

An Introduction to Title IX and its Application to Intercollegiate Athletics

*Hayden Coombs, Assistant Professor of Communication
Southern Utah University*

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When I first joined the Southern Utah University Department of Athletics, the department was just 18 months removed from cutting men's baseball from the list of varsity sports offered at the university. Before I was even offered the position, I googled "SUU Athletics" and the name of then-athletic director, Ken Beazer. I was surprised to see the amount of negative backlash being directed at Beazer, as dozens of comments accused him of cutting baseball "because of Title IX."

The idea that Title IX is costing males opportunities to participate in intercollegiate athletics is something that has been brought up in comment sections and social media arguments for years now. This uninformed and ignorant stance fails to acknowledge the depth of this law. While it's true that some administrators choose to limit opportunities for men rather than expand opportunities for women, the spirit of Title IX offers a hope for equality and increased opportunities for both men and women.

In this essay, I aim to explain my current understanding of Title IX applied to intercollegiate athletics, my personal experiences with Title IX, a brief discussion of the history of Title IX, how the law has evolved over the years in relation to intercollegiate athletics, and its impact on sports moving forward.

Title IX

The Title IX of the Education Amendments Act of 1972 states, “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” (20 U.S.C. §1681-§1688, USEPA, 2017). This law applies to any institution that receives federal financial assistance from the U.S. Department of Education (Carpenter & Acosta, 2004). In other words, any educational program, including institutions of higher education, that receive federally appropriated funds have to operate through nondiscriminatory methods.

The groundwork for Title IX started back in October of 1967, as President Lyndon B. Johnson signed Executive Order 11375, which prohibited federal programs and federally funded operations from discriminatory employment methods, specifically on the basis of sex. This executive order laid the groundwork for the future of legislation that dealt with gender equity (Kwak, 2012). This positive momentum continued with Title VII of the Civil Rights Act, which prohibited employment discrimination on the basis of religion, national origin, race, or sex, but this law was not applicable to employment in educational institutions (Hogshead-Makar & Zimbalist, 2007). Likewise, Title VI was created to prohibit discrimination in federally assisted programs, but only on the basis of race, but not sex (Hogshead-Makar & Zimbalist, 2007). The need for federal legislation dealing with discriminatory practices in educational institutions is evident in the following example. During the 1960s in the state of Virginia, there was a three-year period that where over 20,000 women denied college admission to federally funded universities. However, during this very same frame of time, not a single man was denied admission or turned away (Weight & Zullo, 2015). After President Richard Nixon signed the

Title IX of the Education Amendments Act into law in June of 1972, society saw near-immediate results, as just seven years after being signed, women enrolled in undergraduate degree-seeking programs outnumbered men, and just three years after that in 1982, women were earning bachelor's degrees at a higher rate than men were for the first time (Kwak, 2012).

Another significant impact of the Title IX of the Education Amendments Act of 1972 was sexual harassment being deemed a form of sex discrimination, thus becoming illegal under Title IX (Kwak, 2012). First used in a court case involving sexual harassment against an educational institution in *Alexander v. Yale*, the United States Court of Appeals for the Second Circuit decided that sexual harassment of female students can be considered sex discrimination, and was, thus, illegal under Title IX (*Alexander v. Yale*, 1980). This case, along with Title IX, has made college and university campuses across the national much safer places and now provides female students with a safe way to report sexual harassments and assaults. In fact, college campuses have Title IX offices that are committed to maintaining educational environments free from discrimination and harassment. No faculty, staff, or student is excluded from participation of university-sanctioned activities because of their gender, as defined by U.S. legislation.

Title IX and Intercollegiate Athletics

When Title IX of the Education Amendments Act was passed into law in 1972, it was not initially designed to specifically address interscholastic and intercollegiate athletics. However, since sports are a major component of most U.S. institutions of higher education, Title IX has applied to numerous aspects of educational sport (Blumenthal, 2005). Gender equity in college sport became a political and legal issue with the passing of Title IX, therefore, policy to ensure that opportunities exist for both genders was enacted to be fair in delivering opportunities for both men and women (Covell & Barr, 2016).

Despite the NCAA's recent efforts to establish gender equity, the association initially met Title IX with great resistance. After Title IX was first introduced and started to impact intercollegiate athletics, the NCAA did not warmly embrace the federal statute. In fact, the NCAA actually brought the first legal challenge to Title IX in the mid-1970s against Joseph Califano, who, at the time, was serving as the Secretary of the U.S. Department of Health, Education, and Welfare (Covell & Barr, 2016).

In 1993, the NCAA Board of Governors established the NCAA Gender Equity Task Force in order to compel more meaningful progress of gender equity at NCAA-member institutions at every level of competition (NCAA, 2020). The NCAA Gender Equity Task Force defines gender equity stating that, "No individual should be discriminated against on the basis of gender, institutionally or nationally, in intercollegiate athletics" (NCAA, 2020). The NCAA Gender Equity Task Force further says, "An athletics program can be considered gender equitable when the participants in both the men's and women's programs would accept as fair and equitable the overall program of the other gender" (NCAA, 2020).

The primary means by which an institution can demonstrate compliance to Title IX through their respective athletic departments is through the so-called three-prong approach. By law, an athletic department is deemed to be compliant with Title IX is through meeting any one of the following three prongs:

1. Proportionality, or having the same percentage of female athletes and female undergraduates,
2. A continuing history of expanding athletic opportunities for women, and
3. Demonstrating success in meeting the interests and abilities of female students (Carpenter & Acosta, 2004, pp. 14-15).

Proportionality aims to measure if a university's varsity athletics programs have a number of male and female students enrolled that is proportional to the overall representation of the university's student body (Clotfelter, 2019). In other words, if a university's student body population is split even at 50% for both male and female students, the athletics programs must also be close to an even 50% split or they would not be compliant with this prong. Instead of cutting men's programs to become compliant, universities are encouraged to add new female teams (Keating, 2012).

Meeting the second prong, expansion, can be accomplished if a university and its athletics department can show they are expanding their university-sponsored female athletics programs. However, the female athletics expansion must align with the interests of female students, who have shown interest in joining specific athletics programs and teams. If a university athletics department can show they meet these requirements, even if they still don't meet the proportionality requirement, they can be considered Title IX compliant.

The last prong is somewhat of a last resort, as it is only utilized by universities that sponsor fewer programs and opportunities for female students compared to the programs offered to male students, and are not actively expanding. A university can show compliance to this third prong by illustrating they already are meeting students interests. This would require a university to prove they have taken input from female students, by way of surveys, interviews, and focus groups, and showing that these females are substantially satisfied with having less funding and fewer athletic opportunities than their male counterparts (Keating, 2012).

Critiques of Title IX

Despite many of the great successes of Title IX, since its inception, Title IX's application to intercollegiate athletics has been attacked due to its derivative nature to athletics (Clotfelter,

2019). As previously stated, Title IX was not initially was not originally designed to address intercollegiate athletics. Because of this, many critics have labeled Title IX to be an unjust quota system that is focused on numbers rather than experiences that limits opportunities for males (Suggs, 2006). Additionally, much scholarly research has shown that many athletic administrators use Title IX as a scapegoat for lavish expenditures for the depleting resources and opportunities that face both men and women participating in intercollegiate athletics (Suggs, 2006, Keating, 2012).

Conclusion

The impact that Title IX has had on athletics is undeniable. Going far beyond just intercollegiate athletics, the number of opportunities it has provided women all over the country has led to it becoming one of the most important laws in the history of the United States. In the 30 years from 1971 to 2010, the number of girls participating in high school sports ballooned from 294,000 to 3,173,000, an increase of over 1000% (Wulf, 2012). During this same time, boys participating in sports has also grown to almost 4,500,000 (Wulf, 2012). Likewise, in that same timeframe, the number of females playing for university-sponsored varsity sports teams skyrocketed from 29,900 to 186,460, while males playing varsity sports grew to 249,307 (Wulf, 2012).

Title IX is not perfect, but the positive changes it has had on intercollegiate athletics is undeniable. Despite the lack of understanding surrounding this law, Americans have been shown to be in dramatic approval of the Title IX and its corresponding enforcement (Keating, 2012). As a father, Title IX has made it possible for my daughters to have the same scholarship opportunities that my son will have. Additionally, Title IX has made this country a better, and safer, place for them. Even though there will always be critics who argue that Title IX has forced

the closure of men's teams across the country, Title IX has had an overwhelmingly positive impact on both sports and society.

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Title IX Three-Prong Test

Title IX of the Education Amendments Act of 1972 is a federal law that states:

“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.”

Sex discrimination in school athletics is just one example of the civil rights violations considered under Title IX. When the Title IX of the Education Amendments Act was passed into law in 1972, it was not initially designed to specifically address interscholastic and intercollegiate athletics. Because of this, Title IX and its application to sports is highly derivative and has been cause of numerous court proceedings. In response to these court proceedings, the U.S. Department of Education's Office for Civil Rights developed a test designed to measure Title IX compliance within athletics: the three-prong test.

When confronted with a Title IX case, the court or the OCR will look at each of these 3 prongs in turn to see if the school meets the requirements of any of them. These tests are applied in stages so that if the school fails the first prong, they will move on to the second, then the third. If the school can pass any of the tests, there is typically no Title IX violation. These 3 prongs of the test are as follows:

Prong #1: Proportional Participation Test- This test refers to proportionality of the general student population being reflected in the student-athlete population. This means that if a school is 50% male students and 50% female students, and the athletics are also split 50/50 – or close to it – the school is generally complying with Title IX. If the student body at large is 50/50, but the athletics programs are 30% female and 70% male, for example, the school is not in compliance.

In order to comply, schools should ideally bolster the female athletics programs by adding new teams and opportunities, but many schools instead cut men's athletics to balance the opportunities, leading to criticisms of Title IX's rules and implementation.

Prong #2: History of Progress Test- Institutions can document a clear history and continuing practice of expanding athletic opportunities for women.

If a school has a history of having fewer programs and opportunities for female students, but they can show that they are working to expand their female athletics programs, they might be seen as complying with Title IX. As long as the expansion is in line with the interest female students have shown in joining athletics programs, the school meets Title IX's requirements even if they are still behind having equal male and female programs.

Prong #3: Accommodation of Interests Test- Institutions can prove that it has fully and effectively accommodated the sport participation interests and abilities of female students.

If the programs are not equal, and they are not currently being expanded to meet student interests, then a school can show they are complying with Title IX by showing that they already meet the interests of the students. If a school runs surveys and takes input from female students and they are essentially satisfied with having less funding or fewer athletics opportunities, then it is not considered a Title IX violation. This could be the case in a school that provides other extracurricular activities and clubs that students might participate in, or it could happen in a school that simply has low interest in athletics. However, schools must do their part to seek input so they can show there is not enough interest to add more teams or balance athletics opportunities.

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