

EXECUTIVE SUMMARY

TITLE IX ATHLETICS POLICIES

Issues and Data for Education Decision Makers

August 27, 2002

The National Coalition for Women and Girls in Education (NCWGE) is a nonprofit organization composed of 50 diverse organizations dedicated to improving educational opportunities for girls and women. Established in 1975, the coalition has been a major force in developing national education policies that benefit all women and girls.

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Title IX Athletics Policies: Issues and Data for Education Decision Makers:

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On June 27, 2002, U.S. Department of Education Secretary Rod Paige announced the establishment of the Commission on Opportunity in Athletics (Commission) to “collect information, analyze issues, and obtain broad public input directed at improving the application of current federal standards for measuring equal opportunity for men and women, and boys and girls to participate in athletics under Title IX.” By January 31, 2003, the Commission must submit a report to the Secretary outlining its findings and any recommendations for revisions to the Title IX standards.

It is the position of the National Coalition for Women and Girls in Education (NCWGE) that:

- **No changes to the Title IX standards as applied to athletics are warranted or necessary; the three-part test, including its proportionality prong, is an appropriate and necessary means to implement Title IX’s requirement of equality.** Modifications to the standards that would limit future opportunities for women in favor of expanded opportunities for men would violate the goal of gender equity. Any modification to the standard that is based on the premise that women are less interested than men in sports, i.e. using the results of an interest survey to limit women’s participation opportunities, would be both factually inaccurate and legally invalid.
- **What is necessary to ensure equal opportunity is vigorous federal enforcement of Title IX and its implementing policies at every level of education,** not revisions to the standards that have moved our nation toward that equality. The responsibility of the federal government is to ensure equal opportunity, not to ensure that particular sports teams are added, discontinued, or maintained.
- **A “pull-back” on the nation’s commitment to civil rights should not be precipitated by institutional financial decisions to emphasize selected sports programs,** reduce the size of men’s sports programs, or in other way determine the appropriate size and expense of athletics programs.

This report demonstrates the following:

- **Female athletes are not receiving equal treatment or opportunities to participate 30 years after passage of Title IX.** Although male and female participation in athletics has grown steadily, female students lag in participation opportunities, receipt of scholarships, and allocation of operating and recruitment budgets. Thus, we have not yet reached the Title IX goal of gender equity.
- **The three-part test is flexible, lawful, and reflects fundamental principles of equality.** Most educational institutions comply with Title IX’s mandate to provide equal athletics participation opportunities by expanding opportunities for the underrepresented gender, or by demonstrating that they have fully accommodated the interests and abilities of the underrepresented gender. Every federal appellate court that has considered the validity of the three-part test has upheld it as constitutional and consistent with the statute. The courts have repeatedly recognized that the three-part test in no way creates quotas.

- **Title IX has been wrongly blamed by its critics for cuts to some men’s sports teams at some educational institutions.** Schools choose to support, eliminate, or reduce particular sports opportunities on both men’s and women’s specific teams for a variety of reasons, including varying interests in specific sports, and choices about how to allocate budget resources among the sports teams the school decides to sponsor or emphasize. The number, competitive level, and quality of sports programs are individual institutional decisions, just as the number and quality of academic programs are institutional prerogatives. The government cannot dictate that particular varsity sports be added, retained or discontinued.
- **As is proved by the increase in women’s participation in athletics since 1972, given the opportunity to play, women are just as interested in athletics as men.** The remaining discrepancies in participation rates are the result of continuing discrimination in access to equal athletic opportunities. It is neither logical nor permissible to posit a lack of interest in college sports participation on the part of female athletes when fewer than 200,000 college participation opportunities exist for females and 2.7 million high school girls are participating.

Responses to Commission Questions

1. Are Title IX standards for assessing equal opportunity in athletics working to promote opportunities for male and female athletes?

A: **This question is framed incorrectly. The correct question should be: “Are Title IX standards working to promote *equal* opportunity in athletics?”** That is, are the standards meeting Congress’ intent to remedy the lack of equal educational opportunities afforded women and girls, including in athletics programs? The answer to this question is a qualified yes. While women and girls’ athletics opportunities have steadily increased since 1972, female student athletes continue to lag behind their male counterparts in getting their fair share of participation opportunities, scholarships, budgets, and equal treatment. The Department of Education’s athletic policies, which have promoted the advances that have occurred, must be preserved and vigorously enforced.

2. Is there adequate Title IX guidance that enables colleges and school districts to know what is expected of them and to plan for an athletic program that effectively meets the needs and interests of their students?

A: **Yes, there are more than adequate resources available to guide educational institutions.** The U.S. Department of Education, as the federal agency with primary responsibility for the enforcement of Title IX, has issued numerous documents over the last 30 years providing guidance on Title IX’s application to athletics. In 1975, the regulations implementing Title IX were adopted after extensive congressional hearings. In 1979, the Office for Civil Rights (OCR – then HEW) issued a comprehensive athletics policy guidance document. In 1990, OCR published the Title IX Athletics Investigator’s Manual which provides guidance to OCR investigators conducting Title IX investigations of athletics programs; this guidance has been made widely available to athletics administrators on the NCAA website. In 1996, in response to inquiries from schools, OCR issued a clarification that provides additional guidance on participation requirements. In addition to these written materials, OCR has 10 regional offices

throughout the country that are available to provide technical assistance to schools on Title IX compliance standards.

Further, national collegiate athletics governance organizations and numerous state high school associations have produced materials and workbooks that are available to their members. In addition, some conduct workshops on Title IX compliance.

3. Is further guidance needed at the junior and senior high school levels, where the availability or absence of opportunities will critically affect the prospective interests and abilities of student athletes when they reach college age?

A: No. Ample Title IX guidance currently exists, is available, and applies to all levels of education, including the junior and senior high school years. What is needed at this level is more targeted enforcement of Title IX by the federal government, *and* for the Department of Education to collect data that would enable OCR and the public to more accurately evaluate equality of athletics opportunities and treatment. While anecdotal evidence suggests that discrimination against girls is widespread, the federal government does not collect systematic information about athletics opportunities at the junior and senior high school levels. This undermines Title IX enforcement efforts, and must be remedied.

4. How should activities such as cheerleading and bowling factor into the analysis of equitable opportunities?

A: Activities such as cheerleading and bowling factor into the analysis of Title IX compliance if such activities are considered to be bona fide sports. Standards for making this assessment are amply explained in existing Title IX guidance. OCR does not rely on a specific definition of a sport. It instead makes case-by-case determinations based on many factors, including whether selection for the team is based on factors related primarily to athletic ability; whether the activity is sponsored for the primary purpose of preparing for and engaging in athletic competition against other similar teams; whether the team prepares for and engages in competition in the same way as other teams in the athletic program (e.g. receives coaching, conducts try-outs, engages in regular practice sessions, and has regularly scheduled athletic competitions); whether national, state, and conference championships exist for the activity; and whether the activity is administered by the athletic department. If the purpose of the activity were primarily to support and promote other athletes, then the team would not be considered to be engaged in a sport for the purpose of compliance under Title IX.

5. How do revenue-producing and large-roster teams affect the provision of equal athletic opportunities?

A: “Revenue producing” and “profit generating” are not equivalent terms. Many sports produce revenues, but few produce profits. Whether a team or athletic program produces revenues or profits does not remove the obligation of a school to comply with Title IX. Rising costs in excess of increases in revenues and excessive expenditures for “revenue producing” sports like football may limit schools’ financial ability to provide equal participation opportunities for women without cutting or reducing men’s lower profile sports. But the allocation of resources among different men’s sports presents budgetary issues for schools to resolve—not a reason to weaken the government’s commitment to enforce the gender equity requirements of the law.

The facts are clear—few sports or total athletic programs pay for themselves, deficits are increasing, and institutions are not addressing cost-control issues. Among NCAA football programs in all competitive divisions, 78 percent spend money more than they raise, and contribute nothing to other sports budgets. Even among Division I-A football programs, more than one-third are running deficits in excess of \$1 million per year. Athletic program deficits in all subsections of the NCAA's Divisions I and II have been steadily increasing over the past decade – from 22 percent making profits in 1993, to 15 percent in 1999, and 78 percent running deficits in 1993, to 85 percent in 1999. If schools refuse to reduce expenditures on the sports consuming most of the athletic budget and deficits remain the rule rather than the exception, athletic programs will get smaller, but they must still provide equal opportunities under Title IX.

Large roster teams like football or crew are irrelevant considerations. The law considers the total participation opportunities afforded each gender, not the numbers or sizes of teams. If a school decides to have all of its men's or women's participation opportunities in two or three larger roster sports instead of seven or eight small roster sports or combinations of small and large roster teams for each gender, this is permissible under Title IX. Title IX does not require mirror image men's and women's sports programs.

6. The Department of Education has heard from some parties that women rarely “walk-on” to intercollegiate teams, whereas some male athletes will “walk-on” to intercollegiate teams without athletic financial aid and without having been recruited. Is this accurate and, what are its implications for Title IX analysis?

A: A walk-on is just like any other athletics participant for the purpose of Title IX compliance. Therefore, there are no implications for Title IX analysis. “Walk-on” is a term usually reserved for an athlete who is not a scholarship recipient, or someone whom the coach has not recruited. Historically, because of the status and exceptional treatment of football players and other traditionally successful sports at some schools, male athletes are willing to “walk on” to such a team, because they are then accorded this same high status, prestige, and preferential treatment. Title IX does not label participants as to whether they are recruited, recipients of scholarships, or other categories. If schools are preventing men from walking on to teams, this is a reflection of budget decisions that hinder them from sponsoring additional women's participation opportunities. It is not a consequence of Title IX.

7. In what ways do opportunities in other sports venues, such as the Olympics, professional leagues, and community recreation programs, interact with the obligations of colleges and school districts to provide equal athletic opportunity?

A: The obligation of colleges and school districts receiving federal financial assistance to comply with Title IX and provide equal athletic opportunity (assuming that athletics opportunities are offered) is unrelated to any opportunities that might exist in other sports venues. Educational institutions cannot escape their Title IX obligations by pointing to other sports programs that may be available to students. Conversely, schools cannot enhance their treatment of particular teams by pointing to the team members' professional prospects. In fact, if other venues, such as community recreation programs, receive federal funds and are considered to be

education programs or activities, such programs would also have to comply with Title IX and its implementing regulations and policies.

8. Apart from Title IX enforcement, are there other efforts to promote athletic opportunities for male and female students that the Department might support, such as public-private partnerships to support the efforts of schools and colleges in this area?

A: While there may be efforts, such as public-private partnerships, that the Department chooses to support to promote athletics opportunities, the Department has a duty and responsibility to ensure compliance with Title IX in *all* education programs or activities receiving federal financial assistance. Thus, any efforts targeted at other institutions do not relieve schools of their obligation to comply with the law, or the Department of its obligation to enforce the law. Additionally, any new educational efforts that may be provided by federal funds must also comply with Title IX.

The report that follows examines the following issues in detail: (1) the Title IX law and its impact on athletics opportunities for women and men; (2) trends in the discontinuation of men's and women's teams; (3) financial issues facing schools and solutions; and (4) other issues raised by the Commission.

This report can be found at www.ncwge.org.

