

An Examination of Title IX and its Impact on NCAA Male and Female Sports

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ABSTRACT

Throughout this culmination paper, emphasis will be formulated to the underlying philosophy of Title IX, concerns since the enactment of Title IX and the future of Title IX in today's interscholastic and intercollegiate athletics. Practical implication from the paper can contribute towards the growing awareness of Title IX issues amongst NCAA athletic departments. Future implications from this commentary can be contributed to understanding the difficulties faced with gender equality and solutions for alleviating issues in intercollegiate athletics.

Keywords: *Title IX, Three-Prong Test, intercollegiate athletics, NCAA, student-athletes.*

INTRODUCTION

In 1970, prior to the enactment of Title IX in 1972, only 2.5 women's teams were represented per intercollegiate athletic department consisting of 16,000 total female student-athletes in the United States.

In 2012, 40 years after Title IX of the Education Amendment Act was passed, women represented 8.73 teams per intercollegiate athletic department and totaled more than 200,000 female student-athletes in colleges and universities across the United States (Acosta & Carpenter, 2012). Since that time in 2012, Acosta and Carpenter (2014) conducted an update to the statistics of female employment and participation in intercollegiate athletics. In 2014, it was found that 13,963 female professionals are employed within intercollegiate athletics which indicates the highest number ever and is an increase of 171 since 2012 (Acosta & Carpenter, 2014). Participation opportunities for females are also at an all-time high with 9,581 women's intercollegiate teams found at NCAA schools in 2014, increase of 307 since 2012. Furthermore, 8.83 women's teams per school are the average offered to female athletics (Acosta & Carpenter, 2014).

Prior to Title IX, expectations of women and their daily activities varied greatly from their male counterparts. A perfect female in the late 1800s into the early 1900s was considered to have two components: having children and

being married (Ladda, 2012). These were the only two opportunities women had in society; if women did not find a husband or give birth, at that point she was considered to be an outcast failure. Females during this time frame were not to be active or be involved in any physical activity due to a risk of health concerns.

It was thought that women could develop health issues if they were to participate in sports which could lead to an unhealthy baby or marriage (Ladda, 2012). By the 1880's women were beginning to establish their right to be more than a wife and mother, these women were ready to achieve a higher education and have the right to participate in sports.

Through the advancement of women beginning to obtain a higher education, it sparked an all-female committee known as the Seven Sister Colleges which provided numerous women an opportunity to higher education (Ladda, 2012). These outspoken women immediately became leaders developing advancement opportunities in athletics and higher education for females. As a result, enrollment numbers for women began steadily increasing; women's colleges had validated an educated woman was now considered to be a healthy woman.

Not only were women achieving higher educational opportunities, but these young ladies began participating in collegiate athletics. The only problem was these opportunities were not

referred to as events or competition; it was known as “play days”. “Play days” gave women from various colleges a chance to come together at one location and participate in sports such as swimming and bowling (Ladda, 2012).

Women’s competitive athletics in college did not come into effect until the 1960s; still the events women were allowed to compete in were limited. Although these times were difficult for women to participate in collegiate athletics, it did not stop the achievement opportunities for women.

The first woman to swim the English Channel was a lady by the name of Gertrude Ederle. She swam 35 miles in 14 hours and 31 minutes setting a new world record. She accomplished this triumph on August 6, 1926. The first ever Women’s National Golf Tournament was organized by Gladys Palmer in 1941 (Ladda, 2012).

In 1945, Babe Didrikson Zaharias was the first woman to make the 36 hole-cut to qualify to play against men in a Professional Golf Association (PGA) Tour event. Babe also became one of the founding members of the Ladies Professional Golf Association (LPGA) Tour. Not only was Babe a successful women’s golfer and innovator for the game, she was also considered an All-American basketball player and Olympic track and field medalist.

Another female whom had success was Wilma Rudolph, she was the first woman to win three gold medals in track and field in the Rome Olympics of 1960 (Dangerfield, 2012).

These women were considered innovators for opening doors and proving women could be equal to their male counterparts in athletic success. By 1972, women were on the same pace as their male counterparts in gaining an education and wanting to be involved in competitive athletic competition.

The impact Title IX created through higher education, many colleges and universities established intercollegiate women’s athletics programs for the first time. Title IX was the beginning of success for women in individual and team sports. It was an opportunity for females to be considered equal with its male counterpart in every facet of life including athletic and opportunity.

OVERVIEW OF TITLE IX

In 1972, the paramount year in the history of gender equity was the Title IX Amendment

stating, “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 educational program or activity receiving Federal financial assistance” (Title IX of the Education Amendment of 1972, 44 Fed. Reg. at 71413). Title IX applies to all educational institutions that receive any federal funding and it prohibits discrimination in all educational programs and activities, not just athletics.

Title IX allocates females to participate and receive equal opportunity in sports from elementary school to intercollegiate athletics (Judge & Morrison, NCAA). In 1978, “three-prong” tests in which all educational institutions (high school and collegiate) must meet the standards of three essential parts of Title IX to be considered compliant:

Participation

Substantial Proportionality Test

Intercollegiate participation opportunities for male and female students must mirror in correlation to the actual enrollment numbers of the institution.

In *Cohen v. Brown University* (1996), Brown demoted four women’s teams to club status; as a result members of the demoted teams sued Brown alleging the university violated Title IX. Brown student enrollment comprised of 48% women but only 37% of women were student-athletes which is a violation of proportionality (Mc Andrews, 2012).

Program Expansion Test

Whether the institution can show a history and continuing practice of program development which is demonstrative towards the interest and expansion of that gender.

If an institution is working progressively each year, constructed a five-year gender equity plan and continues to improve facilities, scholarships, and athletic opportunities for women then they have shown a continuance of development.

In *Cohen v. Brown University* (1996), courts began studying if Brown had made efforts to expand athletic programs since the passing of Title IX in 1972. Brown made expansions by adding numerous women’s athletic programs in the 1970s; however Brown only added one women’s team in the 1980s.

New facilities and accommodations were built for female student-athletes; however, current

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plans for program expansion had decreased and Brown had cut the women's athletic programs budgets and many of the teams were donor-funded instead of being fully funded.

Interest and Abilities Accommodation Test

Are the interests and abilities of the underrepresented sex fully and effectively accommodated by the current program? Students whom wish to participate on a varsity athletics program that is not offered at the college of enrollment can file a petition to gain varsity status. In *Choike v. Slippery Rock University of Pennsylvania* (2006), the university cut three female athletic programs due to budgetary reasons. However, the university had previously hired a consultant prior to this instance to look at the proportionality and numbers to make sure it would not be in violation. Also, the university had a plan to add women's lacrosse which helped the institution stay in compliance.

Athletic Financial Assistance

Scholarships

Intercollegiate athletic programs must offer equitable athletic scholarships to male and female student-athletes. The allotment of scholarship dollars must be equal per sport program (example – men's basketball received 10 full scholarships, the women's basketball team must receive 10 full scholarships).

Whether it is determining the equity between male and female student-athletes, Title IX suggests the percentage of males and females will mirror the percentage of athletics based aid provided to both male and female student-athletes (NCAA).

Treatment

Evidence provided that members of a varsity athletic program have been given the equal opportunity to be as successful as the team can be (equivalence to counterpart) accommodated by the present program. Title IX expects athletic departments, colleges, and athletic programs to treat male and female student-athletes equally regarding the following:

Equipment & Supplies

Determined by examining the quality, amount, suitability, maintenance, and availability of the equipment and supplies.

Scheduling of Games and Practice Time

Based on the number of competitive events scheduled per sport, number and length of

practices, time of the day for practices and games and the number of post-season and tournament related contests.

Travel and Per Diem Allowance

It includes mode of transportation, housing (hotel) furnished during travel, length of stay, daily allowance, and meals provided for members of the team.

Opportunity to Receive Coaching

Equivalence of full/part time head coaches and assistant coaches per athletic team; assignment of coaches with comparable experience and training.

Compensations must be equal as well including contracts and contract renewal (justification with experience, duties and working conditions).

Academic Tutoring Services

Availability of tutoring for men's and women's athletic programs.

Providing Adequate Locker Rooms, Practice and Competitive Facilities

Availability, quality, and maintenance of the facilities provided for practice and competition.

Providing Adequate Medical and Training Facilities and Services Rendered

Availability of medical and training personnel such as trainers including equitable health and insurance coverage.

Providing Adequate Housing and Dining Facilities and Services Rendered

Housing provided by the institution including special services such as laundry, parking and curfew hours. Meal plans will be equivalent amongst all student-athletes.

Publicity

Quality and availability of sports information staff at events including press guides, stories and interview opportunities. Athletic department must ensure all publicity opportunities are equitable between male and female teams.

Support Services

Equitable services provided by administrative, secretarial, and offices on campus to men's and women's athletic programs.

Recruitment

Financially male and female athletic programs have opportunities to recruit the highest rated student-athletes for their desired needs (based

on budgetary line for recruiting). (Title IX Intercollegiate Athletics Policy Interpretation, 1979). Title IX compliance as stated by the Women's Sports Foundation (1988) includes a total program comparison in which the entire men's and women's programs are to be compared across the board in all athletic programs.

Title IX does not require equal expenditure funds; however it is suggested by the National Collegiate Athletic Association (NCAA) that equality remains equal in allocated funding.

IMPLICATIONS OF TITLE IX

Over the last 49 years, the structure of intercollegiate athletics in American colleges and universities has transformed, while Title IX's policies have been at the front of these changes.

Even though Title IX has helped improve the opportunities for female employment and participation, Title IX has not evolved into a prominent piece of legislation. The average intercollegiate institution in 2001/02 illustrated that women comprised of 55% of the total student body but only 42% in varsity athletics (Anderson, Cheslock, & Ehrenberg, 2006). Due to these imbalanced statistics, numerous Title IX lawsuits have been engaged on intercollegiate institutions for not abiding by Title IX legislation policies.

Several court cases after the implementation of Title IX erupted and would help eventually shape Title IX compliance. *Cannon v University of Chicago* (1979), dealt with a case in which an individual was trying to sue an institution without first exasperating all administrative options including in-house complaints. Cannon believed she had been denied acceptance into a medical school, based on her gender; the medical school was a recipient of federal financial aid, therefore was under the authority of Title IX.

A private right of action was filed due to the case meeting a standard of someone being discriminated against on the basis of sex as part of the four part test of a private matter. The Supreme Court relied on the connection between Title VI and Title IX discovering that an implicit private right of action did exist to Title IX in favor of Cannon (Bruner, 2010).

Implementation of Title IX justifies an issue from this case in not knowing an individual had enforcement options beyond filing an in-house

complaint; a plaintiff could process a federal lawsuit under Title IX regulations. In another court case *North Haven Board of Education v. Bell* (1984), two major questions were considered regarding Title IX; 1) does Title IX cover employees?; and 2) did Congress provide a tacit approval of Title IX Regulations (Carpenter & Acosta, 2005)? Elaine Dove was a tenured public school teacher and had just completed her maternity leave of one year and was ready to return to school; however the school district did not allow her to return.

She filed a Title IX complaint with the department of health, education and welfare (HEW), and the school stated employees did not have justice to Title IX. The Supreme Court became involved in the case making clear that in Title IX, "no person, shall, on the basis of sex be subjected to employment" (Carpenter & Acosta, 2005).

This case added Title IX protection laws of employees along with the Title VII laws for a workplace, already in place. In the third case, perhaps the most important case post-Title IX enactment, of *Grove City College v Bell* (1984), Grove City College, a private college in Pennsylvania, refused to file a letter stating it was in compliance with Title IX regulations (a law passed in 1978 for all postsecondary institutions within jurisdiction of Title IX were required to be in compliance "three prong" tests) due to the fact it did not receive any federal funding.

The Office of Civil Rights (OCR) thought differently considering the institution was receiving Better Education Opportunity Grants for its students to pay tuition and fees with. The Supreme Court discovered: 1) even indirect federal funding indicated Title IX legislation; and 2) "program" was referred to only which subunit of the institution was receiving money – only the "programs" receiving federal money was under Title IX jurisdiction, not the institution.

This particular case had a great effect for the next four years in intercollegiate athletics; college athletic programs began terminating female athletic scholarships ("program" did not receive federal financial aid), this lasted for four years until 1988 when the Civil Rights Restoration Act was put into place mandating all programs at a federally funded institution be subject to Title IX. (Carpenter & Acosta, 2005).

These three court cases are examples of Title IX implementation issues and how the evolvement of Title IX took time and experience through lawsuits and court cases. These lawsuits helped develop Title IX into what it is today.

RECOMMENDATIONS AND CONCLUSIONS

There are issues still associated with Title IX as a couple already mentioned. Title IX has grown into becoming a landmark for gender equity amongst not only athletics but in the workplace and in all schools and programs in the United States. A major issue that has suffered from the backlash of Title IX is the reduction of male collegiate sport programs and boys sport participants at the high school level.

The following are some statistical examples of college men's athletic programs that have made cuts due to Title IX regulations: Boston University dropped its football program after 91 years due to facing Title IX pressures; University of San Francisco cut its football program after 64 years; Colgate University eliminated men's baseball after 107 years; Cornell University's men's fencing team was cut after 98 years; and UCLA dropped its swimming and diving team in 1994 after producing 16 Olympic Gold Medalists, 41 individual national titles and a team title in 1982 (Owoc, n.d.).

These are just a few of the examples of colleges that have had to endure changes to be compliant with Title IX regulations. Since 1981 more than 2,200 men's athletic teams have been eliminated to comply with Title IX policies (Owoc, n.d.). Gymnastics at the high school level is feeling the deficit; in 1969, 40,000 high school boys participated in the United States and there were 230 NCAA schools sponsoring men's gymnastics (Owoc, n.d.).

Since that time, NCAA schools have lost 92% of its programs (2,544 college roster positions eliminated) and 75% of male gymnasts have vanished (Owoc, n.d.). Combining NCAA Division I, II, and III there are 9,999 women's sport teams and 198,103 female student-athletes compared to 8,784 male sport teams and 261,150 male student-athletes (NCAA, 2012).

Clearly these stats illustrate there are over 1,000 more women sports teams in the NCAA than male sport teams, however football makes up the difference in participants rationing the equality amongst NCAA schools.

The next obstacle associated with Title IX at the intercollegiate level is Title IX "ignorance" demonstrated by coaches across the United States. Changes have occurred throughout Title IX and the different cases providing learning examples for coaches and administrators across the country; however coaches and schools remain out of compliance with Title IX (Acosta & Carpenter, 2005). The Mellman Group (2007) conducted a study surveying 1000 participants in a phone survey, revealing 80% strongly supported Title IX and "three prong test", and nearly 60% did not know what the correct steps were to enforce compliance. It was not until the case of *Jackson v. Birmingham* (2005) the U.S.

Supreme Court determined coaches who conduct their selves in a manner reflecting an effective method of compliance to seek appropriate resources for their programs are protected against retaliation by his/her employers.

The aftermath of this case resulted in numerous lawsuits by female administrators and coaches having been litigated for wrongful termination with million dollar settlements being handed out. (Staurowsky & Weight, 2011). This case example and the litigations that followed proved coaches and administrators need to be knowledgeable if they are in a position dealing with Title IX issues.

The results of the study of where coaches gain their information on Title IX, conducted by Staurowsky & Weight, (2011) resulted in 60% indicated mainstream news, 53.5% NCAA news, 43.5% sport-specific coaching newsletters and publications, and 42% from college courses taken previously.

An astounding 83.4% of coaches reported that they were never given any information regarding Title IX compliance as part of their training being hired. This issue can easily be solved by a couples of methods: 1) the NCAA must mandate that each athletic institution will be in charge of handling Title IX Compliance in terms of generating information, overseeing compliance and serving as a liaison; and 2) the NCAA needs to disseminate brochures to every school and college that receives federal funding on tips to maintain a Title IX compliant environment. These issues are not of severe compliance to Title IX; however, these obstacles are still important to consider for collegiate and high school organizations/administration when associating with Title IX Compliance. Title IX has been an advocator for gender equity and

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women for the past 49 years since the enactment of the law in 1972.

Not only has Title IX improved gender equity in athletic opportunities, it serves as a platform for women in the work field and human resources. Today, women are given more opportunities in athletic administration positions, coaching roles, chief executive officer roles and other organizational roles in what was unheard of 50 years ago.

The typical woman has come a long ways from just being a wife and mother. As mentioned throughout this paper, there has been constant growth and concerns associated with Title IX. In intercollegiate athletics, substantial proportionality is a main concern in equality amongst student body and the student-athlete participants.

It is up to the institution's athletic directors to mandate athletic programs and participation numbers based on equality. Many collegiate institutions struggle the most with budgetary constraints placed on their athletic department as whole and specific programs. Sometime programs must be cut in order to maintain the budget; however careful planning is integral in that aspect.

The progressive direction a collegiate institution can take is to create a gender equity plan addressing five years of equality and methods of addressing current issues, developing goals, steps to achieving goals, individuals responsible, and a timetable for reaching the desired changes and goals.

The athletic department can also create a gender-equity committee which will provide continuous evaluation of men's and women's athletic programs, substantial proportionality issues, demonstrate a continual practice of upgrading opportunities for males and females and to explore any disparities within the institutional structure. Title IX will continue to develop its laws and compliance ensuring gender equity is present amongst all financially funded institutions.

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