school participation gap has increased, meaning that participation opportunities are growing at a faster pace for boys than girls.<sup>41</sup>

Girls' and women's gains have manifested themselves in the rise of female sports icons like Mia Hamm, Lisa Leslie, Julie Foudy, Jennie Finch, and Jessica Mendoza who grew up with the benefits of access to high school participation opportunities, college athletic scholarships and opportunities for professional and Olympic competition. In addition, the last thirty-five years have brought incredible advances, from the first girl playing in a Little League World Series to the rise of women's professional leagues, such as the Women's National Basketball Association and, for several years, the Women's United Soccer Association.

## Persistent Challenges

### A. Women Still Lag in Participation, Resources, and Coaching

Despite the advancements brought by Title IX, girls and women continue to lag far behind boys and men in athletics in participation, resources, coaching and support. While girls comprise 49% of the high school population,<sup>42</sup> they receive only 41% of the athletic participation opportunities.<sup>43</sup> In college, the gap is even greater: women comprise 57% of the college student population<sup>44</sup> but receive only 43% of the college athletic opportunities.<sup>45</sup> Instead of working to close this participation gap, however, some schools have eliminated women's teams. During the 2003-04 school year, for example, West Chester University in Pennsylvania attempted to eliminate its women's gymnastics team, which would have reduced women's participation opportunities to only 45%, while they comprised 61% of the students. The gymnasts filed a lawsuit, which was settled after the school agreed to reinstate the team.<sup>46</sup>

In addition, the resources allocated to women's teams continue to lag behind those provided to men's teams. Female collegiate athletes received only 37% of sports operating dollars and 32% of recruitment dollars in the 2003-04 school year.<sup>47</sup> Benefits such as equipment, facilities, publicity, and

coaching are still often not equally distributed between female and male teams.<sup>48</sup> In 2006, for example, the Prince George's County Public Schools Board of Education (PGCPS) entered into a settlement agreement to remedy program inequities for its female athletes and particularly for female softball players.<sup>49</sup> The settlement provides that PGCPS will improve sports opportunities for young women and ensure that girls' teams in each of the county's middle and high schools are given equal treatment.

Other inequities arise from schools' decisions to schedule girls' sports in nontraditional, and therefore disadvantageous, seasons. For example, in 2006, in *Communities for Equity v. Michigan High School Athletic Association*<sup>50</sup> the U.S. Court of Appeals for the Sixth Circuit held that the Association had violated Title IX, the U.S. Constitution and Michigan state law by scheduling six girls' sports, and no boys' sports, in nontraditional seasons, thereby disadvantaging the girls in numerous ways, including access to college recruiters and the ability to engage in club play.

In numerous instances, schools have failed to provide equal publicity and support for female and male teams. For example, in 2006, the mother of a female high school basketball player demanded that her daughter's school and other schools in their district provide the girls' team with the same publicity and support it gave to the boys' basketball team. While the school provided cheerleaders for all of the boys' home and away basketball games, it did not provide them for any of the girls' games. The mother filed a complaint with OCR, which found that 12 schools in her daughter's league had failed to comply with Title IX's publicity requirement and mandated that the schools provide cheerleaders to both girls' and boys' teams.<sup>51</sup>

Many challenges also persist in the allocation of coaching jobs. Women are only 19% of the head coaches of both women's and men's teams. Women also make up only 35% of athletic administrators and 19% of athletic directors. In fact, this is one area that has seen a regression. Since Title IX was passed in 1972, the number of females coaching women's teams at the college level has steadily diminished. In 1971, 90% of the head coaches of women's collegiate teams were women, compared to only 42% in 2006.<sup>52</sup>

## Collegiate Sports Positions by Gender (2006)

	Female	Male
<b>Athletic Directors of Women's Programs (All Divisions)</b>	18.6%	81.4%
<b>Head Coaches of Women's Teams (All Divisions)</b>	42.4%	57.6%
<b>NCAA Division I</b>	43.8%	56.2%
<b>NCAA Division II</b>	36.2%	63.8%
<b>NCAA Division III</b>	44.4%	55.6%
<b>Head Coaches of Men's and Women's Teams (All Divisions)</b>	17.7%	82.3%
<b>Full-Time Athletic Trainers (All Divisions)</b>	27.4%	72.6%
<b>NCAA Division I</b>	15.3%	84.7%
<b>NCAA Division II</b>	28.0%	72.0%
<b>NCAA Division III</b>	37.2%	62.8%
<b>Full-Time Sports Information Directors (All Divisions)</b>	12.1%	87.9%
<b>NCAA Division I</b>	9.3%	90.7%
<b>NCAA Division II</b>	10.5%	89.5%
<b>NCAA Division III</b>	15.3%	84.7%

—Acosta and Carpenter, *Women in Intercollegiate Sport*, 2006

### B. Women with Disabilities, Women of Color and LGBTQ Women Continue to be Denied Equal Opportunity in Sports

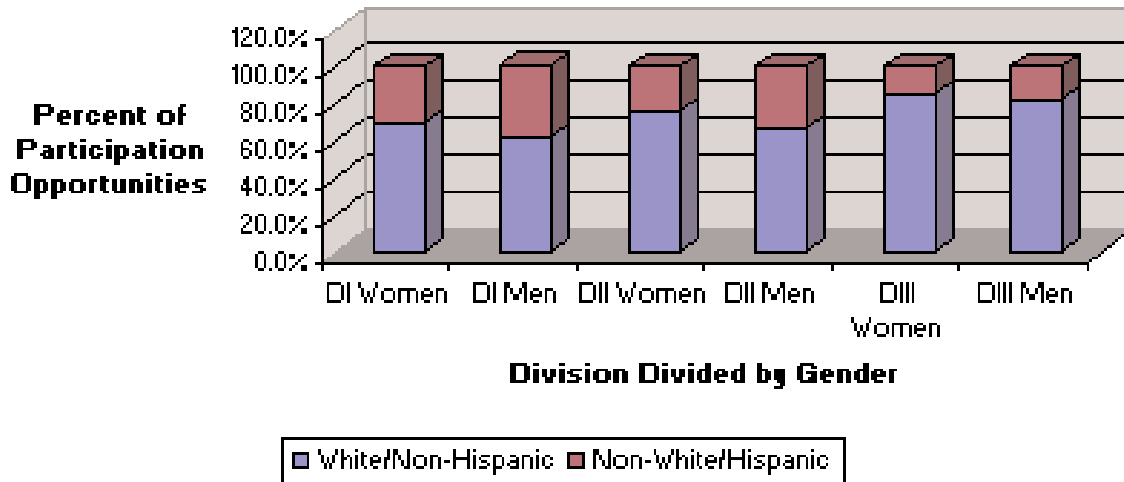
Women with disabilities, women of color, lesbians and trans-gendered individuals have even greater hurdles to overcome than other women before they receive the same opportunities in athletics as their male counterparts. These women face double jeopardy: they are discriminated against because of their gender and their disability, race or sexual orientation.

Throughout all levels of sport women with disabilities have limited athletic opportunities. Neither the NCAA nor the National Federation of State High School Associations officially sanctions any intercollegiate or interscholastic program, event or competition for individuals with disabilities. Although women comprise half of the population of individuals with disabilities,<sup>53</sup> in 2002, women and girls comprised less than 12% of all wheelchair basketball players in the world.<sup>54</sup> Even at the Paralympic level, women are not receiving equivalent opportunities. In the 2004 Paralympic Games, women only comprised 31% (1,160) of the athletes competing.<sup>55</sup> In the Winter Games, women comprised only 20.9% (99) of the athletes in 2006.<sup>56</sup> Gender disparities in leadership

add to the hurdles for female athletes with disabilities. At the time of the 2006 Paralympic Winter Games only two women (13.3%) served on the 15-member International Paralympic Committee.<sup>57</sup>

Since the passage of Title IX, female college athletes of color have experienced a dramatic increase in NCAA sports participation opportunities. While in 1971 there were only 2,137 college female athletes of color,<sup>58</sup> in 2004 that number was 27,680.<sup>59</sup> Yet, in both athletic participation and staffing, the representation of women of color in sport remains low. While African-Americans make up 16% of secondary school students,<sup>60</sup> African-American females represent less than 5% of all high school athletes.<sup>61</sup> Less than 2% of all college coaches and less than 1% of all college athletics administrators are African-American.<sup>62</sup> In NCAA Division I athletics in 2005-06, minority women made up only 4% of the head coaches for women's sports.<sup>63</sup> Racial imbalances in both men's and women's participation are most evident in NCAA Division III institutions, and opportunities for female athletes of color are considerably less than for male athletes of color.

## NCAA Participation Opportunities Divided by Race



Lesbian female athletes face barriers to athletic participation, such as taunting, name-calling, vandalism of property and physical abuse from teammates based on gender-nonconformity. Coaches continue to bar lesbians from their teams or give lesbian athletes unequal playing time or coaching attention. For example, former Pennsylvania State University student-athlete Jennifer Harris sued her basketball coach, Rene Portland, after she was dismissed from the team for unspecified reasons. Reports from former players revealed that Portland had a “no lesbian” policy: telling parents she kept her team lesbian-free, covering the issue during orientation, and kicking lesbian players off the team. The hostile and harassing athletic environment leads many to stay closeted.

### C. Opponents Continue to Play The Blame Game

Even though much work remains to be done to achieve gender equity in athletics, Title IX opponents continue to try to undermine the law through the media, legal challenges and appeals to Congress and the Executive Branch. The basic claim made by these opponents is that women are inherently less interested in sports than men, and thus that providing them equal opportunities to play discriminates against men who lose opportunities they deserve. The most recent court challenges have been brought by a coalition of wrestlers, which sued the Department of Education in 2002 and again in 2007, alleging that the three-part test unlawfully creates quotas and should be struck down.<sup>64</sup>

These allegations have been resoundingly rejected. As the First Circuit stated in its seminal decision in *Coben v. Brown University*, “No aspect of the Title IX regime at issue in this

case—inclusive of the statute, the relevant regulation, and the pertinent agency documents—mandates gender-based preferences or quotas, or specific timetables for implementing numerical goals.”<sup>65</sup> And all of the many federal appellate courts that have considered the test have upheld it.<sup>66</sup>

Contrary to the opponents’ claims, far from being reduced, opportunities for men in sports have continued to expand since the passage of Title IX—with regard to both numbers of athletes and numbers of teams. From the 1988-1989 school year to the 2003-2004 school year, NCAA member institutions added 2,346 men’s sports teams and dropped 2,276, for a net gain of 70. The teams added and dropped reflect trends in men’s sports: wrestling and gymnastics teams were often dropped, while soccer, baseball and lacrosse teams were added. Meanwhile 3,592 women’s teams were added and 1,490 were dropped, for a net gain of 2,102, including many soccer, softball and golf teams.<sup>67</sup> And, as discussed above, participation opportunities for individual men have increased by 15% at the high school level and 31% in intercollegiate sports since Title IX was enacted.

The claim that Title IX is responsible for cuts to particular men’s teams is also baseless. In fact, between 1984 and 1988, following the Supreme Court’s decision in *Grove City College v. Bell*—a decision that effectively eliminated Title IX’s coverage of athletics—men’s wrestling teams were cut at a rate almost three times as high as the rate of decline in the 12 years following, after Title IX’s application to athletics was reestablished by Congress in the Civil Rights Restoration Act.<sup>68</sup>

In reality, a major culprit for the loss of men's and women's sports programs is men's basketball and football—not Title IX. Instead of allocating resources among a variety of sports, college administrators are choosing to take part in the basketball and football “arms race,” at the expense of other student athletes. For example, football and men's basketball combined account for nearly half of capital costs in Division I, with the division-wide total estimated at 46.9% and Division I-A estimated at 54.5%. Football and men's basketball account for 41.4% of capital costs across all three divisions.<sup>69</sup> It is expenditures like these that have led NCAA President Myles Brand to note that “Title IX mandates increased participation opportunities, not fewer. It is true that institutions [sic] must make decisions about what it can afford and what it cannot, about how many sports it can sponsor, and about the level at which those sports will be supported. Those are the results of institutional priorities and financial circumstances, not the unintended consequences of Title IX.”<sup>70</sup>

Moreover, these expenditures cannot be justified by claims that football and men's basketball make profits that subsidize other sports. In fact,

- 60% (70) of Division I-A programs are in deficit spending. The average annual deficit for those in the red is now \$4.4 million, which is up from \$2.8 million in 1997.<sup>71</sup>
- 52% (187 of 359) of football programs and 52% (285 of 549) of basketball programs operate with budget deficits, spending more than they bring in and contributing nothing to other sport budgets.<sup>72</sup>

#### **D. The Department of Education Has Undermined Enforcement of Title IX**

Challenges by opponents of Title IX have been exacerbated by actions taken by the Department of Education that have significantly undermined the enforcement of the law. In 2002, the Department convened a “Commission on Opportunities in Athletics,”<sup>73</sup> charged with evaluating and making recommendations to change Title IX athletics policies. This commission was stacked with Title IX opponents and representatives of Division I Colleges, and the commission heard unbalanced witness testimony at its hearings. In February 2003, the Commission recommended changes that would have gutted Title IX's commitment to equality of opportunity.<sup>74</sup> Two members of the Commission immediately released a Minority Report criticizing the Commission's biased process and recommendations. Although public outrage at

the Commission's report led the Department of Education to publicly reject each of the Commission's recommendations in July 2003,<sup>75</sup> the Department in March 2005 released, without notice or opportunity for public comment, an “Additional Clarification” of its athletics policies that implemented two of the Commission's prior suggestions.<sup>76</sup> Specifically, the Additional Clarification authorizes schools that are not offering proportional athletics opportunities to their female students and have not continuously expanded opportunities for them to evaluate whether those students are interested in additional sports opportunities by doing nothing more than administering an e-mail survey to them.

Problems with the Clarification include:

- The Clarification is a significant policy change that is illegal given Title IX law, is inconsistent with long-standing DOE policies, and conflicts with the fundamental principles of equality under Title IX.
- No policy change of this magnitude should have been issued without public input or comment.
- The Clarification creates a major loophole through which schools can evade their obligation to provide equal opportunity in sports by allowing schools to gauge students' interest in athletics simply by conducting e-mail surveys and to claim that a failure to respond to the survey shows a lack of interest in playing sports.
- The Clarification eliminates schools' obligation to look broadly and proactively at whether they are satisfying women's interests in sports and puts the burden of demonstrating compliance with Title IX on female students instead of the institution.
- Both the survey instrument and the contention that sole use of any one methodology can determine whether an institution is meeting the interests and abilities of females is scientifically flawed.
- The Clarification conflicts with a key purpose of Title IX—to encourage women's interest in sports and eliminate stereotypes that discourage them from participating. Thus, this new policy threatens to reverse the enormous progress women and girls have made in sports since the enactment of Title IX and to perpetuate further discrimination against them.

## Conclusion

For 35 years, Title IX enforcement and compliance has brought increased athletic participation opportunities for women and girls, and this trend continues. But there is much more that must be done for true equality in sports to be achieved. Toward that end, the NCWGE makes the following policy recommendations.

# NCWGE RECOMMENDATIONS

## CONGRESS

- Congress should pass the High School Athletics Accountability Act/High School Sports Information Collection Act. These bills would require high schools to report key data on the gender breakdown of their teams, including participation numbers and budgets and expenditures. These data, which are similar to those currently required at the college level, would enable students, parents and schools themselves to evaluate gender equity in their athletics programs.

## ADMINISTRATIVE AGENCIES

- OCR should rescind the March 2005 Clarification and affirm the 1996 policy standards, which allow surveys to be only one of a multitude of factors schools must use to determine if they are satisfying the interests of their female students.
- OCR should undertake a public education campaign to inform students, parents and schools about their rights and responsibilities under Title IX.
- OCR should strengthen its enforcement of Title IX by initiating proactive compliance reviews of educational institutions. In addition, when issuing findings in response to complaints, OCR should be vigilant in efforts to ensure that schools actually implement their compliance improvement plans.

## EDUCATION PROGRAMS AND ACTIVITIES

- Colleges, universities and the NCAA should take action to stop the "arms race" in college athletics, which has led schools to devote increasing amounts of their budgets to football and men's basketball. Bringing these budgets under control would free up money and opportunity for men's minor sports and women's sports.