

CRS Report for Congress

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Title IX and Gender Bias in Sports: Frequently Asked Questions

Gary L. Galemore
Analyst in American National Government
Government and Finance Division

Summary

Title IX of the Education Amendments of 1972 was enacted to curtail discriminatory practices against woman and girls in educational institutions. Prior to the passage of Title IX, some schools used quotas to limit the number of women who could attend them. With the exception of historically black colleges and universities, virtually no college offered women athletic scholarships. In other cases, elementary and secondary school teachers frequently had to leave their jobs when they married or became pregnant. Although Title IX was not specifically aimed at alleged discrimination on the sporting fields of educational institutions, this aspect of the law has proved to be the most controversial. The Commission on Opportunity in Athletics has just released their recommendations to reform the application of Title IX to the Secretary of Education. The Secretary will decide what, if any of the recommendations he will implement. The 108th Congress may wish to review any changes to Title IX that may result from this Commission report.

This report answers a select number of often asked questions about Title IX and how it pertains to sports activities at educational institutions. It will be updated as events warrant. For related reading, see CRS Report RS20201, *Sports Legislation in the 106th Congress*, CRS Report RS20710, *Title IX and Sex Discrimination in Education: An Overview* and CRS Report RL31709, *Title IX, Sex Discrimination, and Intercollegiate Athletics: A Legal Overview*.

What is Title IX?

Title IX of the Education Amendments of 1972 was enacted to curtail discriminatory practices against woman and girls in educational institutions. Prior to the passage of Title IX, some schools used quotas to limit the number of women who could attend them. With the exception of historically black colleges and universities, virtually no college offered women athletic scholarships. Some high schools prohibited boys from taking home economics and girls from taking auto mechanics classes. In other cases, elementary and secondary school teachers frequently had to leave their jobs when they married or

became pregnant. The federal mandate was meant to address these kinds of discriminatory practices. Title IX of the Education Amendments of 1972 states, in relevant part, that, “No person in the United States, shall, on the basis of sex, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving federal financial assistance”¹

The Office of Civil Rights of the Department of Education has responsibility for the administration and enforcement of Title IX. Although Title IX pertains to discrimination against either sex, it has primarily been applied by women and girls to challenge alleged sexual harassment or gender bias on college and university campuses.

In 1979, the U.S. Supreme Court held that an individual has an implied private right of action under Title IX, allowing for a judicially imposed remedy. In other words, claimants may sue in court for alleged discriminatory practices. This decision opened, in addition to the procedures in place at the Office of Civil Rights, an entirely new avenue for redressing alleged sexual harassment and gender bias claims, and has resulted in dozens of court challenges under Title IX.

In 1992, the Supreme Court ruling in *Franklin v. Gwinnett County*, allowed for monetary awards against educational institutions found to be intentionally discriminating.²

How does Title IX apply to sports?

Title IX applies to a variety of activities at educational institutions, including sports. The application to sports is best explained by the *Code of Federal Regulations*, which stipulates that, “No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.” (34 CFR, 106.41)

What agencies are covered by Title IX?

Title IX applies to all state and local educational agencies that receive federal funds, as well as over 16,000 local school districts, over 3,000 colleges and universities, and 5,000 for-profit schools, libraries, and museums.

What types of school activities fall under Title IX?

Title IX applies to a variety of school activities, including admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, housing, employment, and athletics.

Are any programs or activities exempt from Title IX?

¹ 86 Stat. 235, at 373.

² 503 U.S. 60 (1992).

Several agencies and activities are exempt from Title IX, including educational institutions operated or controlled by religious organizations, if the application of Title IX would be inconsistent with the religious tenets of that organization. Title IX is not applicable to federal military and merchant marine academies. Social fraternities and sororities whose members are primarily students at institutions of higher education are exempt from Title IX. So are voluntary youth organizations which are tax-exempt and/or whose membership is traditionally limited to one sex. These organizations include groups such as the Boy Scouts of America, the Girls Scouts of America, the Young Men's Christian Association, and the Camp Fire Girls.

Who is responsible for enforcing Title IX?

Title IX enforcement and administration is primarily the responsibility of the Office of Civil Rights (OCR) at the Department of Education (DOE). Administrative complaints concerning possible Title IX violations may be filed with this office. A complaint to the Office of Civil Rights is not a lawsuit. A complaint can be filed by anyone: a parent, a student athlete, a team, or even a concerned third party.

The OCR will determine if the school is covered by Title IX, and may assign an investigator or team of investigators to the complaint. Investigators may go directly to the school or ask the institution for a written response to their questions. If the OCR finds that a school is not in compliance with Title IX, it will work with the school in question to plan actions to bring the school into compliance.

The OCR does not file lawsuits on behalf of persons or groups injured by alleged discrimination. It can, but rarely does, seek to have federal financial assistance withheld from educational institutions not in compliance with Title IX. The OCR's first choice of action is to mediate a solution to a discrimination claim that satisfies the law and both the alleged victim and the school.

A commonly expressed misunderstanding about the OCR is that it directly disperses federal funds to schools to implement Title IX or conduct sports programs, and that this money is what can be withdrawn. Contrary to this perception, the OCR neither has appropriated federal funds available to disperse for sports programs, nor is the agency authorized to do so by law.

What is the OCR'S three part test for Title IX compliance?

The OCR has prepared a three part test to aid educational institutions in assessing whether they are in compliance with Title IX. If any single one of these conditions is being met by an educational institution, then that institution is considered to be in compliance with Title IX. The Commission on Opportunity in Athletics, appointed by the Secretary of Education, has just reported its recommendations and may result in modifications to the three part test mentioned below. Unless modified, the three part test currently consists of the following parts.

The first part of the test applies to proportionality. Proportionality is satisfied when participation opportunities for men and women are "substantially proportionate" to the undergraduate enrollment of men and women. For example, if a school is spending 72%

of its athletic funds on 20 men's sports and 28% of the funds on 10 women's sports, yet school enrollment is 52% male and 48% female, then that school may not be in compliance with Title IX.

The second portion of the test applies to an educational institution's history and continuing practice of expanding its sports opportunities in such a way as to address the needs of the under represented sex. For example, a school that 10 years ago had a ratio of 52% male to 48% female enrollment may have been in compliance with Title IX, because it provided sports opportunities in about the same ratio as that enrollment. Today, the same school might find that its enrollment is entirely reversed to 52% female and 48% male. Unless the school can show a history and ongoing practice of trying to reflect this new enrollment balance with sports opportunities, it could find itself no longer in compliance with part two of the test.

The third and final test of institutional compliance is whether the current sports program accommodates the interests and abilities of the under represented sex. For example, if numerous ongoing women's club sports exist at the educational institution, but not at the varsity level, a school may be challenged for not meeting the interests or abilities of the under-represented sex.

It might be restated at this point that an educational institution should meet one or more of these requirements, but is not required to meet them all.

How is "financial assistance" defined under Title IX?

Federal financial assistance is defined under Title IX as assistance in the following forms. It can be federal grants or loans to educational institutions for acquisitions, construction, renovations, restorations, or repairs of buildings and facilities. Federal assistance can also take the form of scholarships, loans, grants, wages, or other funding extended to schools directly or through students at the school. In addition, it can take the form of federal surplus property, either donated or sold to schools, or services provided by federal personnel.

Contracts, agreements, or other arrangements between educational institutions or individuals associated with educational institutions and federal agencies, such as defense-related research conducted by an educational institution for the Department of the Army, can also be regarded as federal financial assistance for the purposes of Title IX. An educational institution may lose its federal financial assistance if it is found to be in non-compliance with Title IX.

Can schools maintain separate teams?

Schools can maintain separate teams for members of each sex if selection for teams is based on competitive skills or if the sport in question involves physical contact. Contact sports are considered to be boxing, wrestling, rugby, ice hockey, football, basketball, and other sports involving bodily contact. However, if opportunities to participate in sports activities have previously been denied to one sex, members of that sex must be allowed to try out for whichever team is the only one offering the activity.

How is athletic “equal opportunity” defined in the *Code of Federal Regulations*?

In determining if equal opportunity has been provided by a school or other agency, several factors can be considered. Does the selection of sports and levels of competition effectively meet the needs and interests of both sexes? Does the school provide equipment and supplies, game scheduling, and practice times in a fair manner? Are travel and per diem allowances and the opportunity for coaching and academic tutoring comparable for male and female teams? Is the provision of locker rooms, practice and competitive facilities, medical and training services, housing and dining facilities, and even publicity, done in a non-discriminatory manner?

Unequal expenditures for members of male and female teams is not, in itself, a sign of non-compliance with Title IX, if the school provides separate teams for male and female athletes. However, failure to provide the necessary funding for one sex may be considered in assessing “equality of opportunity” for both sexes.