

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

PRESS RELEASE

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U.S. CIVIL RIGHTS COMMISSION RELEASES REPORT ON IMPROVING FAIRNESS AND EFFECTIVENESS OF TITLE IX ATHLETICS ENFORCEMENT

Washington, D.C.--The U.S. Commission on Civil Rights has released a report on accommodation of athletic interests and abilities of college students under Title IX of the Higher Education Amendments Act of 1972, which prohibits discrimination on the basis of sex in any educational program or activity receiving federal funds, including athletics, and is enforced by the Department of Education. The Department's regulatory test for compliance (widely known as the "three-prong" test) requires: a) substantially proportional representation of men and women in athletic participation (considered a "safe harbor" from prosecution); or b) substantial progress in providing opportunities for the underrepresented sex; or c) adequate accommodation of the interests and abilities of the underrepresented sex in the institution's athletic offerings ("prong three").

The report is based on a briefing by a balanced panel of experts who debated, among other topics, the efficacy of the model survey guidance provided by the Department of Education in 2005 to help colleges comply with prong three of the test, and the ability of students to express their interests in athletics. The report includes discussions of the rationale for developing the model survey, including the need to provide an objective alternate to prong one, currently considered the only "safe harbor" from prosecution, which some witnesses alleged had resulted in men's sports being dropped.

The Commission found that the Department's 2005 model survey provides the best method available for achieving compliance under prong three, that students (including women) are fully capable of expressing their interests, and recommends that schools continue to use the survey to comply with Title IX rather than relying on mechanical compliance with proportional representation. The Commission also recommends that the regulations be revised to explicitly take into account the athletic interests of both sexes rather than just the interests of the underrepresented sex, restoring Title IX to its original goal of providing equal opportunity for individuals of both sexes.

The body of the report was approved by Chairman Reynolds and Commissioners Kirsanow, Taylor, Heriot, and Gaziano. Vice Chair Thernstrom and Commissioners Yaki and Melendez were not present for the vote. The report includes findings and recommendations (with the vote tally noted), a statement submitted by Vice Chair Thernstrom, and a joint rebuttal by Commissioners Yaki and Melendez.

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Copies of this report are posted online at <http://www.usccr.gov/pubs/TitleIX-2010.pdf> and will be available through the agency's Robert S. Rankin National Civil Rights Library—(202) 376-8110; TTY: (202) 376-8116.

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The U.S. Commission on Civil Rights is an independent, bipartisan agency charged with monitoring federal civil rights enforcement. Members include Chairman Gerald A. Reynolds, Vice Chair Abigail Thernstrom, Commissioners Todd Gaziano, Gail Heriot, Peter N. Kirsanow, Arlan D. Melendez, Ashley L. Taylor, Jr., and Michael Yaki. Martin Dannenfelser is the Staff Director. Commission meetings are open to the general public. The Commission's website is <http://www.usccr.gov>.