

Sock Foon MacDougall

From: Christopher Byrnes
Sent: Monday, March 30, 2009 4:24 PM
To: Sock Foon MacDougall
Subject: FW: Public Comment on Title IX
Attachments: Title IX comments for USCCR.doc

Here you go!

From: Allison Kasic [mailto:AKasic@iwf.org]
Sent: Wednesday, June 06, 2007 9:27 AM
To: Byrnes, Christopher
Subject: Public Comment on Title IX

Public Comment on Title IX

Submitted via email to Chris Byrnes on June 6, 2007

The Independent Women's Forum is a non-partisan, 501(c)(3) non-profit educational institution. Founded in 1992, IWF's mission is to rebuild civil society by advancing economic liberty, personal responsibility, and political freedom. IWF fosters greater respect for limited government, equality under the law, property rights, free markets, strong families, and a powerful and effective national defense and foreign policy. IWF is home to the next wave of the nation's most influential scholars—women who are committed to promoting and defending economic opportunity and political freedom.

Title IX is one of the many policies that IWF monitors closely through our campus program. We are thrilled that the commission decided to address this important issue in its May meeting.

Since Title IX's inception in 1972, much has changed for women in society. Women face less discrimination and have more opportunities than ever before. Many of the gains women have made in the past 35 years involve the realm of education. Once a minority of college students, women now make up six of every ten undergraduate students in the country. The Independent Women's Forum is delighted that women are thriving on campus and in society at large.

Unfortunately, while the status of women on campus has improved over time, Title IX's enforcement mechanisms have not kept pace. Its measures are outdated and require reform to remain relevant in 2007 and beyond.

The current state of Title IX enforcement shows the need for additional measures and clarification. This year has seen a string of massive athletics cuts – ten teams at James Madison University, six teams at Rutgers, and four teams at Ohio University. Unfortunately, these are not anomalies, but rather part of a larger trend in collegiate athletics.

Even though it was not the intention of Title IX (and Title IX supporters are always quick to point out that Title IX does not require schools to cut teams), schools nonetheless view cutting programs (both men's teams and small roster women's teams) as their only option for compliance. These cuts go against the spirit in which Title IX was passed. Both the House and Senate sponsors of the bill assured their fellow politicians and the public that the law would only require that individuals be judged on merit without regard to sex.

4/9/2009

The pressure to cut teams stems from prong one of Title IX's compliance options, commonly referred to as proportionality. Considering budgetary concerns and other factors, it is usually easier for schools to cut men's teams than to add women's teams to meet the gender ratios that proportionality requires. As the percentage of female students continues to increase, even more cuts are necessary to stay in safe harbor under the proportionality test.

Still, proportionality remains the only real option for schools wishing to comply with the law. Schools rely on proportionality because it provides a quantitative measure, whereas the other prongs (methods of coming into compliance) are subjective in nature. These methods are demonstrating a continual expansion of opportunities for the underrepresented sex—usually interpreted as women—or fully accommodating the interest and ability of the underrepresented sex. Even with the best of intentions for improving opportunities for women, schools seeking compliance through these two methods face the threat of lawsuits from interest groups. The answer to fixing problems in Title IX enforcement is providing quantitative measures for these methods—or prongs. Only then will schools view them as long-term options, and not as transitional options leading toward eventual compliance via proportionality.

Interest surveys are an excellent opportunity to move toward providing a quantitative measure to satisfy interests of the underrepresented sex. The Department of Education took a step in the right direction with its model survey for schools. However, since schools are still hesitant to implement the survey and interest groups have threatened to sue any school that implements the survey further guidance is needed.

The other benefit to surveys is that, for the first time, they would give athletes a say in what sports a school sponsors. Under proportionality, small roster sports for both men and women are the first to go. Decisions are often made by administrators behind closed doors. Athletes are not involved in the discussion until it's too late for their opinions to affect the school's decision. In other words, compliance has become a simple numbers game, without regard to student interest and popularity in the different sports. Such a one-size-fits-all system hardly serves student interests. Surveys would solve this problem by allowing schools to customize their athletics programs to their local needs. Some schools might favor primetime sports like basketball while others might find their niche with outstanding Olympic sports programs. Sports with regional popularity, such as ice hockey or water polo could thrive.

As a former Division I athlete, I am thrilled that women are thriving in higher education. But both women and men on campus deserve better from Title IX. They deserve the same opportunity to succeed and should not be treated as numbers in an attempt to meet the requirements of the proportionality test. Interest surveys would solve many problems associated with Title IX, but until schools receive sufficient guidance on how to implement these surveys (in a way that will provide legal safe harbor), such potentially valuable surveys are unlikely to be widely used. It is my hope that the commission will encourage the U.S. Department of Education to provide further guidance in this regard.

Thank you for considering these comments.

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MacDougall, Sock-Foon

From: Advocacy [Advocacy@WomensSportsFoundation.org]
Sent: Friday, June 08, 2007 9:45 AM
To: MacDougall, Sock-Foon
Subject: Title IX Hearing Public Record

Hi Sock-Foon,

I'm with the Women's Sports Foundation and we would like to submit our most recent research report, "Who's Playing College Sports?" to the public record for the May 11 Title IX hearing. The report and its supplement are attached. Please let me know if you have any questions.

Thank you,
Melanie

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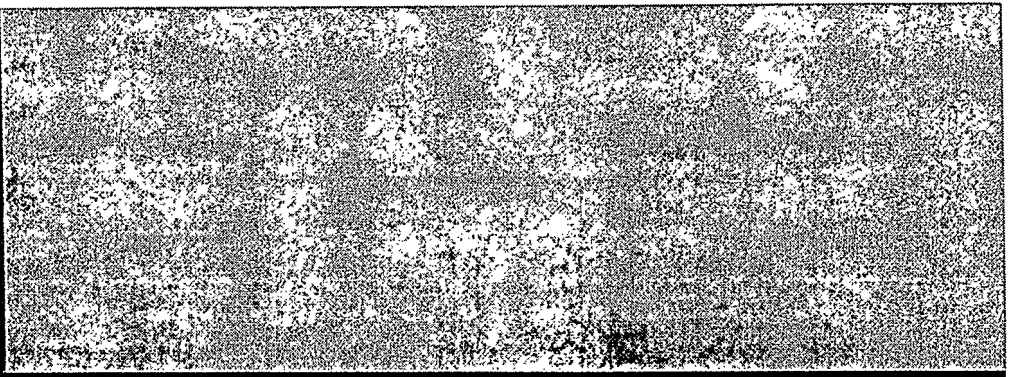
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Women's Sports Foundation

RESEARCH SERIES

Who's Playing College Sports?

Trends in Participation

June 5, 2007



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This report is the first in a series of three gender equity reports. The second report will examine which factors influence intercollegiate participation changes, with a special focus on Title IX, spending on men's basketball and football, and changing preferences for less prominent men's sports. It is scheduled for release in January 2008. The third report will examine how the racial and ethnic composition of intercollegiate athletes has changed over time. It is scheduled for release in June 2008.

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Who's Playing College Sports?

Trends in Participation

Table of Contents

About the Women's Sports Foundation	2
Acknowledgments.....	2
Executive Summary.....	3
Major Findings	3
Policy Implications.....	4
How Are Colleges and Universities Doing? Grading Participation, Documenting Expansion.....	4
Introduction.....	6
Findings.....	7
Women's Participation	7
Men's Participation	9
Female Share of Athletes.....	11
Compliance with Title IX	11
Distribution of Institutions Across Athletic Organization Affiliations and Divisions.....	13
Participation Levels by Affiliation and Division	13
Title IX Compliance by Affiliation and Division	16
What Explains These Participation Trends.....	17
Policy Implications.....	18
How Are Colleges and Universities Doing? Grading Participation, Documenting Expansion.....	19
Appendix A: Comparison with Alternative Reports	21
College Sports Council Longitudinal Study of NCAA Participation Data (College Sports Council, 2007)	21
Intercollegiate Athletics: Comparison of Selected Characteristics of Men's and Women's Programs (General Accounting Office, 1999).....	22
Appendix B: Sample Overview and Data Corrections	24
Sample Overview.....	24
Data Corrections.....	24
Appendix C: Cross Country and Track and Field.....	26
Appendix D: Title IX and Athletics.....	27
References.....	29

About the Women's Sports Foundation

Founded in 1974 by Billie Jean King, the Women's Sports Foundation is a national charitable educational organization seeking to advance the lives of girls and women through sports and physical activity. The Foundation's Participation, Education, Advocacy, Research and Leadership programs are made possible by gifts from individuals, foundations and corporations. The Foundation is located in Nassau County, N.Y. For more information, please call the Foundation at (800) 227-3988 or visit www.WomensSportsFoundation.org. The Foundation serves as a center for collecting and sharing information on girls and women in sports and physical activity. The Women's Sports Foundation also produces academic research on the psychological, social and physiological dimensions of sport and physical activity in the lives of girls and women.

This educational publication is made possible by the support of our members and donors. The Women's Sports Foundation is a 501(c)(3) nonprofit organization. Donations to the Foundation are tax-deductible to the full extent of the law. Please give generously to support our mission and activities.

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Executive Summary

The 35th anniversary of Title IX is an excellent time to consider men's and women's participation in intercollegiate athletics. This study provides the most accurate and comprehensive examination of participation trends to date. We analyze data from almost every higher education institution in the country and utilize data and methods that are free of the shortcomings present in previous research on this subject. A 10-year NCAA sample containing 738 NCAA colleges and universities is examined over the 1995-96 to 2004-05 period. In addition, a complete four-year sample containing 1,895 higher education institutions is examined over the 2001-02 to 2004-05 period.

The results demonstrate that women continue to be significantly underrepresented among college athletes. At the average higher education institution, the female share of undergraduates is 55.8% while the female share of athletes is 41.7%. Women did enjoy a substantial increase in participation opportunities in the late 1990s, but this progress slowed considerably in the early 2000s. In fact, the increase in women's participation levels was roughly equal to the increase in men's participation levels between 2001-02 and 2004-05. Progress towards more equitable participation numbers for men and women has stalled.

Debates over Title IX have focused more on maintaining the numerous athletic opportunities that men have historically enjoyed rather than ensuring that women gain access to the opportunities they have been historically denied. In other words, the significant underrepresentation of women among college athletes often receives relatively little attention. Instead, the debate focuses on whether or not men have maintained their high participation levels, and many claim that men's athletic participation has seriously declined over time. The results of this study clearly refute this claim and instead indicate small overall increases in men's participation in intercollegiate athletics. Men's participation levels grew slightly between 1995-96 and 2001-02, a period containing the *Cohen vs. Brown* decision that encouraged colleges and universities to take Title IX more seriously. Furthermore, men's participation levels continued to increase between 2001-02 and 2004-05, a moment of tough financial times for many higher education institutions.

This report demonstrates the importance of providing a complete portrait of participation trends. Examination of specific sports or sets of institutions can produce misleading results. For example, participation in men's wrestling and tennis declined substantially over time, but other men's sports (football, baseball, lacrosse and soccer) experienced much larger gains. While it is true that men's participation levels fell slightly among Division I-A institutions, no other set of institutions experienced declines and many saw their men's participation levels increase.

Major Findings

1. Women's athletic participation levels substantially increased during the late 1990s, but this growth slowed considerably in the early 2000s.
 - ◆ For the 10-year/738 NCAA institutions sample, female participation grew by almost 26,000 athletes between 1995-96 and 2004-05, but only 15% of this increase came during the 2001-02 to 2004-05 period.
 - ◆ For the complete four-year/1,895 institutions sample, female participation grew by 11,000 athletes between 2001-02 and 2004-05, an increase similar to that experienced by men.
2. Women's participation still lags far behind men's participation levels.
 - ◆ For the average higher education institution in the complete four-year/1,895 institutions sample, the female share of undergraduate enrollment in 2004-05 was 55.8% while the female share of athletes was only 41.7%.
 - ◆ For the complete four-year/1,895 institutions sample, the reported number of men's participants in 2004-05 was 291,797, while the corresponding number for women was 205,492. In combination, these figures demonstrate that as of 2004-05, only 41% of athletic participants were women and 151,149 female athletes would need to have been added (assuming no reduction in male participants) to reach a share of 55%, the female share of full-time undergraduates in the fall of 2004.

3. Men's overall athletic participation levels increased over time.
 - ◆ For the 10-year/738 NCAA institutions sample, male participation grew by around 7,000 athletes between 1995-96 and 2004-05, an average of almost 10 athletes per institution.
 - ◆ For the complete four-year/1,895 institutions sample, male participation grew by almost 10,000 athletes between 2001-02 and 2004-05, an average of slightly over five athletes per institution.
4. While a few men's sports suffered substantial declines, a larger number of men's sports enjoyed increases that far outnumbered those losses.
 - ◆ For the 10-year/738 NCAA institutions sample, only tennis (-678) and wrestling (-488) experienced declines of more than 80 athletes between 1995-96 and 2004-05. In contrast, four men sports grew by much larger amounts: football grew by more than 4,000 participants while baseball (+1,561), lacrosse (+1,091) and soccer (+758) also rose sharply.
 - ◆ For the complete four-year/1,895 institutions sample, only two men's sports (tennis and volleyball) experienced declines of more than 60 athletes between 2001-02 and 2004-05, while 12 men's sports had increases of at least that amount. Men's football, baseball, lacrosse and soccer again enjoyed the largest increases.
 - ◆ For some of the growing men's sports (especially football), the participation increases were primarily due to growth in the average roster size. As a result, the total number of men's teams essentially remained the same over the period of study.
5. The only subset of higher education institutions that experienced declines in men's participation levels was NCAA Division I-A schools, the institutions that spend the most on intercollegiate athletics.
 - ◆ For the 10-year/738 NCAA institutions sample between 1995-96 and 2004-05, men's participation grew in Divisions II and III, remained mostly the same in Divisions I-AA and I-AAA, and fell only in Division I-A.
 - ◆ For the complete four-year/1,895 institutions sample between 2001-02 and 2004-05, all six of the major intercollegiate athletic organizations (NCAA, NAIA, NCCAA, NJCAA, COA, NWAAC) experienced overall increases in men's participation levels.

Policy Implications

Many of the arguments against Title IX in intercollegiate sports are not supported by the data presented in this comprehensive report. The findings in this study have implications for the ways that policymakers think about how Title IX has shaped the lives and opportunities of female and male athletes on American campuses.

1. Further weakening of Title IX, as represented by the March 2005 policy clarification, is unjustified.
2. Title IX does not need to be reformed to stop large overall decreases in men's athletic participation because such decreases have not occurred.
3. The debate over Title IX should not be based on the experience of a few individual sports.
4. Efforts to analyze and stem reductions in men's sports should focus on Division I-A institutions, the only set of institutions that experienced declines. Future attempts to explain the declines of men's athletic participation at Division I-A institutions should consider institutional policies and practices associated with the "arms race" in athletic spending.

How Are Colleges and Universities Doing? Grading Participation, Documenting Expansion

This report contains an online component (available at www.WomensSportsFoundation.org) that enables readers to evaluate and compare each higher education institution's performance in relation to its peers. We present the female share of undergraduates and the female share of athletes for each institution to examine whether the gender composition of an institution's athletes is similar to the gender composition of its student body. To help highlight colleges and universities that perform well in this regard, we assign grades. To identify higher education institutions that recently expanded the number of opportunities for female athletes, we also list the change in women's participation levels over recent years. Please see page 19 for additional details and a description of the grading criteria.

Introduction

The year 2007 marks the 35th anniversary of the passage of Title IX, which prohibits discrimination by gender in any federally funded educational institution. Although Title IX applies broadly to all aspects of education, the focus of this report is its application to intercollegiate athletic participation. Since the passage of Title IX in 1972, athletic opportunities for female undergraduates have expanded considerably.

To what extent has women's athletic participation continued to increase over the last 10 years? Have recent gains addressed the historical gender inequities within intercollegiate athletics? Such questions are important but sometimes missing within the Title IX debate. In contrast, much attention focuses on whether male athletes continue to enjoy their high participation levels. Some assert that men's athletics have been severely reduced, but these claims are rarely based on definitive statistical evidence. When sound data and analyses are utilized, how have men's participation levels changed over time?

In the past, these questions were difficult to answer due to a scarcity of data on intercollegiate athletics participation levels, which has prevented researchers from conducting substantial longitudinal analyses. As a result, estimates of participation trends can only be drawn from a limited number of reports, which contain contradictory findings in terms of men's participation levels and often possess serious shortcomings. A previous Women's Sports Foundation report (Sabo, 1997) and a 2001 Government Accounting Office (GAO) report found that men's sports have increased over time, yet a recent College Sports Council (CSC) study and a 1999 GAO report produced contradictory results. Appendix A discusses these reports further, and in an effort to generate consensus, demonstrates that past findings that differ from those presented in this report are primarily the result of shortcomings in the data and methodology these studies employ.

As a result of the limited research, great confusion exists regarding how athletic participation levels in higher education have changed over time. The hearings of the Secretary's Commission on Opportunity in Higher Education (2002-03) focused extensively on changes in athletic participation for men and women over time. The commission members brought in several experts to discuss the existing reports with "the hope that there would be some clarity and unanimity regarding some of these numbers," but the hearings ended with little consensus on how participation opportunities have changed over time.

The passage of the Equity in Athletics Disclosure Act (EADA) in 1994 created the opportunity for the clarity and unanimity that the commission members desired. This act requires colleges and universities to report detailed data on their athletic program to the general public. While some of the reported data are flawed, most notably the financial data, the participation data contain relatively few errors, and researchers can identify and adjust for these errors.

This report utilizes available EADA data to provide the most accurate and comprehensive analysis of how intercollegiate athletic participation levels have changed over time. This report differs from earlier studies in a number of important ways. The sample contains almost all institutions of higher education, while previous studies used only a subset of schools. As demonstrated in Appendices B and C, we expended great effort to ensure data validity, steps that were not taken in many previous reports. And finally, this report uses data that are publicly available, so unlike previous analyses of participation trends, the validity of the findings presented here can be scrutinized by the greater research community.

Due to changes in the reporting requirements of the EADA over time, we use two samples of higher education institutions throughout this study. Our "10-year/738 NCAA institution sample" includes the 738 NCAA institutions that reported data for the 1995-96, 2001-02, and 2004-05 academic years. Our "complete four-year/1,895 institutions sample" contains the 1,895 higher education institutions that reported data for 2001-02 and 2004-05, a nearly complete roster of all postsecondary institutions that offer athletic departments. As discussed in Appendix B, we use a smaller sample for the 10-year period, because the EADA did not require institutions to report participation data to the Office of Postsecondary Education (OPE) until 2000-01. As a result, a more limited amount of data is available for 1995-96.

Findings

Women's Participation

As demonstrated by Table 1, female participation in intercollegiate athletics increased by approximately 25,000 athletes over the 1995-96 to 2004-05 period for the 10-year/738 NCAA institutions sample. These gains were concentrated in the early years of the period as progress towards gender equity slowed considerably during the last three years of the period. Almost 85% of the increases in women's participation occurred between 1995-96 and 2001-02.

Participation trends varied significantly across sports. Soccer grew by more than 4,000 participants, while rowing (+2,779), softball (+2,203), swimming (+1,630) and lacrosse (+1,550) also experienced substantial gains. Our estimates also demonstrate similarly sized increases for cross country, indoor track and field, and outdoor track and field (see Appendix C for a discussion of these sports). In contrast, a number of sports (squash, tennis, skiing, rifle, sailing, gymnastics and fencing) experienced relatively little or no growth for women.

The results in Table 2 demonstrate that participation levels for women increased by more than 11,000 athletes between 2001-02 and 2004-05 for the complete four-year/1,895 institutions sample. The trends across sports did not differ from those reported for the 2001-02 to 2004-05 period in Table 1. The number of participants in squash, gymnastics and tennis fell, while the largest increases occurred in soccer, track and field, cross country, softball, swimming, volleyball and golf.

The number of women's teams also grew substantially in the late 1990s, but this growth slowed in the early 2000s. (See Table 3.) For the 10-year/738 NCAA institutions sample, 876 teams were added between 1995-96 and 2004-05, an increase of more than one team per school. For the complete four-year/1,895 institutions sample, the increase was 394 between 2001-02 and 2004-05, suggesting that only a minority of institutions added women's teams during this period. The differences by sports were similar to those reported for participation levels, except that one sport, golf, became more noticeable as a growth sport. An additional golf team does not create as many extra participants as other sports do because the average roster size for golf is relatively small (7.2).

Table 1: Women's Participation by Sport, 10-Year/738 NCAA Institutions Sample

Sport	1995-96	2001-02	2004-05	Change: 95-04
Soccer	10,752	14,902	15,632	4,880
Rowing	3,184	5,759	5,963	2,779
Softball	9,706	11,553	11,909	2,203
Swimming	7,088	8,436	8,718	1,630
Lacrosse	3,038	4,432	4,588	1,550
Golf	1,795	2,749	2,956	1,161
Ice Hockey	377	1,222	1,348	971
Water Polo	221	850	950	729
Equestrian	331	848	1,041	710
Volleyball	9,191	9,669	9,896	705
Field Hockey	3,953	4,307	4,356	403
Basketball	10,316	10,721	10,626	310
Other Sports*	279	590	573	294
Bowling	29	224	289	260
Fencing	506	590	622	116
Gymnastics	1,208	1,285	1,310	102
Sailing	361	428	461	100
Rifle	110	123	135	25
Skiing	373	368	389	16
Tennis	6,244	6,355	6,256	12
Squash	324	327	311	-13
Subtotal	69,386	85,738	88,329	18,943
Cross Country**	(Estimated increase of 1,426 participants)			
Indoor Track & Field**	(Estimated increase of 3,478 participants)			
Outdoor Track & Field**	(Estimated increase of 1,998 participants)			
Total	(Estimated increase of 25,845 participants)			
* Other Sports include archery, badminton, ice skating, judo, lightweight rowing, pistol, polo, rodeo, rugby, synchronized swimming, track & skeet shooting, water skiing, and wrestling. None of these sports have more than 10 teams in any year.				
** See Appendix C for further discussion of cross country and track and field estimates.				

Sport	2001-02	2004-05	Change
Soccer	26,312	28,576	2,264
Softball	25,118	25,897	779
Swimming	10,731	11,371	640
Volleyball	20,781	21,409	628
Golf	4,237	4,783	546
Lacrosse	5,385	5,791	406
Equestrian	1,467	1,751	284
Rodeo	337	554	217
Ice Hockey	1,427	1,638	211
Rowing	6,580	6,780	200
Basketball	24,219	24,381	162
Bowling	428	589	161
Water Polo	1,618	1,768	150
Field Hockey	5,176	5,308	132
Sailing	510	595	85
Fencing	616	661	45
Rifle	173	198	25
Skiing	503	523	20
Badminton	144	153	9
Squash	338	322	-16
Gymnastics	1,483	1,424	-59
Other Sports*	1,142	1,021	-121
Tennis	10,212	10,023	-189
Subtotal	148,937	155,516	6,579
Cross Country**	(Estimated increase of 837 participants)		
Indoor Track & Field**	(Estimated increase of 1,815 participants)		
Outdoor Track & Field**	(Estimated increase of 1,813 participants)		
Total	(Estimated increase of 11,043 participants)		
* Other Sports include archery, ice skating, judo, lightweight rowing, pistol, polo, rodeo, rugby, synchronized swimming, table tennis, team handball, water skiing, weight lifting, and wrestling. None of these sports have more than 10 teams in any year.			
** See Appendix C for further discussion of cross country and track and field estimates.			

Sport	1995-2004*	2001-2004*
Soccer	162	86
Golf	141	68
Softball	92	33
Track and Field, Indoor**	71	48
Lacrosse	72	22
Track and Field, Outdoor**	46	18
Swimming	40	15
Cross Country**	34	18
Bowling	30	17
Water Polo	37	7
Ice Hockey	38	6
Rowing	43	2
Volleyball	18	18
Basketball	10	25
Field Hockey	20	7
Equestrian	17	8
Rodeo	1	19
Other Sports	7	11
Sailing	2	4
Rifle	1	-1
Squash	0	-1
Fencing	-1	-1
Skiing	-2	1
Gymnastics	-5	-6
Tennis	2	-30
Total	876	394
* The first column of results contains the number of teams added, on net, between the 1995-96 to 2004-05 period for the 10-year/738 NCAA institutions sample. The second column contains the same information for the complete four-year/1,968 institutions sample for the 2001-02 to 2004-05 period.		
** See Appendix C for further discussion of cross country and track and field estimates.		

Men's Participation

Male participation in intercollegiate athletics increased by approximately 7,000 athletes over the 1995-96 to 2004-05 period for the 10-year/1,865 NCAA sample. (See Table 4.) This increase was steady over the period, occurring during good economic times for colleges and universities (the late 1990s) as well as relatively bad economic times (the early 2000s). The gain in men's overall participation masked differences across individual sports; increases in the growing sports were substantially larger than the declines in the remaining sports. Four sports accounted for almost all of the increase in men's participants: football grew by more than 4,000 participants, while baseball (+1,561), lacrosse (+1,091) and soccer (+758) also rose sharply. Meanwhile, only two sports declined by more than 80 athletes, and these declines were relatively small at -680 (for tennis) and -488 (for wrestling). In general, the trends by sport were similar for men and women in that the sports experiencing no growth for women were those that had declines for men.

Although small in terms of total athletes, the reductions in some of the individual men's sports were relatively large in percentage terms.

For example, rifle fell by only 41 athletes, but that was a 20% decline from 1995-96 levels. To demonstrate how important scale is, consider the following: in 2004-05, the combined number of participants for men's water polo, volleyball, skiing, rifle, fencing, squash, sailing and gymnastics was 3,693. In contrast, the number of football participants grew by 4,063 between 1995-96 and 2004-05. In other words, if the 4,063 increase in participants occurred in these eight sports rather than football, each of these sports would be more than twice as large in 2004-05.

As indicated by Table 5, the growth in men's sports between 2001-02 and 2004-05 was even larger when one considers all higher education institutions (i.e. the complete four-year/1,895 institutions sample). During this period, men's participation levels increased by close to 10,000 for the 1,895 institutions reporting data for both years. This increase is very similar to the 11,000 participant increase reported for women in Table 2 for the same set of institutions. Almost two-thirds (16 of 25) of men's sports experienced gains between 2001-02 and 2004-05. Table 5 shows that the declines in individual men's sports were very slight in relation to the gains in other sports. Only two men's sports experienced declines of more than 60 athletes, while 12 men's sports had increases of at least that amount. As in Table 4, the men's sports that experienced the largest gains were football, baseball, soccer and lacrosse, whose gains dwarfed the losses experienced by volleyball and tennis, the two sports with the largest declines.

Table 4: Men's Participation by Sport, 10-Year/738 NCAA Institutions Sample

Sport	1995-96	2001-02	2004-05	Change: 95-04
Football	43,814	46,716	47,870	4,056
Baseball	19,482	20,506	21,043	1,561
Lacrosse	4,482	5,148	5,573	1,091
Soccer	13,492	13,847	14,250	758
Swimming	6,146	6,136	6,274	128
Other Sports*	536	454	626	90
Water Polo	602	651	684	82
Volleyball	719	845	768	49
Rowing	2,388	2,396	2,436	48
Basketball	11,828	11,842	11,868	40
Skiing	417	402	405	-12
Ice Hockey	3,027	3,057	3,003	-24
Rifle	210	210	169	-41
Fencing	628	542	586	-42
Squash	418	374	368	-50
Sailing	509	403	436	-73
Golf	6,008	6,001	5,932	-76
Gymnastics	354	280	277	-77
Wrestling	5,089	4,787	4,601	-488
Tennis	6,252	5,780	5,572	-680
Subtotal	126,401	130,377	132,741	6,340
Cross Country**	(Estimated increase of 48 participants)			
Indoor Track & Field**	(Estimated increase of 915 participants)			
Outdoor Track & Field**	(Estimated decrease of 202 participants)			
Total	(Estimated increase of 7,101 participants)			
* Other Sports include archery, bowling, cricket, equestrian, judo, sprint football, lightweight rowing, pistol, polo, rodeo, rugby, track & skeet shooting, and water skiing. None of these sports have more than 10 teams in any year.				
** See Appendix C for further discussion of cross country and track and field estimates.				

Sport	2001-02	2004-05	Change
Football	73,714	76,639	2,925
Baseball	44,367	46,511	2,144
Soccer	28,542	29,903	1,361
Lacrosse	6,964	7,730	766
Swimming	7,917	8,349	432
Basketball	28,235	28,589	354
Other Sports*	786	1,064	278
Golf	11,129	11,374	245
Sailing	498	581	83
Water Polo	1,384	1,461	77
Bowling	232	302	70
Rodeo	1,058	1,125	67
Fencing	568	620	52
Squash	385	380	-5
Wrestling	7,483	7,478	-5
Skiing	578	562	-16
Ice Hockey	4,043	4,026	-17
Rowing	2,899	2,876	-23
Rifle	263	232	-31
Gymnastics	353	295	-58
Volleyball	1,752	1,624	-128
Tennis	9,391	9,052	-339
Subtotal	232,541	240,773	8,232
Cross Country**	(Estimated increase of 84 participants)		
Indoor Track & Field**	(Estimated increase of 759 participants)		
Outdoor Track & Field**	(Estimated increase of 890 participants)		
Total	(Estimated increase of 9,965 participants)		
* Other Sports include archery, cricket, judo, sprint football, lightweight rowing, pistol, polo, rodeo, rugby, table tennis, team handball, and water skiing. None of these sports have more than 10 teams in any year.			
** See Appendix C for further discussion of cross country and track and field estimates.			

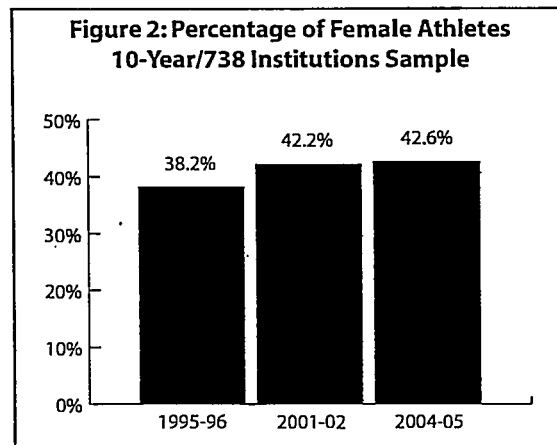
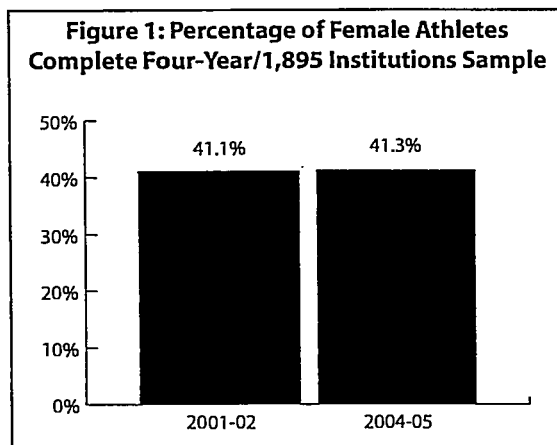
Sport	1995-2004*	2001-2004*
Track & Field, Indoor**	34	37
Lacrosse	20	9
Baseball	3	15
Soccer	2	15
Other Sports	4	12
Cross Country**	10	5
Track and Field, Outdoor**	7	8
Golf	8	3
Rodeo	1	10
Basketball	2	8
Football	3	1
Sailing	2	2
Ice Hockey	2	0
Water Polo	5	-3
Skiing	0	-3
Squash	-2	-1
Rifle	-1	-3
Rowing	0	-7
Fencing	-5	-2
Swimming	-7	-3
Volleyball	0	-19
Gymnastics	-10	-5
Wrestling	-32	-8
Tennis	-44	-48
Total	2	23
* The first column of results contains the number of teams added, on net, between the 1995/96 to 2004/05 period for the 10-year/738 NCAA institutions sample. The second column contains the same information for the complete four-year/1,968 institutions sample for the 2001/02 to 2004/05 period.		
** See Appendix C for further discussion of cross country and track and field estimates.		

This overall growth in participation, however, did not translate into growth in the number of men's teams. As indicated in Table 6, the overall number of men's teams experienced almost no change over time. The number of teams for some individual sports, however, did increase or decrease over the period of study. There are two reasons why the overall number of men's participants increased but the overall number of men's teams did not. First, the average roster size increased between 1995-96 and 2004-05 for several men's sports, most notably football (+7.0), baseball (+2.3), lacrosse (+3.4) and soccer (+1.2). Second, the sport experiencing the largest decline was tennis, which had teams with an average roster size of 9.4 in 2004-05. Meanwhile, the average roster sizes in 2004-05 were quite large for growing sports such as lacrosse (32.9), baseball (30.0) and soccer (24.6).

Female Share of Athletes

While women's participation increased more than men's participation, females still comprise a minority of athletes. For the complete four-year sample of 1,895 institutions, the reported number of men's participants in 2004-05 was 291,797 while the corresponding number for women was 205,492. In combination, these figures demonstrate that as of 2004-05, only 41% of athletic participants were women, and 151,149 female athletes would need to have been added (assuming no reduction in male participants) to reach a share of 55%, the female share of full-time undergraduates in the fall of 2004 (NCES, 2005).

As demonstrated in Figure 1, the female participation share changed little (from 41.1% to 41.3%) between 2001-02 and 2004-05 for our complete four-year/1,895 institutions sample. Figure 2 shows similar findings over this period for the 10-year/738 NCAA institutions sample, but it also depicts substantial improvement during the late 1990s. Between 1995-96 and 2001-02, the female share of athletes increased from 38.2% to 42.2%. The female share only increased four-tenths of a percentage point between 2001-02 and 2004-05 (from 42.2% to 42.6%).



The much higher participation levels for men do not imply that a larger number of men's teams were offered. Among our complete four-year/1,895 institutions sample, the average institution offered 6.3 men's teams and 6.7 women's teams in 2004-05. The contrast between the participation and team numbers mainly reflects the large average roster size for football, which was 93 for the 823 institutions offering the sport in 2004-05.

Compliance with Title IX

To demonstrate compliance with Title IX, higher education institutions must meet requirements in three areas: participation; athletic financial assistance and other program areas. For a complete description of these standards, please see Appendix D. To determine whether colleges and universities are providing equitable participation opportunities to female athletes, the Office for Civil Rights (OCR) has developed the following three-prong test.

Prong One: Substantial Proportionality. This part of the test is satisfied when participation opportunities for men and women are "substantially proportionate" to their respective undergraduate enrollments.

Prong Two: History and Continuing Practice. This part of the test is satisfied when an institution has a history and continuing practice of program expansion that is responsive to the developing interests and abilities of the underrepresented sex (typically female).

Prong Three: Effectively Accommodating Interests and Abilities. This part of the test is satisfied when an institution is meeting the interests and abilities of its female students even where there are disproportionately fewer females than males participating in sports (U.S. Department of Education, 1997).

An institution fulfills the participation requirement if it adheres to any or just one of the three tests listed above. The Equity in Athletics Disclosure Act (EADA) data allow one to make several broad-brush inferences with regard to compliance with the first two prongs of the Title IX athletic participation standards.

Table 7 contains detailed information on the extent to which participation opportunities were "substantially proportionate" to undergraduate enrollments. For the complete four-year/1,985 institutions sample in 2004-05, the female share of undergraduate enrollments was 55.8%, while

the female share of athletes was 41.7%. In combination, these figures mean that the average institution had a proportionality gap of 14.1 percentage points and was far from compliance with the first prong of the test. The figures were only slightly better for the 10-year/738 NCAA institutions sample, which had an average female share of athletes of 42.7% and an average proportionality gap of 12.5 percentage points.

In a 1996 policy clarification, the Office for Civil Rights (OCR) stated that they would:

consider opportunities to be substantially proportionate when the number of opportunities that would be required to achieve proportionality would not be sufficient to sustain a viable team, i.e., a team for which there is a sufficient number of interested and able students and enough available competition to sustain an intercollegiate team (Office for Civil Rights, 1996).

Depending on the size of the institution's athletic department, an institution would need a proportionality gap between one and three percentage points to meet this standard. As Table 7 indicates, the large majority of institutions (somewhere above 86.9% or 1,620 institutions) did not achieve substantial proportionality in 2004-05 because their female share of athletes was below their female share of undergraduates. Furthermore, many institutions were far from compliance with the first prong; for example, 46% of the complete four-year/1,895 institutions sample had a proportionality gap greater than 15 percentage points.

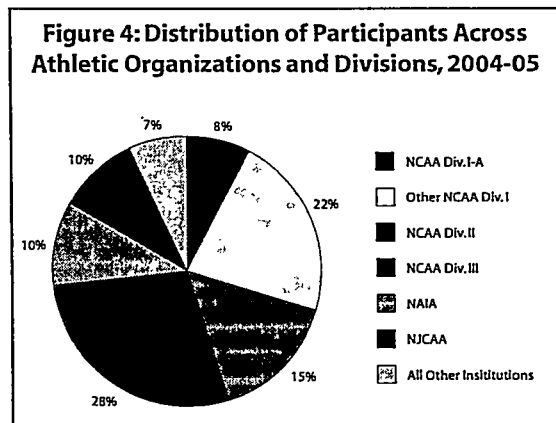
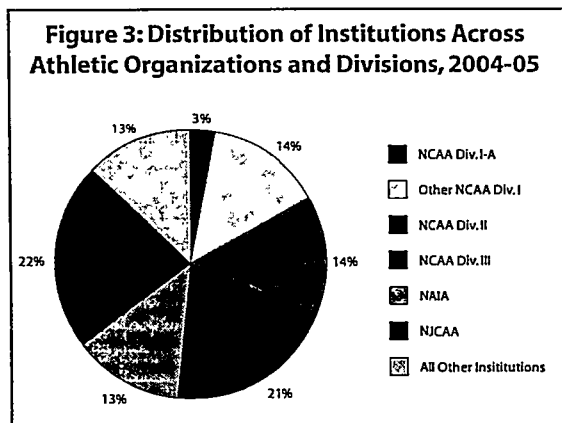
Table 7 also demonstrates that approximately a quarter of institutions added a female sport on net between 2001-02 and 2004-05; that is, around 25 percent of institutions increased the number of women's teams they offer. Some of these institutions, however, may not be in compliance with Prong Two (a history and continuing practice of program expansion), because the 1996 OCR Policy Clarification suggests that a more thorough examination is required. The results in Table 7 indicate that a much larger share of institutions (66%) added a female sport on net between 1995-96 and 2001-02. However, no OCR guidelines suggest that increases in such an historical time frame without additional expansion would demonstrate a history and continuing practice of program expansion.

In combination, the figures in Table 7 clearly indicate that the majority of institutions would not meet either of the first two prongs of the three-prong test. More than 86 percent of institutions would not meet the substantial proportionality standard, and 75 percent did not increase their number of women's teams in the early 2000s. A reliable estimate of Prong Three compliance cannot be conducted using EADA data and is therefore beyond the scope of this report.

Variable	10-Yr NCAA Sample	Complete 4-Yr Sample
% Undergraduates, Female	55.3%	55.8%
% Athletes, Female	42.7%	41.7%
Average Proportionality Gap (Prop Gap)	12.5	14.1
Percent of Institutions:		
with Prop Gap > 3	85.2%	86.9%
with Prop Gap > 5	76.8%	80.7%
with Prop Gap > 10	58.3%	65.8%
with Prop Gap > 15	39.3%	46.3%
with Prop Gap > 20	23.3%	28.6%
with Prop Gap > 25	10.2%	14.4%
with Prop Gap > 30	2.6%	6.3%
Percent of Institutions Adding Women's Teams on Net:		
Between 2001-02 and 2004-05	24.4%	26.0%
Between 1995-96 and 2001-02	65.9%	n/a

Distribution of Institutions Across Athletic Organization Affiliations and Divisions

To this point, we have discussed colleges and universities in the aggregate. The following two sections examine how participation trends and compliance levels vary by an institution's organizational affiliation and the division within the organization in which it competes. It is helpful to first provide some perspective regarding the location of most intercollegiate athletes, because the vast majority of these athletes compete outside the limelight of the national media. The casual observer may believe that intercollegiate athletics primarily takes place within large athletic departments that offer football and compete in Bowl Championship Series (BCS) athletic conferences (Big-10, Pac-10, Big 12, SEC, ACC, Big East). But as Figures 3 and 4 demonstrate, BCS institutions comprise only 3% of the higher education institutions that offer athletics and account for only 8% of intercollegiate athletes.



Nearly half of the colleges and universities that offer athletics are not in the NCAA (around 48%), although the smaller size of athletic programs at non-NCAA institutions cause them to contain only 27% of the total athletes. These schools mostly reside in the National Association of Intercollegiate Athletics (NAIA) and the National Junior College Athletic Association (NJCAA). The other 49% of athletic departments reside at institutions that are in the NCAA but in other conferences within Division I or in Divisions II or III. Unlike Divisions I and II, Division III institutions do not offer athletic scholarships; also, schools in Division II face limits on the number of athletic scholarships allowed that are different from those in Division I.

Participation Levels by Affiliation and Division

Table 8 describes changes in participation levels by NCAA division and subdivision between 1995-96 and 2004-05 for the 10-year/738 NCAA institutions sample. The results indicate that the average institution in the 10-year NCAA sample added 35 female athletes, with steady growth throughout the NCAA, as each division increased its number of female participants by at least 20 percent. The largest gains, in terms of number of participants, occurred in Divisions I-A and I-AA. The results presented earlier in Table 1 demonstrate that most of the gains (about 85%) took place during the first six years of the period.

The evidence in Table 9 (which contains information for the complete four-year/1,895 institutions sample) also suggests that the gains for female athletes slowed between 2001-02 and 2004-05. The average NCAA institution added about seven to eight female athletes over the period of study, with the largest increase occurring among non-BCS Division I-A institutions. Outside of the NCAA, NAIA schools experienced the largest growth (eight female athletes per institution), while two-year institutions in the NJCAA and the Northwest Athletic Association of Community Colleges (NWACC) lagged behind.

Tables 8 and 9 (on the following pages) also report information on how changes in men's athletic participation varied across organizations and divisions. The figures in Table 8 demonstrate that the overall gains for men

Table 8: Participants by NCAA Division, 10-Year/738 NCAA Institutions Sample

	# Inst.	Total Participants			Participants per Institution		
		1995-96	2004-05	Change	1995-96	2004-05	Change
Women							
All NCAA Institutions	738	101,570	127,415	25,845	137.6	172.6	35.0
Division I	269	46,346	58,739	12,393	172.3	218.4	46.1
Div. I-A (BCS)	60	13,636	17,335	3,699	227.3	288.9	61.7
Div. I-A (Non-BCS)	39	6,278	8,471	2,193	161.0	217.2	56.2
Div. I-AA	88	15,823	19,718	3,895	179.8	224.1	44.3
Div. I-AAA	60	7,334	9,008	1,674	122.2	150.1	27.9
Division II	180	16,574	21,571	4,997	92.1	119.8	27.8
Division III	264	35,866	43,449	7,583	135.9	164.6	28.7
Men							
All NCAA Institutions	738	163,998	171,099	7,101	222.2	231.8	9.6
Division I	269	74,513	72,736	-1,777	277.0	270.4	-6.6
Div. I-A (BCS)	60	22,395	21,918	-477	373.3	365.3	-7.9
Div. I-A (Non-BCS)	39	11,685	10,766	-919	299.6	276.1	-23.6
Div. I-AA	88	26,363	26,312	-51	299.6	299.0	-0.6
Div. I-AAA	60	8,933	8,953	20	148.9	149.2	0.3
Division II	180	28,769	31,886	3,117	159.8	177.1	17.3
Division III	264	55,988	61,210	5,222	212.1	231.9	19.8

* An institution is only reported in a division and subdivision if they are in that classification for 1995-96, 2001-02, and 2004-05.

reported in Table 4 (on page 9) were driven by substantial gains for male athletes in Divisions II and III. The average institution in these divisions increased the number of male participants by about 17-20 over this period. In contrast, NCAA Division I institutions reported declines in men's participation levels. Furthermore, these declines were concentrated within the upper levels of Division I. Division I-AAA schools (which don't offer football) and Division I-AA schools (which have a lower football scholarship limit of 63) saw little change in men's participation levels over time. The declines solely occurred for Division I-A institutions (which can offer up to 85 football scholarships). Within Division I-A, the largest reductions occurred for schools located outside of the BCS conferences; they saw a drop of 24 participants per institution, much higher than the eight-participant drop for BCS schools.

The evidence tells a similar story when one examines all intercollegiate athletic organizations. (See Table 9, next page.) Between 2001-02 and 2004-05 for the complete four-year/1,895 institutions sample, the only decreases for men's participation occurred among non-BCS Division I-A institutions and among institutions switching affiliations within Division I over the period. The reductions in the latter group (which are not listed separately in Table 9) primarily came from the seven Division I institutions that dropped football over the period of study and moved into Division I-AAA. Only one Division I institution added football. The largest gains for men occurred within the NAIA, where the average institution added 15 athletes over the period of study.

Table 9: Participants by NCAA Division, Complete Four-Year/1,895 Institutions Sample

	# Inst.	Total Participants			Participants per Institution		
		2001-02	2004-05	Change	2001-02	2004-05	Change
Women							
All Institutions	1895	198,623	209,666	11,043	104.8	110.6	5.8
NCAA	964	149,472	156,687	7,215	155.1	162.5	7.5
Div. I	321	65,537	67,753	2,216	204.2	211.1	6.9
Div. I-A (BCS)	63	18,031	18,373	342	300.5	306.2	5.7
Div. I-A (Non-BCS)	50	10,337	11,082	745	195.0	209.1	14.1
Div. I-AA	113	23,026	23,788	762	203.8	210.5	6.7
Div. I-AAA	83	12,228	12,700	472	147.3	153.0	5.7
Div. II	261	28,626	30,615	1,989	109.7	117.3	7.6
Div. III	375	54,403	57,408	3,005	145.1	153.1	8.0
NAIA	239	17,622	19,627	2,005	73.7	82.1	8.4
Div. I	104	6,484	7,009	525	62.3	67.4	5.0
Div. II	127	10,332	11,803	1,471	81.4	92.9	11.6
NCCAA	41	985	1,132	147	24.0	27.6	3.6
NJCAA	431	17,747	18,397	650	41.2	42.7	1.5
Div. I	220	8,767	9,065	298	39.9	41.2	1.4
Div. II	86	3,783	3,905	122	44.0	45.4	1.4
Div. III	92	3,828	4,035	207	41.6	43.9	2.2
COA	95	7,305	7,713	408	76.9	81.2	4.3
NWAAC	32	1,537	1,511	-26	48.0	47.2	-0.8
Men							
All Institutions	1895	285,215	295,180	9,965	150.5	155.8	5.3
NCAA	964	206,355	210,961	4,606	214.1	218.8	4.8
Div. I	321	83,959	83,036	-923	261.6	258.7	-2.9
Div. I-A (BCS)	63	22,583	22,611	28	358.5	358.9	0.4
Div. I-A (Non-BCS)	50	13,631	13,268	-364	272.6	265.4	-7.3
Div. I-AA	113	32,205	32,323	118	285.0	286.0	1.0
Div. I-AAA	83	12,460	12,594	134	150.1	151.7	1.6
Div. II	261	43,177	44,856	1,679	165.4	171.9	6.4
Div. III	375	77,510	81,543	4,033	206.7	217.4	10.8
NAIA	239	26,264	29,858	3,594	109.9	124.9	15.0
Div. I	104	9,960	11,091	1,131	95.8	106.6	10.9
Div. II	127	15,005	17,531	2,526	118.1	138.0	19.9
NCCAA	41	1,393	1,503	110	34.0	36.7	2.7
NJCAA	431	29,475	29,958	483	68.4	69.5	1.1
Div. I	220	14,461	14,502	41	65.7	65.9	0.2
Div. II	86	5,776	5,985	209	67.2	69.6	2.4
Div. III	92	6,990	7,148	158	76.0	77.7	1.7
COA	95	13,709	14,390	681	144.3	151.5	7.2
NWAAC	32	1,811	1,872	61	56.6	58.5	1.9
* An institution is only reported in a division and subdivision if they are in that classification for 2001-02 and 2004-05.							
** NCAA refers to the National Collegiate Athletic Association; NAIA refers to the National Association of Intercollegiate Athletics; NCCAA refers to the National Christian College Athletic Association; NJCAA refers to the National Junior College Athletic Association; COA refers to the California Community College Commission on Athletics; NWAAC refers to the Northwest Athletic Association of Community Colleges.							

Title IX Compliance by Affiliation and Division

As indicated in Table 10, some variation existed across the 10-year/738 NCAA institutions sample in terms of our very rough estimates of compliance with Prongs One and Two of the participation requirement of Title IX. In 2004-05, institutions in Division I-A BCS conferences had the smallest average proportionality gap, but that was not because they had the highest share of women among their athletes. Although these institutions had a relatively high share of female athletes (44%), the primary reason why they had the lowest average proportionality gap was their relatively low female share of undergraduates (50%). In contrast, Division I-AAA schools had a substantially higher female share of athletes (50%) but an even higher female share of undergraduates (58.5%). Similarly, Division I-A schools that were not in BCS conferences had a similar female share of athletes (45%) as their BCS counterparts, but had a higher average proportionality gap because 53% of their undergraduates were female. Divisions II, III and I-AA had the lowest female share of athletes and the highest proportionality gaps among all NCAA classifications.

	All NCAA	Div I	Div II	Div III	Div I-A (BCS)	Div I-A (non-BCS)	Div I-AA	Div I-AAA
Average:								
Proportionality Gap	12.5	9.2	16.5	13.3	6.2	8.6	12.5	8.3
Percent Undergraduates, Female	55.3%	54.3%	57.4%	55.0%	50.1%	53.2%	54.3%	58.5%
Percent Athletes, Female	42.7%	45.0%	40.9%	41.7%	44.0%	44.6%	41.8%	50.2%
% with Proportionality Gap > 3	85.2%	78.1%	92.2%	89.0%	73.3%	69.2%	85.2%	78.3%
% with Proportionality Gap > 5	76.8%	62.1%	87.2%	85.2%	51.7%	59.0%	73.9%	56.7%
% with Proportionality Gap > 10	58.3%	40.9%	72.2%	67.0%	26.7%	38.5%	56.8%	35.0%
% adding women's teams:01-04	24.4%	18.6%	31.7%	25.4%	13.3%	25.6%	15.9%	23.3%
% adding women's teams:95-01	65.9%	72.1%	61.1%	61.4%	75.0%	74.4%	79.5%	53.3%
# of Institutions	738	269	180	264	60	39	88	60

* An institution is only reported in a division and subdivision if they are in that classification for 1995-96, 2001-02, and 2004-05.

In terms of program expansion for females, Division II boasted the largest share of institutions that added women's teams between 2001-02 and 2004-05, while Divisions I-A (BCS) and I-AA had the lowest shares. In contrast, Divisions I-A and I-AA had the highest share of institutions that added women's teams over the 1995-96 to 2001-02 period, while Division I-AAA had the lowest share.

As indicated by Table 11, athletic organizations in the complete four-year/1,895 sample differed substantially in meetings Prongs One or Two of Title IX's three-prong test. Among the largest organizations, NAIA and NJCAA schools had slightly higher average

Measure	All	NCAA	NAIA	NCCAA	NJCAA	COA	NWAAC
Average:							
Proportionality Gap	14.1	13.0	15.9	6.9	16.3	19.4	9.5
Percent Undergraduates, Female	55.8%	55.8%	57.6%	49.3%	56.1%	55.4%	54.8%
Percent Athletes, Female	41.7%	42.8%	41.6%	42.4%	39.8%	36.0%	45.3%
% with Proportionality Gap > 3	86.9%	86.2%	89.1%	75.6%	90.7%	94.7%	84.4%
% with Proportionality Gap > 5	80.7%	78.8%	84.9%	63.4%	86.1%	88.4%	78.1%
% with Proportionality Gap > 10	65.8%	61.2%	78.7%	31.7%	71.2%	85.3%	43.8%
% adding women's teams:01-04	26.0%	25.9%	36.0%	34.1%	19.7%	17.9%	12.5%
# of Institutions	1895	964	239	41	431	95	32

* An institution is only reported in a division and subdivision if they are in that classification for 2001-02 and 2004-05.
 ** NCAA refers to the National Collegiate Athletic Association; NAIA refers to the National Association of Intercollegiate Athletics; NCCAA refers to the National Christian College Athletic Association; NJCAA refers to the National Junior College Athletic Association; COA refers to the California Community College Commission on Athletics; NWAAC refers to the Northwest Athletic Association of Community Colleges.

proportionality gaps than those in the NCAA. Note that relative to the NCAA, the female share of undergraduates was higher at NAIA institutions, while the female share of athletes was lower at NJCAA schools. Among the smaller organizations, the NWAAC and the National Christian College Athletic Association (NCCAA) had relatively low average proportionality gaps, while the California Community College Commission on Athletics (COA) had a very high gap. These figures resulted from a relatively low female share of undergraduates at NCCAA institutions (49.3%), a relatively high female share of athletes at NWAAC colleges (45.3%), and a low female share of athletes at COA colleges (36%).

In terms of expanding women's athletics, the three organizations representing four-year institutions did considerably better than the three representing community colleges. Slightly more than one-third of institutions within the NAIA and NCCAA, and about one-quarter of NCAA schools, added at least one female team on net between 2001-02 and 2004-05. The analogous figures for NJCAA, COA and NWAAC ranged between 13% and 20%.

What Explains These Participation Trends?

This report provides the most accurate and comprehensive description to date of how men's and women's participation in intercollegiate athletics have changed over time. An upcoming Women's Sports Foundation report (January 2008) will examine the extent to which Title IX, spending on prominent men's sports, high school participation levels and other factors contribute to the participation trends observed. Although a thorough examination must be left to that report, the findings in this report provide some meaningful insights.

After substantial growth during the second half of the 1990s, gains in female participation nearly leveled off between 2001-02 and 2004-05. While the fiscal challenges experienced by colleges and universities during the early 2000s may account for some of the slow growth in overall female participation, they do not explain why male and female participation levels increased by similar amounts even though female athletes still only comprise 41% of athletes. Given that the rapid gain in women's participation levels coincided with the Clinton administration, while the much slower growth occurred during the Bush administration, any changes in support of Title IX across these two different administrations could provide an additional explanation.

The steady gains for male participation certainly counter claims that Title IX has led to widespread reductions in men's sports. In fact, men's participation grew between 1995-96 and 2001-02, a period containing the *Cohen v. Brown* decision, which pushed colleges and universities to take Title IX more seriously. In addition, between 2001-02 and 2004-05, many colleges and universities faced extremely difficult financial situations as a result of the general slowdown in the national economy. In such a budgetary environment, institutions would welcome any opportunity to cut costs. Yet, overall participation in men's athletics continued to grow. Thus, the evidence does not support the argument that pressures to comply with Title IX led to overall reductions in men's sports over the 10 years spanning 1995-96 and 2004-05.

We do find reductions in men's participation levels for Division I-A institutions, especially those in non-BCS conferences. Division I-A institutions may face the greatest pressure to comply with Title IX because many female athletes desire the opportunity to participate at the highest level of competition. Such considerations may explain the high growth in women's participation at these institutions over the period of study. But a Division I-A schools face another concern that is much more severe: the pressure to increase spending levels by an amount similar to their competitors, especially in high-profile men's sports.

These pressures have contributed to extremely high expenditures among Division I-A institutions. According to a recent NCAA study (Fulks, 2005), the average Division I-A athletic program has expenditures of \$27.2 million, far above the \$7.5 million spent by Division I-AA programs or the \$2.7 million spent by Division II programs with football. Furthermore, Division I-A institutions devote a much greater share of their dollars to men's football. Among those expenditures allocated to specific sports, 41.6% of Division I-A expenditures go to football, while the corresponding shares are only 26.6% and 29.0% for Division I-AA and Division II (with football), respectively.

The results of this study also demonstrate that participation trends differed across individual men's sports. For example, we find that men's lacrosse and soccer have grown steadily while men's tennis and wrestling have declined. What is the cause of these trends? Neither Title IX nor spending on men's football seems like a good explanation. A variety of sport-specific factors is more likely the culprit and the forthcoming Women's Sports Foundation report will examine some of these alternative explanations.

Policy Implications

For too long, policymakers have been forced to rely upon a set of confusing and contradictory estimates of how intercollegiate athletics participation has changed over time. This report addresses this problem. It produces clear evidence regarding participation trends and, furthermore, it demonstrates that two recent reports on Title IX have yielded erroneous findings due to shortcomings in their data analysis and methodology. (See Appendix A for a systematic critique of these two studies.) The participation trends revealed by this report have several important implications for the ways that policymakers think about Title IX and shifting patterns of female and male athletic participation.

Implication #1: Further weakening of Title IX, as represented by the March 2005 policy clarification, is unjustified.

Women continue to be significantly underrepresented in college athletics and the growth in their participation slowed considerably in the early 2000s. These findings provide no support for weakening Title IX, but the March 2005 policy clarification did exactly that. By allowing institutions to use an online survey to demonstrate compliance with Prong Three of Title IX's participation standard, this clarification substantially reduced the pressure on institutions to ensure gender equity by expanding opportunities for women. Past research and basic methodological principles demonstrate that exclusive reliance on such a survey will not fairly reveal the interests and abilities of female athletes (Sabo & Grant, 2005).

Implication #2: Title IX does not need to be reformed to stop large overall decreases in men's athletic participation because such decreases have not occurred.

Debates over Title IX have focused more on maintaining the numerous athletic opportunities that men have historically enjoyed rather than ensuring that women gain access to the opportunities they have been historically denied. Within these debates, some claim that institutions rely heavily on cuts in men's athletic participation to achieve gender equity. The results of this study clearly refute this claim. Recent improvements in gender equity were driven by increases in female participation rather than decreases in men's participation levels. In fact, overall men's participation has increased. For the 10-year/738 NCAA institutions sample, male participation levels grew by around 7,000 athletes between 1995-96 and 2004-05, an average of almost 10 athletes per institution. For the complete four-year/1,895 institutions complete, male participation levels grew by almost 10,000 athletes between 2001-02 and 2004-05, an average of slightly over five athletes per institution.

Implication #3: The debate over Title IX should not be based on the experience of a few individual sports.

Figures for a few specific sports, such as wrestling or tennis, are often used to support claims that men's sports are in serious decline. But such claims would make little sense if participation trends for growing men's sports, such as lacrosse or soccer, are used instead. The policy debate over Title IX must consider the broader experiences of all men's and women's sports and should never be based on data for a few individual sports.

Implication #4: Efforts to analyze and stem reductions in men's sports should focus on Division I-A institutions, the only set of institutions that experienced declines. Future attempts to explain the declines of men's athletic participation at Division I-A institutions should consider institutional policies and practices associated with the "arms race" in athletic spending

This report demonstrates that a reduction in men's sports occurred solely at Division I-A institutions. Given the scale of expenditures within these athletic programs, sufficient funds exist for additional participation opportunities if costs are controlled. Furthermore, the competitive pressures driving the "arms race" in expenditures is most severe at the highest level of competition, as represented by Division I-A of the NCAA, and will likely absorb any additional dollars generated by alternative reforms.

How Are Colleges and Universities Doing? Grading Participation, Documenting Expansion

This report also includes an online portion (available at www.WomensSportsFoundation.org) that enables readers to evaluate and compare each higher education institution's performance in relation to its peers. This component of the study does not provide a comprehensive analysis of gender equity at each institution nor does it seek to determine whether institutions are currently in compliance with Title IX. But it does report figures that contain substantial insight into an institution's commitment to women's athletics. For all figures, conference-level averages are provided to allow for additional comparisons. We present the female share of undergraduates and the female share of athletes for each institution to examine whether the gender composition of an institution's athletes is similar to the gender composition of its student body. To identify institutions of higher education that recently expanded their women's athletic program, we also list the change in the number of women's participants for each institution between 2001-02 and 2004-05. For the 738 institutions in our 10-year NCAA sample, we also report changes in participation for the 1995-96 to 2001-02 period.

To identify those higher education institutions that have a female share of athletes similar to their female share of undergraduates, we report the proportionality gap for each institution. This gap equals the percentage of undergraduates that are female minus the percentage of athletes that are female. To help provide meaning to an institution's proportionality gap, we assign grades. Table 12 outlines the grading criteria, which assigns the lowest grades to those institutions at which female athletes are substantially underrepresented. To recognize their contribution towards alleviating the current underrepresentation of female athletes in the aggregate, institutions are not assigned a low grade when female athletes are overrepresented.

Table 13 presents proportionality gap grades for each athletic organization and NCAA division; it also provides the data used to compute the grade. For example, the average NCAA institution had a female share of

Table 12: Interpreting the Proportionality Gap Report Card

Rank Order	Grade
Proportionality gap* is:	
2 percentage points or less	A
above 2 but no more than 4 percentage points	A-
above 4 but no more than 6 percentage points	B+
above 6 but no more than 8 percentage points	B
above 8 but no more than 10 percentage points	B-
above 10 but no more than 12 percentage points	C+
above 12 but no more than 14 percentage points	C
above 14 but no more than 16 percentage points	C-
above 16 but no more than 18 percentage points	D+
above 18 but no more than 20 percentage points	D
above 20 but no more than 22 percentage points	D-
above 22 percentage points	F

* The proportionality gap equals an institution's female share of undergraduates minus the institution's female share of athletes.

Table 13: Proportionality Gap Grades by Affiliation

Affiliation/Division*	Prop Gap.	Grade	% Und., Fem.	% Ath. Fem.	# Inst.
NCAA	13.0	C	55.8%	42.8%	964
Div. I	9.5	B-	54.4%	44.9%	321
Div. I-A	7.2	B	51.7%	44.5%	113
Div. I-AA	13.2	C	54.6%	41.4%	113
Div. I-AAA	7.9	B	58.0%	50.1%	83
Div. II	16.2	D+	57.4%	41.2%	261
Div. III	13.9	C	56.0%	42.2%	375
NAIA	15.9	C-	57.6%	41.6%	239
NCCAA	6.9	B	49.3%	42.4%	41
NJCAA	16.3	D+	56.1%	39.8%	431
COA	19.4	D	55.4%	36.0%	95
NWAAC	9.5	B-	54.8%	45.3%	32

* NCAA refers to the National Collegiate Athletic Association; NAIA refers to the National Association of Intercollegiate Athletics; NCCAA refers to the National Christian College Athletic Association; NJCAA refers to the National Junior College Athletic Association; COA refers to the California Community College Commission on Athletics; NWAAC refers to the Northwest Athletic Association of Community Colleges.

undergraduates of 55.8% and a female share of athletes of 42.8% in 2004-05, which results in a proportionality gap of 13 percentage points and a grade of C. Among organizations, the NCCAA earned the highest grade, while within the NCAA, Divisions I-A and I-AAA earned the highest grades. In contrast, the NJCAA, COA and NCAA Division II received the worst grades.

The online portion of this report also describes changes in the number of female participants over recent years for each institution of higher education. To provide additional context, we report similar figures for men. Note that changes in cross country and track and field participants are not included in these figures, because participation data for these sports contain substantial error due to changes in the EADA reporting form. As described in Appendix C, however, we were able to obtain much more reliable information on whether or not an institution offers these sports. Consequently, we report changes in the number of cross country and track and field teams to complement the participation numbers for other sports.

Appendix A: Comparison with Alternative Reports

Past research has generated conflicting findings regarding trends in athletic participation levels. A previous Women's Sports Foundation report (Sabo, 1997) and a 2001 Government Accounting Office (GAO) report found similar results to this study. In contrast, a recent College Sports Council (CSC) study and a 1999 GAO report produced contradictory results. Because this report seeks to produce clarity and consensus, it is important to reconcile this report's findings with those of the latter two studies.

The CSC study and the 1999 GAO report are often used to claim that men's participation levels have fallen over time and to suggest that Title IX is the cause of these declines. The analysis below, however, shows that the estimated reductions in men's sports in the CSC study turn into gains once the methodological flaws in the report are corrected. The discussion in this appendix also raises important questions about the quality of the data used by the GAO to report reductions in men's sports.

Furthermore, the findings from these reports suggest that Title IX had little to do with any declines in men's participation levels. In both studies, the one time period in which men's sports appears to have declined is 1984 to 1988, a time during which intercollegiate athletics was exempt from Title IX. In 1984, the Supreme Court ruled (in *Grove City College v. Bell*) that Title IX did not apply to intercollegiate athletics, and it was not until 1988 that Congress passed the Civil Rights Restoration Act, which mandated that intercollegiate athletics be subject to Title IX.

College Sports Council (CSC) Longitudinal Study of NCAA Participation Data (College Sports Council, 2007)

The College Sports Council's (CSC) 2007 study is based on data from the *1981-82 – 2004-05 NCAA Sports Sponsorship and Participation Rates Report*. The CSC report presents estimates showing declines in men's sports, and some commentators have claimed that these declines are somehow related to Title IX. But the CSC study incorrectly adjusts for changes in NCAA membership when reporting participation trends and only reports figures for Division I institutions when reporting trends in the number of teams offered. When the flaws in the CSC report are corrected, as demonstrated below, men's athletic participation increases rather than decreases between 1981 and 2004.

The CSC study correctly notes that the data in the NCAA participation report is not designed to accurately portray participation trends because it does not adjust for growth in the number of NCAA institutions over time. The number of NCAA institutions grew from 752 to 1,045 between 1981-82 and 2004-05, so any comparisons over time may reflect the growth in the number of institutions rather than growth in the number of male athletes at specific institutions. To solve this problem, the CSC study essentially estimates the average number of participants per NCAA institution for each year. These estimates appear in Table 3 of the CSC report.

To demonstrate the CSC's method, consider the first and last years of the period of study. The NCAA participation report indicates that there were 167,055 athletes at 752 NCAA institutions in 1981-82 and 219,744 athletes at the 1,045 NCAA institutions in 2004-05. If you divide the number of athletes by the number of institutions for each year, you find that the number of male athletes per institution fell from 222 to 210, a drop of 5.3%.

For such a comparison to be informative, institutions that joined the NCAA over time must have the same number of athletes as the pre-existing NCAA institutions. Put simply, the CSC's analyses assume that the 293 institutions that joined the NCAA after 1981 are identical in size to the 752 institutions that were already NCAA members in 1981. This assumption is unrealistic. A comparison of 2004-05 participation levels (using EADA data) demonstrates that those institutions that were already NCAA members in 1981 have 57% more male athletes, on average, than those institutions that later joined the NCAA between 1982 and 2004.

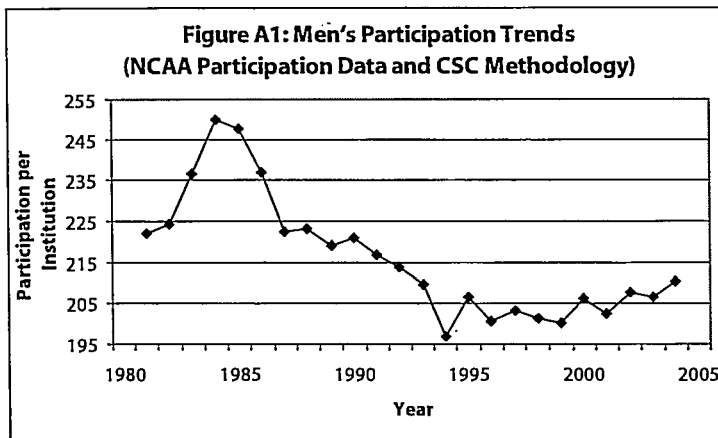
If pre-existing NCAA institutions have 57% more male athletes than those institutions that joined the NCAA between 1982 and 2004, then figures from the NCAA Participation Report indicate that the number of male athletes increased by 5.5% between 1981-82 and 2004-05. Clearly, the CSC's finding that men's participation has

decreased over time reflects the use of an untrue assumption rather than any real reduction in men's sports. The purported losses in men's participation produced by the CSC study turn to gains once more accurate assumptions are used.

The CSC study also reports (in Table 1 of that study) that the number of men's teams decreased by 239 among NCAA Division I schools between 1988-89 and 2004-05. That information is correctly drawn from the NCAA participation report and does not contradict the findings of this Women's Sports Foundation report. But the

CSC study fails to note that the same NCAA participation report indicates a net increase in the number of men's sports, on net, of 44 for Division II institutions and of 265 for Division III institutions. For the NCAA as a whole (including Division I), the number of men's teams increased by 70 teams. Once again, the figures in the CSC study demonstrate overall increases for men's athletics once accurate overall estimates are provided.

Some commentators have used the findings of the CSC study to claim that Title IX has led to substantial reductions in men's sports. However, this claim is inaccurate because men's sports in the aggregate have not decreased over time. Figure A1 (which uses the same methodology as Table 3 of the CSC study) demonstrates another major problem with such a claim. According to the CSC's estimates, men's participation levels declined the most between 1984 and 1987, a period in which intercollegiate athletics was exempt from Title IX. Thus, even if the CSC estimates of declines in men's participation levels were accurate, it would be quite difficult to argue that these reductions were due to Title IX.



Intercollegiate Athletics: Comparison of Selected Characteristics of Men's and Women's Programs (General Accounting Office, 1999)

This General Accounting Office (GAO) report examines changes between the 1985-86 and 1996-97 period for a consistent sample of 725 NCAA institutions. The results indicate a decrease in the total number of men's participants of 21,404 and a decrease in the total number of men's teams of 183. These findings are in direct contrast to the findings presented in this Women's Sports Foundation report.

A close reading of the GAO report presents several explanations for the contrasting findings. The first explanation regards the quality of data used in the GAO study. The GAO only had access to aggregate data for each NCAA division and sport, so it could not identify and correct for potential flaws in the data. (See appendixes B and C for the corrections utilized in this report.) Furthermore, the GAO did not appear to have data on every athlete at each institution, since data on sports with less than 10 participating teams were not included in the report.

A comparison of the GAO report's findings with figures from the *1981-82 NCAA Sports Sponsorship and Participation Rates Report* creates additional concerns about data quality. Most of the 21,404 athlete decrease in men's participation levels was due to decreases in the average roster sizes for almost all men's sports. Table A1 recreates the roster size estimates found in the GAO report for 1985-86 and 1996-97, the only two years of study in the GAO report.

Table A1 (on following page) also contains the average roster size reported by the NCAA Participation Report for 1985-86, 1987-88, and 1996-97 academic years. The changes in roster size between 1985-86 and 1996-97 for the NCAA and GAO reports are almost identical, which is not surprising because the GAO used data provided

by the NCAA. But what is surprising is that almost all of the decrease in average roster sizes in the NCAA participation report occurred during the first two years of the period, 1985-86 to 1987-88. Because these drops in roster size are extremely severe for a two-year period, much of the decrease in men's athletics may reflect changes in reporting requirements rather than a drastic restructuring of men's athletics.

Table A1: Comparison of Findings from the NCAA Participation Report and the 1999 GAO report

	GAO (1999) Report			NCAA Participation Report			
	1985-86	1996-97	Change	1985-86	1987-88	1996-97	Change
Baseball	34.1	29.7	-4.4	33.9	28.9	30.2	-3.7
Basketball	18.3	16.0	-2.3	18.4	15.9	16.0	-2.4
Cross-Country	14.6	13.2	-1.4	14.5	13.4	12.9	-1.6
Football	100.0	91.3	-8.7	99.7	92.6	91.6	-8.1
Golf	12.3	10.8	-1.5	12.2	11.2	10.8	-1.4
Ice Hockey	37.6	28.9	-8.7	37.5	30.7	28.1	-9.4
Lacrosse	36.5	31.6	-4.9	36.2	31.6	31.3	-4.9
Soccer	29.4	25.2	-4.2	29.3	24.9	25.0	-4.3
Swimming	21.8	20.6	-1.2	21.8	20.5	19.7	-2.1
Tennis	12.2	10.5	-1.7	12.1	11.0	10.3	-1.8
Track (indoor)	34.3	31.4	-2.9	34.2	31.7	31.1	-3.1
Track (outdoor)	34.7	31.3	-3.4	34.5	32.1	30.9	-3.6
Volleyball	15.9	14.5	-1.4	16.0	14.9	15.0	-1.0
Wrestling	26.5	25.2	-1.3	26.5	24.3	26.3	-0.2

In the event that the GAO estimates accurately reflect changes in men's participation levels, then most of the reductions in men's sports had little to do with Title IX. Intercollegiate athletics was exempt from Title IX between 1985-86 and 1987-88, the period in which most of the decreases in men's athletics appear to have occurred. Thus, as was the case with the 2007 CSC study, the main findings and conclusions of the 1999 GAO study do not appear to contradict those of this Women's Sports Foundation report.

Appendix B: Sample Overview and Data Corrections

Sample Overview

The data used in this report came from reports filed by institutions of higher education under the Equity in Athletics Disclosure Act (EADA). Passed in 1994, the EADA required institutions to report a variety of information on their athletic program. (See <http://surveys.ope.ed.gov/athletics/> to examine the current EADA reporting form.) Starting in 1995-96, the EADA mandated that institutions must report data to any party that requests it directly from them. In 1995-96, the Women's Sports Foundation requested information from each NCAA institution, and 757 of them returned completed EADA forms. The data from these forms were hand entered into an electronic format, and the original forms were retained and are currently located at the Center for the Study of Higher Education at the University of Arizona. These data can be obtained by contacting the author of the report at cheslock@u.arizona.edu.

Starting in 2000-01, institutions were required to send EADA information to the Office of Postsecondary Education (OPE). Full EADA data from these years can be downloaded from the OPE's EADA Web site: <http://ope.ed.gov/athletics/>. For 2001-02, 1,948 higher education institutions reported data to the OPE. In 2004-05, 1,978 institutions reported data to the OPE.

Two samples were used throughout this report. The "10-year NCAA sample" contains the 738 institutions that reported data in 1995-96, 2001-02 and 2004-05 and were members of the NCAA for all three years. These schools comprised 74% of NCAA institutions in 1995-96 and 71% of NCAA institutions in 2004-05. The four-year complete sample contains the 1,895 schools that reported data to the OPE for 2001-02 and 2004-05.

Data Corrections

Several errors in the EADA data required correction. First, the 2001-02 EADA dataset was missing data for nine of the less prominent women's sports (archery, badminton, beach volleyball, bowling, equestrian, rodeo, sailing, table tennis, weight lifting). Institutions that offered teams for these sports were easily identifiable because the sum of participants on each individual sport did not equal the total number of participants reported. For each of these institutions, we examined later EADA data (which was not missing information) or the relevant athletic department's Web site to identify the missing sport and assigned the extra participants appropriately.

Second, the EADA form allowed an institution to choose among 16 different organizational and division affiliations. Some of the resulting data, however, contained errors or insufficient information. To correct for data entry errors, we examined all institutions that switched affiliations over time to ensure that their movement reflected real changes as opposed to an incorrect entry for one of the years. Because the EADA form does not include a complete list of athletic organizations to choose from, approximately 240 institutions chose a category labeled "Other." Most of these institutions belonged to the COA, NWAAC or other smaller organizations, and we assigned these institutions after some investigation.

The third data correction relates to measuring the percentage of undergraduates that are female. Ideally, one should use data on the total full-time undergraduate enrollments for both genders. Unfortunately, the enrollment figures reported under the EADA are usually incorrect. As a result, we obtained correct figures for each year from the Integrated Postsecondary Education Data System (IPEDS) produced by the National Center for Education Statistics (NCES). These data can be downloaded from NCES's IPEDS Web site (<http://nces.ed.gov/ipeds/>).

The reporting form for the EADA changed over time in two important ways; this required two further corrections to the data. The first change regards reporting standards for cross country, indoor track and field, and outdoor track and field. Appendix C contains a description of the complexity associated with these sports. The other change regards coed teams. The 1995-96 form did not force institutions to report the gender breakdown of participants of coed teams, while the 2001-02 and 2004-05 forms did. To allocate the co-ed team participants for 1995-96, we used the same percentage of males and females for the 1995-96 teams as that in 2001-02 when data

was available for that sport at that institution. If 2001-02 information was not available, we simply assigned 50% of males and 50% of females to the individual sports.

Finally, we took great care to ensure that our results were not unduly influenced by extremely small teams or athletic programs. We only listed an institution as adding a sport if it moved from zero athletes to four or more athletes over time. Likewise, an institution was only counted as dropping a sport when it moved from four or more athletes to zero athletes over time. To ensure that extremely small athletic programs were not driving our compliance estimates, we also estimated all proportionality gap figures using only those institutions with at least 50 athletes within their athletic department. When this alternative sample was used, the results varied little from those reported in this study.

Appendix C: Cross Country and Track and Field

Because the EADA reporting form changed over time for cross country, indoor track and field, and outdoor track and field, a simple comparison of reported figures for these sports over time would produce incorrect findings. Table C1 presents the per-institution participation figures for these three sports. These drastic changes over time were not observed in the 1981-82 NCAA Sports Sponsorship and Participation Rates Report, suggesting that these trends were due to changes in reporting standards rather than any fundamental change in these three sports.

Table C1: Reported Per-Institution Participants in Cross Country and Track & Field (10-year/738 NCAA institutions sample)

	1995-96	2001-02	2004-05
Men	33.7	51.2	47.9
Women	29.3	50.3	49.4

An inspection of the EADA data entry forms (which changed over time) provided an explanation for these findings. The structure of the 1995-96 form encouraged the data entrant to report the unduplicated number of participants for indoor and outdoor track and field. The unduplicated count of participants (where a multi-sport athlete is only counted once) is likely to be substantially less than the duplicated count (where a multi-sport athlete is counted once for each team for which he/she participates). The 2001-02 form, in contrast, was much more likely to elicit reporting of duplicated counts. Finally in 2004-05, the structure of the form again led to reporting of some unduplicated counts of athletes in cross country and the two track and field sports, although errors were much less prevalent in 2004-05 than in 1995-96.

To ensure accurate findings, we used data from multiple sources in addition to the EADA to produce the best possible estimates of participation trends for these three sports. For most major athletic associations (NCAA, NAIA, NJCAA, COA), we created a list of all institutions that offered each of the three sports using available publications or data provided directly by the organization. For cases outside of these associations, we examined the Web site for each institution's athletic department when needed. In combination with the EADA data, these data lists allowed us to accurately estimate changes in individual sports.

Estimating changes in participation levels was more complicated because roster sizes can vary over time. The change in participation levels was computed by:

- ◆ adding the number of athletes on teams that were added during the period; and
- ◆ subtracting the number of athletes on teams that were dropped during the period; and
- ◆ adding the number of teams offered throughout the period multiplied by the average change in roster size.

A much longer version of Appendix C, which describes the procedure in great detail, is available from the author upon request. In general, the author spent great effort ensuring that this report did not overestimate increases in the number of participants and teams, especially for men. All methods were designed to err on the side of underestimating gains in the number of participants and teams. All findings for cross country and track and field were checked against those reported in the 1981-82 NCAA Sports Sponsorship and Participation Rates Report, and no discrepancies were found. Finally, all analyses presented in this report were also conducted without data from cross country and the two track and field sports. In every instance, the primary findings of this report remained when these sports were not included.

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Appendix D: Title IX and Athletics

In order to comply with the athletic requirements of Title IX, educational institutions must meet the requirements of three areas:

1. Participation

The first compliance prong of Title IX deals with overall sport and athletic participation offerings available for men and women. A three-part test for participation opportunities determines if institutions provide female and male students with equal athletic opportunities. In order to comply, institutions must pass one of these three tests:

- a. Prong One: Proportionality-male and females participate in athletics in numbers substantially proportional to their respective enrollments in school, or
- b. Prong Two: History and Continued Practice of Program Expansion-the institution shows a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of members of the underrepresented sex, or
- c. Prong Three: Full Accommodation of Interests and Abilities- the institution demonstrates that the interests and abilities of the underrepresented sex (females) are fully and effectively accommodated by the existing programs.

An institution fulfills the compliance requirement for participant opportunities if it adheres to any (or just one) of the three tests listed above.

2. Athletic Financial Assistance

The second major compliance prong of Title IX encompasses athletic financial assistance. The only monetary requirement of Title IX deals with the area of scholarships. Scholarships must be allocated in proportion to the number of female and male students participating in intercollegiate athletics. Funding for women's and men's programs does not have to be equal, but a significant disparity in funds does suggest that institutions could be found non-compliant in other program areas.

3. Other Program Areas (Treatment of Athletes)

The third compliance prong of Title IX requires equivalence in other athletic benefits and opportunities and includes all other program areas not previously covered (OCR, Policy). Title IX does not require that each men's and women's team receive exactly the same services and supplies, but it looks at the entirety of the treatment the men's and women's programs receive as a whole. The equivalence of overall treatment is measured on the basis of eleven criteria:

- a. Locker Rooms, Practice, and Competitive Facilities looks at the quality, maintenance, and availability of the facilities provided for practice and competitive events, the exclusivity of use of the facilities and the preparation of facilities for games and practices, availability, exclusivity, and quality of locker and team rooms.
- b. Equipment and Supplies is determined in examining the quality, amount, suitability, maintenance and replacement, and availability of equipment and supplies.
- c. Scheduling of Games and Practice Times is based on the number of competitive events offered per sport, the number and length of practice opportunities, the time of day for practice sessions, the number of pre-season and post-season competitive opportunities, and the time of day competitive events are scheduled.
- d. Publicity encompasses the availability and quality of sports information personnel, access to other publicity resources for men's and women's programs, and quantity and quality of publications and other promotional devices featuring men's and women's programs.
- e. Coaching examines the equivalence in the availability of qualified full-time and part-time coaches, assistant coaches, and graduate assistants, assignment of coaches with comparable training, experience, and other professional qualifications, equitable compensation of coaches: rate of compensation,

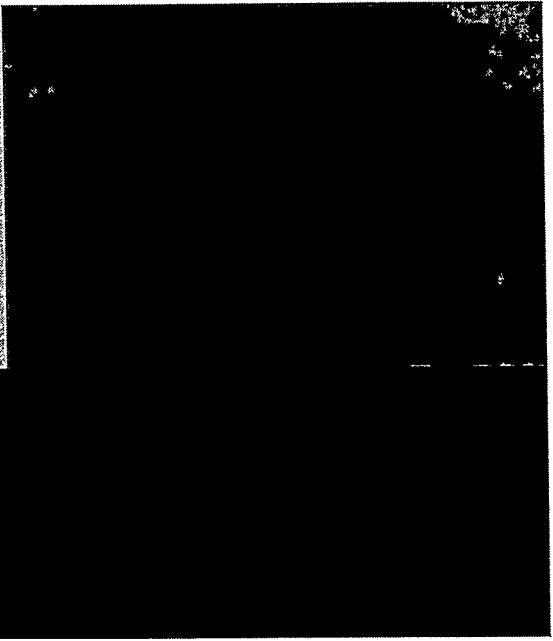
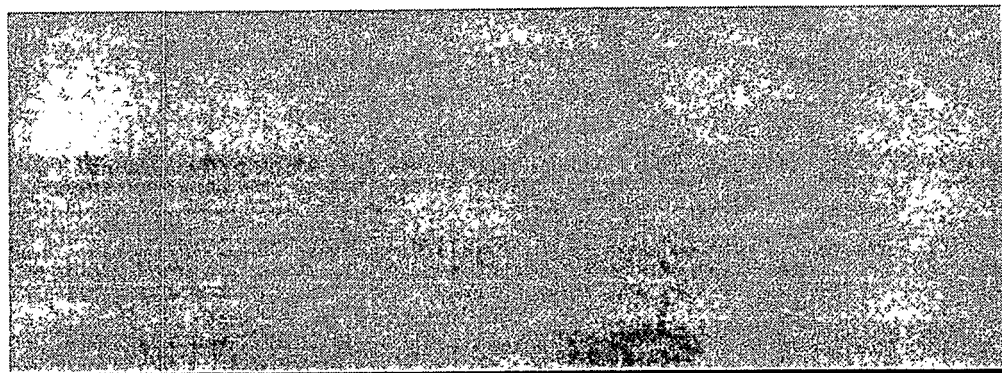
duration of contract, conditions for contract renewal; (taking into account experience, duties, and working conditions).

- f. Travel and Daily Allowance encompasses modes of transportation, housing furnished during travel, length of stay before and after competitive events, daily allowance provided to the teams, and dining arrangements for the teams.
- g. Academic Tutoring includes the availability of tutoring for the women's and men's programs, qualifications, training and experience of tutors provided, employment conditions of the tutors for the men's and women's programs including compensation, term and length of contracts, and the number of students tutored per session.
- h. Provision of Medical Training Facilities and Services includes the availability of medical personal and assistance including health, accident, and injury insurance coverage, availability and quality of weight training and conditioning facilities, and availability and qualifications of athletic trainers.
- i. Provision of Housing and Dining Facilities and Service pertains to housing provided, and special services, such as laundry facilities, parking spaces, and housekeeping services.
- j. Recruitment of Student Athletes refers to whether coaches and athletic personnel serving female and male athletes are provided with substantially equal opportunities to recruit, whether the financial and other resources made available for recruitment meet the needs of the women's and men's programs, whether the differences in benefits, opportunities, and treatment of prospective women and men athletes affect their recruitment.
- k. Support Services includes the amount of administrative, secretarial, and clerical assistance provided to the women's and men's programs.

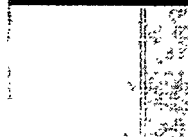
For more detailed information of the compliance criteria under Title IX, please read the Women's Sports Foundation guide, *Playing Fair*, at www.WomensSportsFoundation.org.

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Women's Sports Foundation

RESEARCH SERIES

Who's Playing College Sports?

Trends in Participation Supplement

June 5, 2007

**How Are Colleges and Universities Doing?
Grading Participation, Documenting Expansion**

About the Women's Sports Foundation

Founded in 1974 by Billie Jean King, the Women's Sports Foundation is a national charitable educational organization seeking to advance the lives of girls and women through sports and physical activity. The Foundation's Participation, Education, Advocacy, Research and Leadership programs are made possible by gifts from individuals, foundations and corporations. The Foundation is located in Nassau County, N.Y. For more information, please call the Foundation at (800) 227-3988 or visit www.WomensSportsFoundation.org. The Foundation serves as a center for collecting and sharing information on girls and women in sports and physical activity. The Women's Sports Foundation also produces academic research on the psychological, social and physiological dimensions of sport and physical activity in the lives of girls and women.

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This report is the first in a series of three gender equity reports. The second report will examine which factors influence intercollegiate participation changes, with a special focus on Title IX, spending on men's basketball and football, and changing preferences for less prominent men's sports. It is scheduled for release in January 2008. The third report will examine how the racial and ethnic composition of intercollegiate athletes has changed over time. It is scheduled for release in June 2008.

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How Are Colleges and Universities Doing? Grading Participation, Documenting Expansion

This is a supplement to *Who's Playing College Sports? Trends in Participation*, which enables readers to evaluate and compare each higher education institution's performance in relation to its peers. This information can also be found online at www.WomensSportsFoundation.org, sorted by state (as it appears here), by organizational and division affiliation, alphabetically by institution name, and by grade. Conference-level averages for all figures are also provided online to allow for additional comparisons.

This component of the study does not provide a comprehensive analysis of gender equity at each institution nor does it seek to determine whether institutions are currently in compliance with Title IX. But it does report figures that contain substantial insight into an institution's commitment to women's athletics. We present the female share of undergraduates and the female share of athletes for each institution to examine whether the gender composition of an institution's athletes is similar to the gender composition of its student body. To identify institutions of higher education that recently expanded their women's athletic program, we also list the change in the number of women's participants for each institution between 2001-02 and 2004-05. For the 738 institutions in our 10-year NCAA sample, we also report changes in participation for the 1995-96 to 2001-02 period.

To identify those higher education institutions that have a female share of athletes similar to their female share of undergraduates, we report the proportionality gap for each institution. This gap equals the percentage of undergraduates that are female minus the percentage of athletes that are female. To help provide meaning to an institution's proportionality gap, we assign grades. Table 12 from the full report, reproduced at right, outlines the grading criteria, which assigns the lowest grades to those institutions at which female athletes are substantially underrepresented. To recognize their contribution towards alleviating the current underrepresentation of female athletes in the aggregate, institutions are not assigned a low grade when female athletes are overrepresented.

Table 13 from the full report, reproduced at right, presents proportionality gap grades for each athletic organization and NCAA division; it also provides the data used to compute the grade. For example, the average NCAA institution had a female share of undergraduates of 55.8% and a female share of athletes of 42.8% in 2004-05, which results in a proportionality gap of 13 percentage points and a grade of C. Among organizations, the NCCAA earned the highest grade, while within the NCAA, Divisions I-A and I-AAA earned the highest grades. In contrast, the NJCAA, COA and NCAA Division II received the worst grades.

Table 12: Interpreting the Proportionality Gap Report Card

Rank Order	Grade
Proportionality gap* is:	
2 percentage points or less	A
above 2 but no more than 4 percentage points	A-
above 4 but no more than 6 percentage points	B+
above 6 but no more than 8 percentage points	B
above 8 but no more than 10 percentage points	B-
above 10 but no more than 12 percentage points	C+
above 12 but no more than 14 percentage points	C
above 14 but no more than 16 percentage points	C-
above 16 but no more than 18 percentage points	D+
above 18 but no more than 20 percentage points	D
above 20 but no more than 22 percentage points	D-
above 22 percentage points	F

* The proportionality gap equals an institution's female share of undergraduates minus the institution's female share of athletes.

Table 13: Proportionality Gap Grades by Affiliation

Affiliation/Division*	Prop Gap.	Grade	% Und., Fem.	% Ath. Fem.	# Inst.
NCAA	13.0	C	55.8%	42.8%	964
Div. I	9.5	B-	54.4%	44.9%	321
Div. I-A	7.2	B	51.7%	44.5%	113
Div. I-AA	13.2	C	54.6%	41.4%	113
Div. I-AAA	7.9	B	58.0%	50.1%	83
Div. II	16.2	D+	57.4%	41.2%	261
Div. III	13.9	C	56.0%	42.2%	375
NAIA	15.9	C-	57.6%	41.6%	239
NCCAA	6.9	B	49.3%	42.4%	41
NJCAA	16.3	D+	56.1%	39.8%	431
COA	19.4	D	55.4%	36.0%	95
NWAAC	9.5	B-	54.8%	45.3%	32

* NCAA refers to the National Collegiate Athletic Association; NAIA refers to the National Association of Intercollegiate Athletics; NCCAA refers to the National Christian College Athletic Association; NJCAA refers to the National Junior College Athletic Association; COA refers to the California Community College Commission on Athletics; NWAAC refers to the Northwest Athletic Association of Community Colleges.

The online portion of this report also describes changes in the number of female participants over recent years for each institution of higher education. To provide additional context, we report similar figures for men. Note that changes in cross country and track and field participants are not included in these figures, because participation data for these sports contain substantial error due to changes in the EADA reporting form. As described in Appendix C of the full report, however, we were able to obtain much more reliable information on whether or not an institution offers these sports. Consequently, we report changes in the number of cross country and track and field teams to complement the participation numbers for other sports.

Reading the Table

Due to space constraints, several abbreviations are used in the data for each higher education institution.

Abbreviation	Full Variable Name
Org./Div.	Organizational and Division Affiliation
Name	Institution's Name
Amount	Proportionality Gap (% Und, Fem - % Ath, Fem)
Grade	Proportionality Gap Grade
% Und, Fem	% Full-Time Undergraduates, Female
% Ath, Fem	% Athletes, Female
# Ath, Fem	Number of Female Athletes
# Ath, Male	Number of Male Athletes
Part Chg	Change in Number of Participants (for sports other than Cross Country and Track & Field)
CC/T&F Tms	Change in the Number of Teams (for Cross-Country and Track & Field)
Organization/Division Indicators	
I-A	National College Athletic Association Division I-A
I-AA	National College Athletic Association Division I-AA
I-AAA	National College Athletic Association Division I-AAA
II	National College Athletic Association Division II
III	National College Athletic Association Division III
NAIA	National Association of Intercollegiate Athletics
NCCAA	National Christian College Athletic Association
NJCAA	National Junior College Athletic Association
COA	California Community College Commission on Athletics
NWAAC	Northwest Athletic Association of Community Colleges
Other	All Other Institutions
Notes:	
1. All estimates are based on Equity in Athletics Disclosure Act (EADA) data. [Available at http://ope.ed.gov/athletics/]	
2. All proportionality gap data are from the 2004/05 academic year (including the organization/division information).	

How Are Colleges and Universities Doing? Grading Participation, Documenting Expansion

		Proportionality Gap		Figures Underlying the Proportionality Gap				Changes in Women's Participation				Changes in Men's Participation			
Org./Div.	Name	Amount	Grade	% Und, Fem	% Ath, Fem	# Ath, Fem	# Ath, Male	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
Alabama															
NCAA Div. I-AA	ALABAMA A & M UNIVERSITY	17.5	D+	52.3%	34.8%	117	219	-28	0			-56	0		
NJCAA	ALABAMA SOUTHERN COMMUNITY COLLEGE	13.5	C	63.5%	50.0%	41	41	4	0			0	0		
NCAA Div. I-AA	ALABAMA STATE UNIVERSITY	15.5	C-	59.4%	43.9%	130	166	47	-1			14	0		
NCAA Div. I-A	AUBURN UNIVERSITY MAIN CAMPUS	6.1	B	49.3%	43.2%	257	338	20	0	44	0	14	0	-7	0
NAIA	AUBURN UNIVERSITY-MONTGOMERY	33.5	F	62.6%	29.1%	43	105	7	0			31	0		
NJCAA	BEVILL STATE COMMUNITY COLLEGE	1.3	A	61.9%	60.6%	114	74	-14	0			34	0		
NCAA Div. I-AAA	BIRMINGHAM SOUTHERN COLLEGE	10.7	C+	57.8%	47.2%	91	102	-4	0			12	0		
NJCAA	BISHOP STATE COMMUNITY COLLEGE	14.4	C-	66.3%	51.9%	42	39	14	0			2	0		
NJCAA	CENTRAL ALABAMA COMMUNITY COLLEGE	19.0	D	64.0%	45.0%	36	44	2	0			10	0		
NJCAA	CHATAHOOCHEE VALLEY COMMUNITY COLLEGE	15.3	C-	65.3%	50.0%	40	40	20	0			15	0		
Other	CONCORDIA COLLEGE	27.0	F	61.4%	34.3%	34	65	9	0			-8	0		
NJCAA	ENTERPRISE-OZARK COMMUNITY COLLEGE	6.5	B	45.7%	39.2%	29	45	4	0			7	0		
NAIA	FAULKNER UNIVERSITY	29.1	F	54.0%	30.9%	59	115	22	0			53	0		
NJCAA	GADSDEN STATE COMMUNITY COLLEGE	2.7	A-	54.9%	52.2%	47	43	-2	0			-6	0		
NJCAA	GEORGE C WALLACE COMMUNITY COLLEGE-DOZHAN	19.1	D	58.3%	39.2%	20	31	-18	0			-15	0		
NJCAA	GEORGE C WALLACE STATE COMM COLL-HANCEVILLE	25.4	F	62.5%	37.0%	50	85	-10	-1			-16	-1		
NJCAA	GEORGE C WALLACE STATE COMM COLLEGE-SELMA	44.3	F	71.6%	27.3%	12	32	-4	0			2	0		
NCAA Div. III	HUNTINGDON COLLEGE	23.2	F	49.3%	26.1%	80	226	20	0			143	0		
NCAA Div. I-AA	JACKSONVILLE STATE UNIVERSITY	17.1	D+	57.9%	40.8%	125	181	3	0			-17	0		
NJCAA	JAMES H FAULKNER STATE COMMUNITY COLLEGE	11.0	C+	60.1%	49.1%	52	54	1	0			-19	0		
NJCAA	JEFFERSON DAVIS COMMUNITY COLLEGE	2.6	A-	49.9%	47.3%	44	49	22	0			8	0		
NJCAA	JEFFERSON STATE COMMUNITY COLLEGE	14.9	C-	56.2%	41.3%	19	27	-6	0			1	0		
NJCAA	LAWSON STATE COMMUNITY COLLEGE	15.7	C-	70.3%	54.5%	30	25	0	0			-6	0		
NJCAA	LURLEEN B WALLACE COMMUNITY COLLEGE	14.1	C-	57.4%	43.2%	32	42	-2	0			-23	0		
Other	MARION MILITARY INSTITUTE	11.3	C+	11.3%	0.0%	0	19	0	0			9	0		
NCAA Div. II	MILES COLLEGE	23.1	F	54.0%	30.9%	55	123	2	0			1	0		
NJCAA	NORTHWEST SHOALS COMM COLL-MUSCLE SHOALS	9.8	B-	59.3%	49.6%	59	60	10	0			0	0		
NCAA Div. I-AA	SAMFORD UNIVERSITY	23.0	F	64.4%	41.4%	125	177	-4	0	41	0	-8	0	-5	0
NJCAA	SHELTON STATE COMMUNITY COLLEGE	5.2	B+	58.1%	52.9%	46	41	-2	0			-11	0		
NJCAA	SNEAD STATE COMMUNITY COLLEGE	10.5	C+	59.5%	49.0%	50	52	-5	0			-37	0		
NJCAA	SOUTHERN UNION STATE COMMUNITY COLLEGE	10.4	C+	51.7%	41.4%	48	68	1	0			2	0		
NAIA	SPRING HILL COLLEGE	14.2	C-	61.0%	46.7%	107	122	17	0			5	0		
NCAA Div. II	STILLMAN COLLEGE	17.1	D+	51.0%	33.8%	69	135	-13	0			-16	0		
NCAA Div. I-A	THE UNIVERSITY OF ALABAMA	16.7	D+	53.0%	36.3%	158	277	-6	0	33	0	-6	0	0	0
NCAA Div. I-A	TROY STATE UNIVERSITY-MAIN CAMPUS	14.6	C-	51.6%	37.1%	149	253	7	0			21	-1		
NCAA Div. II	TUSKEGEE UNIVERSITY	24.1	F	56.5%	32.4%	77	161	8	0			-9	0		
NCAA Div. I-A	UNIVERSITY OF ALABAMA AT BIRMINGHAM	24.3	F	61.4%	37.1%	127	215	-3	0			9	0		
NCAA Div. II	UNIVERSITY OF ALABAMA IN HUNTSVILLE	3.6	A-	48.6%	45.0%	130	159	-1	1	26	1	1	2	10	0
NAIA	UNIVERSITY OF MOBILE	19.1	D	62.2%	43.0%	71	94	11	-1			2	-1		
NCAA Div. II	UNIVERSITY OF MONTEVALLO	22.7	F	67.7%	45.0%	63	77	2	1	-1	0	0	0	1	0
NCAA Div. II	UNIVERSITY OF NORTH ALABAMA	29.0	F	56.7%	27.8%	78	203	-3	0	22	0	-16	0	47	0
NCAA Div. I-AAA	UNIVERSITY OF SOUTH ALABAMA	8.6	B-	59.5%	50.8%	91	88	4	0	4	0	-13	0	-12	0
NCAA Div. II	UNIVERSITY OF WEST ALABAMA	30.3	F	52.8%	22.5%	58	200	-10	0	11	1	10	0	12	1
Alaska															
NCAA Div. II	UNIVERSITY OF ALASKA ANCHORAGE	8.0	B-	58.3%	50.3%	91	90	-5	0	7	2	2	0	-23	1
NCAA Div. II	UNIVERSITY OF ALASKA FAIRBANKS	1.5	A	51.8%	50.4%	67	66	13	0			7	0		
Arizona															
NCAA Div. I-A	ARIZONA STATE UNIVERSITY AT THE TEMPE CAMPUS	8.4	B-	51.5%	43.2%	268	353	30	0	37	0	0	0	-31	0
NJCAA	ARIZONA WESTERN COLLEGE	33.6	F	55.2%	21.5%	39	142	-4	0			19	0		
NJCAA	CENTRAL ARIZONA COLLEGE	10.2	C+	48.5%	38.3%	70	113	-1	0			-25	0		
NJCAA	CHANDLER/GILBERT COMMUNITY COLLEGE	3.8	A-	50.8%	47.0%	62	70	5	0			-2	0		
NJCAA	COCHISE COLLEGE	16.0	D+	61.8%	45.7%	43	51	6	0			6	0		
NJCAA	EASTERN ARIZONA COLLEGE	26.0	F	55.0%	29.0%	54	132	7	0			6	0		
NJCAA	GLENDALE COMMUNITY COLLEGE	19.3	D	51.8%	32.5%	93	193	9	0			12	-1		
NCAA Div. II	GRAND CANYON UNIVERSITY	25.0	F	64.0%	39.0%	73	114	19	0	21	-1	24	0	13	-1
NJCAA	MESA COMMUNITY COLLEGE	19.4	D	49.4%	30.0%	87	203	-14	0			8	-1		
NCAA Div. I-AA	NORTHERN ARIZONA UNIVERSITY	13.3	C	59.3%	46.0%	173	203	-6	0	41	0	-13	0	5	0
NJCAA	PARADISE VALLEY COMMUNITY COLLEGE	7.7	B	53.6%	45.9%	68	80	24	-1			10	-1		
NJCAA	PHOENIX COLLEGE	22.2	F	60.4%	38.2%	89	144	-19	1			-21	1		
NJCAA	PIMA COMMUNITY COLLEGE	25.0	F	54.0%	29.0%	90	220	1	-1			9	-1		
NJCAA	SCOTSDALE COMMUNITY COLLEGE	10.8	C+	46.7%	35.9%	104	186	84	2			16	0		
NCCAA	SOUTHWESTERN CONSERVATIVE BAPTIST BIBLE COLL	-12.1	A	49.1%	61.3%	19	12	-1	0			1	0		
NCAA Div. I-A	UNIVERSITY OF ARIZONA	5.4	B+	53.3%	47.9%	235	256	-12	0	16	1	-5	0	-17	0
NJCAA	YAVAPAI COLLEGE	16.9	D+	51.6%	34.7%	35	66	0	0			0	0		
Arkansas															
NCAA Div. I-A	ARKANSAS STATE UNIVERSITY-MAIN CAMPUS	25.6	F	59.1%	33.4%	144	287	19	0	23	0	43	0	9	0
NCAA Div. II	ARKANSAS TECH UNIVERSITY	23.0	F	52.8%	29.8%	71	167	15	0	16	0	-31	0	58	0
NCCAA	CENTRAL BAPTIST COLLEGE	-3.1	A	45.0%	48.1%	37	40	16	0			3	0		
NCAA Div. II	HARDING UNIVERSITY	27.5	F	53.8%	26.3%	84	235	3	0	23	0	10	0	30	0
NCAA Div. II	HENDERSON STATE UNIVERSITY	21.2	D-	56.1%	34.9%	68	127	-31	0	38	0	-70	0	0	0
NCAA Div. III	HENDRIX COLLEGE	6.0	B	57.1%	51.1%	95	91	10	0			0	0		

								Changes in Women's Participation				Changes in Men's Participation			
		Proportionality Gap		Figures Underlying the Proportionality Gap				2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
Org./Div.	Name	Amount	Grade	% Und, Fem	% Ath, Fem	# Ath, Fem	# Ath, Male	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
NAIA	JOHN BROWN UNIVERSITY	-1.4	A	49.0%	50.4%	66	65	29	0			13	0		
NAIA	LYON COLLEGE	16.9	D+	51.3%	34.5%	61	116	9	0			29	0		
NJCAA	NORTH ARKANSAS COLLEGE	23.7	F	64.0%	40.3%	29	43	1	0			-23	0		
NCAA Div. II	OUACHITA BAPTIST UNIVERSITY	21.4	D-	54.5%	33.0%	105	213	8	0	46	0	49	0	40	-1
NCAA Div. II	SOUTHERN ARKANSAS UNIVERSITY MAIN CAMPUS	24.3	F	54.5%	30.2%	98	227	1	0	20	0	16	0	11	0
NJCAA	UNIVERSITY OF ARKANSAS AT FT SMITH	23.8	F	62.6%	38.8%	26	41	3	0			-4	0		
NCAA Div. I-AAA	UNIVERSITY OF ARKANSAS AT LITTLE ROCK	10.1	C+	60.7%	50.6%	82	80	-5	0	25	0	-5	0	-34	0
NCAA Div. II	UNIVERSITY OF ARKANSAS AT MONTICELLO	33.2	F	57.0%	23.8%	45	144	6	0	-2	0	8	0	13	0
NCAA Div. I-AA	UNIVERSITY OF ARKANSAS AT PINE BLUFF	10.9	C+	56.7%	45.8%	116	137	27	0			-10	-2		
NCAA Div. I-A	UNIVERSITY OF ARKANSAS MAIN CAMPUS	9.2	B-	49.6%	40.4%	216	318	18	0	22	0	-12	0	-14	0
NCAA Div. II	UNIVERSITY OF CENTRAL ARKANSAS	26.5	F	59.5%	33.0%	102	207	4	0	28	1	8	1	79	0
NCAA Div. III	UNIVERSITY OF THE OZARKS	14.6	C-	53.5%	38.8%	47	74	-26	0			-20	0		
NAIA	WILLIAMS BAPTIST COLLEGE	13.9	C	53.3%	39.4%	41	63	3	0			-6	0		
California															
COA	ALLAN HANCOCK COLLEGE	25.8	F	55.3%	29.5%	82	196	4	0			13	0		
NAIA	ALLIANT INTERNATIONAL UNIVERSITY-SAN DIEGO	11.2	C+	49.2%	38.0%	38	62	-6	0			2	0		
COA	AMERICAN RIVER COLLEGE	15.5	C-	57.5%	41.9%	135	187	11	0			5	0		
NAIA	AZUSA PACIFIC UNIVERSITY	33.5	F	64.5%	31.0%	93	207	-2	0			32	0		
COA	BAKERSFIELD COLLEGE	26.0	F	57.6%	31.7%	113	244	-10	0			0	0		
COA	BARSTOW COLLEGE	40.4	F	65.4%	25.0%	12	36	-9	0			5	0		
NAIA	BETHANY COLLEGE OF THE ASSEMBLIES OF GOD	8.7	B-	61.0%	52.3%	67	61	30	0			44	0		
NAIA	BIOLA UNIVERSITY	14.5	C-	61.8%	47.4%	99	110	-15	1			17	1		
COA	BUTTE COLLEGE	21.6	D-	53.1%	31.5%	81	176	-8	0			16	0		
COA	CABRILLO COLLEGE	12.0	C	48.4%	36.4%	95	166	12	-1			-16	-1		
NAIA	CALIFORNIA BAPTIST UNIVERSITY	13.5	C	65.0%	51.5%	136	128	26	0			23	0		
NCAA Div. III	CALIFORNIA INSTITUTE OF TECHNOLOGY	-3.7	A	31.5%	35.2%	81	149	-29	1	37	0	-39	1	45	0
NCAA Div. III	CALIFORNIA LUTHERAN UNIVERSITY	21.1	D-	56.5%	35.3%	117	214	19	1	-9	0	14	1	-35	0
NAIA	CALIFORNIA MARITIME ACADEMY	-1.2	A	14.5%	15.6%	23	124	1	0			9	0		
NCAA Div. I-AA	CALIFORNIA POLYTECHNIC ST UNIV-SAN LUIS OBISPO	1.4	A	42.9%	41.4%	225	318	-15	0	19	1	12	-1	11	1
NCAA Div. II	CALIFORNIA STATE POLYTECHNIC UNIV-POMONA	1.0	A	43.8%	42.9%	90	120	1	-1	13	1	-14	-1	3	1
NCAA Div. II	CALIFORNIA STATE UNIVERSITY-BAKERSFIELD	2.2	A-	65.7%	63.4%	222	128	27	1	23	-1	23	1	-16	-2
NCAA Div. II	CALIFORNIA STATE UNIVERSITY-CHICO	3.5	A-	53.8%	50.3%	181	179	-2	0	8	0	6	0	-63	0
NCAA Div. II	CALIFORNIA STATE UNIVERSITY-DOMINGUEZ HILLS	3.3	A-	67.6%	64.3%	133	74	-3	1	20	2	-9	0	5	0
NCAA Div. III	CALIFORNIA STATE UNIVERSITY-EAST BAY	5.2	B+	62.5%	57.3%	110	82	-7	1	39	0	11	1	-6	0
NCAA Div. I-A	CALIFORNIA STATE UNIVERSITY-FRESNO	-0.4	A	58.9%	59.3%	376	258	-8	0	106	0	-15	-2	18	0
NCAA Div. I-AAA	CALIFORNIA STATE UNIVERSITY-FULLERTON	5.4	B+	59.2%	53.8%	234	201	40	0			29	0		
NCAA Div. I-AAA	CALIFORNIA STATE UNIVERSITY-LONG BEACH	4.5	B+	61.5%	57.0%	225	170	5	0	60	0	-1	0	-25	0
NCAA Div. II	CALIFORNIA STATE UNIVERSITY-LOS ANGELES	0.8	A	61.7%	60.9%	148	95	2	0	-1	0	-13	-1	16	-1
NAIA	CALIFORNIA STATE UNIVERSITY-MONTEREY BAY	3.8	A-	57.9%	54.0%	94	80	39	-1			19	0		
NCAA Div. I-AAA	CALIFORNIA STATE UNIVERSITY-NORTHRIDGE	4.5	B+	58.8%	54.3%	240	202	17	0	29	0	-91	0	29	0
NCAA Div. I-AA	CALIFORNIA STATE UNIVERSITY-SACRAMENTO	7.4	B	58.3%	51.0%	240	231	-3	0	60	0	1	0	-9	0
NCAA Div. II	CALIFORNIA STATE UNIVERSITY-SAN BERNARDINO	8.0	B-	66.2%	58.2%	114	82	10	0	27	1	4	0	-8	0
NAIA	CALIFORNIA STATE UNIVERSITY-SAN MARCOS	30.0	F	61.3%	31.3%	31	68	0	0			7	0		
NCAA Div. II	CALIFORNIA STATE UNIVERSITY-STANISLAUS	14.1	C-	64.9%	50.8%	132	128	-9	0	27	1	18	0	-13	0
COA	CANADA COLLEGE	33.3	F	59.8%	26.5%	27	75	7	0			-13	0		
COA	CERRITOS COLLEGE	26.4	F	56.9%	30.5%	148	337	12	0			59	0		
COA	CERRO COSO COMMUNITY COLLEGE	27.1	F	60.4%	33.3%	13	26	-20	0			3	0		
COA	CHABOT COLLEGE	20.7	D-	55.6%	34.9%	125	233	9	-1			23	-1		
COA	CHAFFEY COLLEGE	22.6	F	59.1%	36.6%	117	203	60	1			63	1		
NCAA Div. III	CHAPMAN UNIVERSITY	18.7	D	58.0%	39.3%	133	205	-15	0			55	0		
NAIA	CHRISTIAN HERITAGE COLLEGE	1.9	A	57.5%	55.6%	45	36	1	0			-1	0		
COA	CITRUS COLLEGE	20.7	D-	53.9%	33.2%	101	203	-18	0			-3	0		
COA	CITY COLLEGE OF SAN FRANCISCO	13.5	C	53.0%	39.5%	117	179	20	0			4	0		
NCAA Div. III	CLAREMONT MCKENNA COLLEGE	4.9	B+	47.6%	42.7%	177	238	43	0	-17	0	12	0	0	0
COA	COLLEGE OF ALAMEDA	0.2	A	50.2%	50.0%	12	12	3	0			-8	0		
COA	COLLEGE OF MARIN	38.1	F	53.0%	14.9%	20	114	-15	0			-6	0		
COA	COLLEGE OF SAN MATEO	16.3	D+	50.4%	34.0%	82	159	34	0			32	0		
COA	COLLEGE OF THE CANYONS	12.8	C	50.6%	37.7%	120	198	6	0			31	0		
COA	COLLEGE OF THE DESERT	21.5	D-	55.9%	34.4%	83	158	0	0			-13	0		
COA	COLLEGE OF THE REDWOODS	21.8	D-	54.5%	32.7%	53	109	21	0			-9	-1		
COA	COLLEGE OF THE SEQUOIAS	17.8	D+	58.7%	40.8%	116	168	8	0			2	0		
COA	COLLEGE OF THE SISKIYOU	31.0	F	52.5%	21.5%	41	150	0	0			8	0		
COA	COLUMBIA COLLEGE	12.4	C	52.4%	40.0%	10	15	1	0			2	0		
COA	COMPTON COMMUNITY COLLEGE	53.0	F	65.5%	12.5%	25	175	-29	-1			-16	-1		
NAIA	CONCORDIA UNIVERSITY	13.2	C	63.8%	50.6%	85	83	-1	0			12	0		
COA	CONTRA COSTA COLLEGE	29.7	F	61.1%	31.4%	54	118	0	-1			-6	-1		
COA	COSUMNES RIVER COLLEGE	10.1	C+	54.4%	44.3%	58	73	6	0			-12	0		
COA	CUESTA COLLEGE	4.3	B+	48.5%	44.3%	147	185	9	0			41	0		
COA	CUYAMACA COLLEGE	3.5	A-	52.0%	48.5%	80	85	-7	0			5	0		
COA	CYPRESS COLLEGE	4.1	B+	56.4%	52.4%	89	81	6	0			-28	0		
COA	DE ANZA COLLEGE	12.3	C	48.3%	36.0%	114	203	-21	0			-9	0		
COA	DIABLO VALLEY COLLEGE	13.8	C	49.3%	35.5%	129	234	-10	0			17	0		
NAIA	DOMINICAN UNIVERSITY OF CALIFORNIA	20.9	D-	76.1%	55.2%	79	64	14	0			13	0		
COA	EAST LOS ANGELES COLLEGE	28.0	F	60.6%	32.6%	84	174	22	-2			36	-2		
COA	EL CAMINO COLLEGE	20.1	D-	53.2%	33.2%	122	246	-12	0			-34	0		

Org./Div.	Name	Proportionality Gap		Figures Underlying the Proportionality Gap				Changes in Women's Participation				Changes in Men's Participation			
		Amount	Grade	% Und, Fem	% Ath, Fem	# Ath, Fem	# Ath, Male	2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
								Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
COA	FEATHER RIVER COMMUNITY COLLEGE DISTRICT	16.1	D+	42.9%	26.7%	62	170	24	0			124	0		
COA	FOOTHILL COLLEGE	12.0	C+	51.8%	39.8%	80	121	-5	0			6	0		
COA	FRESNO CITY COLLEGE	19.4	D	55.4%	35.9%	134	239	31	0			34	0		
NAIA	FRESNO PACIFIC UNIVERSITY	12.6	C	69.8%	57.1%	76	57	-1	-1			6	-1		
COA	FULLERTON COLLEGE	13.7	C	50.7%	37.0%	150	255	-3	0			25	0		
COA	GAVILAN COLLEGE	31.8	F	57.8%	26.0%	34	97	-13	0			6	0		
COA	GLENDALE COMMUNITY COLLEGE	25.6	F	57.9%	32.3%	91	191	3	0			-1	0		
COA	GOLDEN WEST COLLEGE	22.4	F	51.0%	28.6%	112	280	12	0			44	0		
COA	GROSSMONT COLLEGE	15.8	C-	54.7%	38.8%	139	219	16	1			26	0		
COA	HARTNELL COLLEGE	23.0	F	54.6%	31.6%	79	171	14	0			-8	0		
NAIA	HOPE INTERNATIONAL UNIVERSITY	10.7	C+	62.8%	52.1%	62	57	-1	0			13	0		
NCAA Div. II	HUMBOLDT STATE UNIVERSITY	4.0	A-	54.9%	50.9%	165	159	-3	-1			-7	0		
COA	IMPERIAL VALLEY COLLEGE	11.9	C+	61.9%	50.0%	64	64	13	0			5	0		
COA	IRVINE VALLEY COLLEGE	11.8	C+	49.5%	37.7%	66	109	-12	-2			7	-2		
NCAA Div. III	LA SIERRA UNIVERSITY	-0.4	A	57.9%	58.3%	35	25	20	0			11	0		
COA	LANEY COLLEGE	35.2	F	57.1%	22.0%	27	96	-31	0			9	0		
COA	LAS POSITAS COLLEGE	-1.1	A	51.6%	52.6%	30	27	4	0			-2	0		
COA	LASSEN COMMUNITY COLLEGE	7.0	B	52.8%	45.7%	86	102	43	0			9	0		
NCCAA	LIFE PACIFIC COLLEGE	0.4	A	50.4%	50.0%	10	10	0	0			-2	0		
COA	LONG BEACH CITY COLLEGE	20.9	D-	55.7%	34.9%	128	239	0	0			-4	0		
COA	LOS ANGELES CITY COLLEGE	3.0	A-	59.3%	56.3%	54	42	-59	0			-39	-2		
COA	LOS ANGELES HARBOR COLLEGE	38.6	F	60.6%	22.0%	44	156	-5	0			-2	0		
COA	LOS ANGELES PIERCE COLLEGE	21.7	D-	55.0%	33.3%	76	152	10	0			30	0		
COA	LOS ANGELES SOUTHWEST COLLEGE	51.6	F	74.2%	22.6%	30	103	0	0			5	0		
COA	LOS ANGELES TRADE TECHNICAL COLLEGE	14.6	C-	56.3%	41.7%	58	81	-3	0			-3	-1		
COA	LOS ANGELES VALLEY COLLEGE	25.4	F	59.6%	34.2%	92	177	8	0			22	0		
COA	LOS MEDANOS COLLEGE	24.0	F	59.4%	35.4%	57	104	5	0			-1	0		
NCAA Div. I-AAA	LOYOLA MARYMOUNT UNIVERSITY	3.5	A-	60.9%	57.4%	214	159	16	0			7	0		
COA	MARYMOUNT COLLEGE	3.6	A-	53.6%	50.0%	8	8	0	0			-8	0		
COA	MENDOCINO COLLEGE	22.7	F	58.6%	35.9%	56	100	33	-2			17	-2		
COA	MERCED COLLEGE	32.5	F	65.7%	33.2%	81	163	-5	0			25	1		
COA	MERRITT COLLEGE	21.1	D-	69.8%	48.7%	19	20	-1	0			0	0		
COA	MIRACOSTA COLLEGE	-0.2	A	56.0%	56.3%	18	14	-2	0			0	-2		
COA	MISSION COLLEGE	3.8	A-	54.8%	51.0%	53	51	5	0			6	0		
COA	MODESTO JUNIOR COLLEGE	21.8	D-	55.8%	33.9%	130	253	12	0			13	0		
COA	MONTEREY PENINSULA COLLEGE	20.7	D-	54.2%	33.5%	60	119	5	0			13	0		
COA	MOORPARK COLLEGE	27.3	F	50.8%	23.5%	92	299	-2	0			60	0		
COA	MT SAN ANTONIO COLLEGE	20.8	D-	51.4%	30.7%	167	377	0	0			21	0		
COA	MT SAN JACINTO COLLEGE	28.5	F	60.7%	32.3%	60	126	-2	0			12	0		
COA	NAPA VALLEY COLLEGE	22.8	F	57.3%	34.5%	40	76	14	0			1	0		
NAIA	NOTRE DAME DE NAMUR UNIVERSITY	13.1	C	62.5%	49.5%	92	94	14	1			45	1		
NCAA Div. III	OCCIDENTAL COLLEGE	22.5	F	58.4%	35.9%	129	230	-15	1	12	0	-4	1	13	0
COA	OHLONE COLLEGE	0.8	A	50.8%	50.0%	84	84	14	0			-7	0		
COA	ORANGE COAST COLLEGE	13.6	C	48.2%	34.7%	173	326	16	0			22	0		
COA	OXNARD COLLEGE	22.2	F	57.5%	35.3%	53	97	5	0			18	0		
NAIA	PACIFIC UNION COLLEGE	-3.3	A	53.3%	56.6%	30	23	-4	0			3	0		
COA	PALOMAR COLLEGE	17.9	D+	47.3%	29.5%	105	251	7	0			-2	1		
COA	PASADENA CITY COLLEGE	14.2	C-	52.4%	38.2%	112	181	12	0			9	0		
NAIA	PATTEN UNIVERSITY	-35.9	A	64.1%	100.0%	11	0	-2	0			0	0		
NCAA Div. I-AAA	PEPPERDINE UNIVERSITY	10.7	C+	58.2%	47.5%	115	127	3	0			7	0		
NAIA	POINT LOMA NAZARENE UNIVERSITY	12.3	C	60.9%	48.6%	104	110	3	0			5	0		
NCAA Div. III	POMONA COLLEGE	8.1	B-	50.1%	42.0%	165	228	0	0	39	0	-1	0	18	0
COA	PORTERVILLE COLLEGE	30.0	F	64.6%	34.6%	36	68	-11	0			4	0		
COA	REEDLEY COLLEGE	33.2	F	55.6%	22.4%	45	156	-3	0			15	0		
COA	RIO HONDO COLLEGE	6.3	B	50.4%	44.1%	109	138	3	0			8	0		
COA	RIVERSIDE COMMUNITY COLLEGE	23.1	F	56.7%	33.7%	141	278	16	0			17	0		
COA	SACRAMENTO CITY COLLEGE	18.7	D	58.8%	40.1%	134	200	6	0			-28	0		
COA	SADDEBACK COLLEGE	16.0	D+	50.3%	34.3%	124	238	0	0			-6	0		
NCAA Div. I-AAA	SAINT MARYS COLLEGE OF CALIFORNIA	3.7	A-	61.4%	57.6%	132	97	-26	0	44	0	-109	0	-2	0
COA	SAN BERNARDINO VALLEY COLLEGE	33.7	F	62.4%	28.7%	62	154	-13	0			-14	0		
COA	SAN DIEGO CITY COLLEGE	12.3	C	56.3%	44.0%	51	65	-5	0			0	-1		
COA	SAN DIEGO MESA COLLEGE	15.0	C-	50.3%	35.3%	135	247	11	0			17	0		
COA	SAN DIEGO MIRAMAR COLLEGE	-5.6	A	44.4%	50.0%	12	12	1	0			0	0		
NCAA Div. I-A	SAN DIEGO STATE UNIVERSITY	0.2	A	58.3%	58.1%	316	228	11	0	101	2	-7	0	39	0
NCAA Div. II	SAN FRANCISCO STATE UNIVERSITY	-4.9	A	60.0%	64.9%	172	93	-35	0	45	1	-14	-1	8	0
COA	SAN JOAQUIN DELTA COLLEGE	24.1	F	57.3%	33.2%	99	199	-13	0			-30	0		
COA	SAN JOSE CITY COLLEGE	30.3	F	57.5%	27.2%	50	134	-2	0			-17	0		
NCAA Div. I-A	SAN JOSE STATE UNIVERSITY	0.4	A	50.1%	49.7%	193	195	30	0			-4	0		
COA	SANTA ANA COLLEGE	22.6	F	51.6%	29.1%	109	266	18	0			54	0		
COA	SANTA BARBARA CITY COLLEGE	18.7	D	49.9%	31.2%	106	234	11	0			29	0		
NCAA Div. I-AAA	SANTA CLARA UNIVERSITY	4.4	B+	55.6%	51.3%	201	191	44	1			11	1		
COA	SANTA MONICA COLLEGE	14.2	C-	52.9%	38.8%	107	169	16	0			26	0		
COA	SANTA ROSA JUNIOR COLLEGE	20.5	D-	53.9%	33.4%	113	225	-26	0			-27	0		
COA	SANTIAGO CANYON COLLEGE	5.5	B+	50.4%	44.8%	52	64	-5	1			-4	1		
COA	SHASTA COLLEGE	27.1	F	58.9%	31.7%	86	185	-8	0			-2	0		

								Changes in Women's Participation				Changes in Men's Participation			
Org./Div.	Name	Proportionality Gap		Figures Underlying the Proportionality Gap				2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
		Amount	Grade	% Und, Fem	% Ath, Fem	# Ath, Fem	# Ath, Male	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
COA	SIERRA COLLEGE	11.7	C+	52.4%	40.6%	128	187	14	-2			-8	-2		
NAIA	SIMPSON UNIVERSITY	18.3	D	65.1%	46.8%	37	42	-1	0			-4	0		
NJCAA	SKYLINE COLLEGE	19.3	D	50.1%	30.8%	36	81	-1	-1			-1	-1		
COA	SOLANO COUNTY COMMUNITY COLLEGE DISTRICT	29.3	F	55.4%	26.1%	55	156	10	0			98	0		
NCAA Div. II	SONOMA STATE UNIVERSITY	-0.0	A	62.9%	63.0%	182	107	59	0	36	0	2	0	-30	0
COA	SOUTHWESTERN COLLEGE	20.9	D-	54.4%	33.5%	106	210	16	0			7	0		
NCAA Div. I-A	STANFORD UNIVERSITY	1.3	A	47.6%	46.3%	417	483	3	0	21	0	9	0	-18	0
COA	TAFT COLLEGE	14.8	C-	59.5%	44.7%	38	47	1	0			7	0		
NAIA	THE MASTER'S COLLEGE AND SEMINARY	11.5	C+	53.7%	42.2%	57	78	-3	0			5	0		
NCAA Div. I-A	UNIVERSITY OF CALIFORNIA-BERKELEY	12.6	C	54.1%	41.5%	389	549	-67	0	102	0	-4	0	12	0
NCAA Div. II	UNIVERSITY OF CALIFORNIA-DAVIS	6.1	B	55.8%	49.7%	363	368	4	0	134	0	-10	0	-25	0
NCAA Div. I-AAA	UNIVERSITY OF CALIFORNIA-IRVINE	4.8	B+	50.4%	45.6%	258	308	-21	0	74	1	-3	0	55	0
NCAA Div. I-A	UNIVERSITY OF CALIFORNIA-LOS ANGELES	12.1	C	56.9%	44.8%	262	323	-43	0	88	0	0	0	-11	0
NCAA Div. I-AAA	UNIVERSITY OF CALIFORNIA-RIVERSIDE	2.1	A-	53.6%	51.5%	170	160	-1	0			-16	0		
NCAA Div. II	UNIVERSITY OF CALIFORNIA-SAN DIEGO	1.7	A	52.3%	50.7%	307	299	-30	0	68	0	-59	0	66	0
NCAA Div. I-AAA	UNIVERSITY OF CALIFORNIA-SANTA BARBARA	8.1	B-	55.7%	47.6%	257	283	-27	-1			-2	0		
NCAA Div. III	UNIVERSITY OF CALIFORNIA-SANTA CRUZ	-0.7	A	54.4%	55.2%	144	117	10	1	47	0	-9	0	36	0
NCAA Div. III	UNIVERSITY OF LA VERNE	25.3	F	64.4%	39.1%	129	201	0	1			-33	1		
NCAA Div. III	UNIVERSITY OF REDLANDS	20.1	D-	57.6%	37.5%	178	297	-22	1	54	0	10	1	15	0
NCAA Div. I-AA	UNIVERSITY OF SAN DIEGO	11.0	C+	60.6%	49.6%	205	208	37	0	34	0	-19	0	8	0
NCAA Div. I-AAA	UNIVERSITY OF SAN FRANCISCO	16.1	D+	63.8%	47.8%	96	105	-5	1	6	0	-7	1	16	0
NCAA Div. I-A	UNIVERSITY OF SOUTHERN CALIFORNIA	4.6	B+	51.0%	46.3%	289	335	-14	0	82	1	11	1	-7	-1
NCAA Div. I-AAA	UNIVERSITY OF THE PACIFIC	5.1	B+	56.8%	51.7%	153	143	-11	0	26	0	-7	0	-73	0
NAIA	VANGUARD UNIVERSITY OF SOUTHERN CALIFORNIA	13.9	C	65.5%	51.6%	80	75	0	0			11	0		
COA	VENTURA COLLEGE	15.7	C-	53.7%	38.0%	135	220	14	0			12	0		
COA	VICTOR VALLEY COLLEGE	30.0	F	61.3%	31.4%	74	162	4	0			-10	0		
COA	WEST HILLS COMMUNITY COLLEGE	42.5	F	61.1%	18.6%	32	140	-10	0			24	0		
COA	WEST LOS ANGELES COLLEGE	26.9	F	61.8%	35.0%	36	67	-6	0			-15	-2		
COA	WEST VALLEY COLLEGE	12.4	C	51.6%	39.2%	98	152	9	0			-26	0		
NAIA	WESTMONT COLLEGE	17.2	D+	63.1%	45.9%	90	106	0	0			11	0		
NCAA Div. III	WHITTIER COLLEGE	18.6	D	56.3%	37.7%	145	240	5	0	12	0	-1	0	10	0
Other	WILLIAM JESSUP UNIVERSITY	-6.6	A	52.8%	59.4%	41	28	18	1			-7	1		
COA	YUBA COLLEGE	31.0	F	62.5%	31.5%	68	148	-2	0			9	0		
Colorado															
NCAA Div. II	ADAMS STATE COLLEGE	21.6	D-	54.2%	32.5%	121	251	21	0			-19	0		
NCAA Div. II	COLORADO CHRISTIAN UNIVERSITY	9.9	B-	65.0%	55.0%	71	58	1	0	-9	0	6	0	-14	0
NCAA Div. III	COLORADO COLLEGE	2.2	A-	53.0%	50.7%	211	205	24	0			-1	-1		
NJCAA	COLORADO NORTHWESTERN COMMUNITY COLLEGE	19.9	D	61.4%	41.6%	32	45	-8	0			-2	0		
NCAA Div. III	COLORADO SCHOOL OF MINES	-0.0	A	22.9%	22.9%	85	286	11	0	-8	0	-11	0	-3	0
NCAA Div. I-A	COLORADO STATE UNIVERSITY	1.4	A	51.4%	50.0%	267	267	6	0	11	0	-7	0	0	0
NCAA Div. II	COLORADO STATE UNIVERSITY-PUEBLO	13.9	C	56.9%	43.0%	83	110	1	0	6	0	3	0	-8	0
NCAA Div. II	FORT LEWIS COLLEGE	12.2	C	48.1%	36.0%	82	146	7	0	-1	0	-15	0	9	0
NAIA	JOHNSON & WALES UNIVERSITY-DENVER	12.8	C	47.9%	35.1%	26	48	-15	0			-19	0		
NJCAA	LAMAR COMMUNITY COLLEGE	21.0	D-	60.0%	39.0%	46	72	8	0			5	0		
NCAA Div. II	MESA STATE COLLEGE	14.9	C-	56.3%	41.4%	123	174	14	0	28	0	12	0	26	0
NCAA Div. II	METROPOLITAN STATE COLLEGE OF DENVER	9.5	B-	54.8%	45.3%	72	87	2	0	4	0	-2	0	0	0
NJCAA	NORTHEASTERN JUNIOR COLLEGE	9.0	B-	52.0%	43.1%	31	41	-13	0			-2	0		
NJCAA	OTERO JUNIOR COLLEGE	9.4	B-	56.9%	47.4%	65	72	3	0			14	0		
NCAA Div. II	REGIS UNIVERSITY	8.8	B-	61.9%	53.1%	102	90	7	0	12	1	21	0	-61	1
NJCAA	TRINIDAD STATE JUNIOR COLLEGE	13.7	C	53.7%	40.0%	28	42	14	0			-10	0		
NCAA Div. I-A	UNIVERSITY OF COLORADO AT BOULDER	7.4	B	47.6%	40.3%	174	258	-15	0	38	0	-26	0	24	0
NCAA Div. II	UNIVERSITY OF COLORADO AT COLORADO SPRINGS	12.3	C	60.5%	48.1%	78	84	7	0			6	0		
NCAA Div. I-AAA	UNIVERSITY OF DENVER	2.6	A-	51.9%	49.3%	149	153	8	-1	18	1	-7	-1	-10	1
NCAA Div. I-AA	UNIVERSITY OF NORTHERN COLORADO	14.3	C-	60.6%	46.3%	199	231	-24	0	35	-1	-2	0	-82	-1
NCAA Div. II	WESTERN STATE COLLEGE OF COLORADO	10.4	C+	40.2%	29.9%	140	329	2	0			-19	0		
Connecticut															
NCAA Div. III	ALBERTUS MAGNUS COLLEGE	16.5	D+	68.9%	52.3%	67	61	31	0	-5	1	-19	0	28	1
NCAA Div. I-AA	CENTRAL CONNECTICUT STATE UNIVERSITY	-0.3	A	50.9%	51.2%	193	184	14	0	29	0	-4	0	-55	0
NCAA Div. III	CONNECTICUT COLLEGE	5.5	B+	59.6%	54.1%	296	251	-5	0			-9	0		
NCAA Div. III	EASTERN CONNECTICUT STATE UNIVERSITY	0.8	A	55.7%	54.8%	204	168	-2	0	59	0	-11	0	5	0
NCAA Div. I-AAA	FAIRFIELD UNIVERSITY	6.5	B	57.2%	50.7%	177	172	-54	0	103	0	-113	0	88	0
NJCAA	GATEWAY COMMUNITY COLLEGE	25.7	F	55.7%	30.0%	12	28	-3	0			-23	0		
NJCAA	MANCHESTER COMMUNITY COLLEGE	12.8	C	51.8%	39.0%	23	36	-12	0			-13	0		
NCAA Div. III	MITCHELL COLLEGE	13.4	C	50.1%	36.6%	48	83	-7	0			-17	0		
NCAA Div. II	POST UNIVERSITY	12.4	C	54.7%	42.3%	83	113	20	0			22	0		
NCAA Div. I-AAA	QUINNIPIAC UNIVERSITY	12.1	C	61.2%	49.1%	219	227	-10	0			8	0		
NCAA Div. I-AA	SACRED HEART UNIVERSITY	18.0	D	58.9%	40.9%	328	474	33	0	47	0	53	0	51	0
NCAA Div. II	SOUTHERN CONNECTICUT STATE UNIVERSITY	16.0	C-	62.1%	46.1%	266	311	-7	0	69	0	-1	0	28	0
NCAA Div. III	TRINITY COLLEGE	8.5	B-	48.3%	39.8%	262	396	18	0	3	0	34	0	-26	0
NCAA Div. II	UNIVERSITY OF BRIDGEPORT	11.4	C+	58.2%	46.8%	80	91	11	1	7	-1	20	0	16	0
NCAA Div. I-A	UNIVERSITY OF CONNECTICUT	2.5	A-	52.7%	50.1%	364	362	2	0	123	0	40	0	-16	0
NCAA Div. I-AAA	UNIVERSITY OF HARTFORD	4.0	A-	49.9%	45.9%	129	152	1	0	-9	0	-11	0	-22	0
NCAA Div. II	UNIVERSITY OF NEW HAVEN	3.8	A-	48.5%	44.7%	113	140	-25	0	42	3	-188	0	60	0
NCAA Div. III	WESLEYAN UNIVERSITY	14.1	C-	52.4%	38.3%	262	422	13	0	2	0	12	0	-16	0

Org./Div.	Name	Proportionality Gap		Figures Underlying the Proportionality Gap				Changes in Women's Participation				Changes in Men's Participation			
		Amount	Grade	% Und, Fem	% Ath, Fem	# Ath, Fem	# Ath, Male	2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
								Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
NCAA Div. III	WESTERN CONNECTICUT STATE UNIVERSITY	20.5	D-	55.1%	34.6%	110	208	2	0	35	0	39	0	18	0
NCAA Div. I-AA	YALE UNIVERSITY	5.3	B+	49.6%	44.3%	465	585	-8	0	43	0	32	0	1	0
Delaware															
NCAA Div. I-AA	DELAWARE STATE UNIVERSITY	22.8	F	59.0%	36.2%	122	215	9	0			8	0		
NJCAA	DELAWARE TECHNICAL AND COMM COLLEGE-OWENS	18.8	D	59.5%	40.7%	22	32	6	0			-2	0		
NJCAA	DELAWARE TECH/CC-STANTON-WILMINGTON	17.8	D+	55.9%	38.1%	16	26	-11	0			-6	0		
NCAA Div. II	GOLDEY-BEACOM COLLEGE	-3.3	A	50.3%	53.7%	66	57	6	1			5	0		
NCAA Div. I-AA	UNIVERSITY OF DELAWARE	9.8	B-	57.7%	47.9%	343	373	-10	0	66	0	-12	0	4	0
NCAA Div. III	WESLEY COLLEGE	24.0	F	55.5%	31.6%	124	269	14	0			49	0		
NCAA Div. II	WILMINGTON COLLEGE	11.6	C+	64.6%	53.0%	88	78	36	0			10	0		
District of Columbia															
NCAA Div. I-AAA	AMERICAN UNIVERSITY	3.6	A-	61.9%	58.4%	171	122	15	0	13	2	2	0	-5	2
NCAA Div. III	CATHOLIC UNIVERSITY OF AMERICA	11.1	C+	54.6%	43.5%	171	222	4	0	27	0	6	0	28	0
NCAA Div. III	GALLAUDET UNIVERSITY	13.4	C	52.6%	39.1%	72	112	1	-1	12	-1	-14	0	-2	-1
NCAA Div. I-AAA	GEORGE WASHINGTON UNIVERSITY	-3.3	A	56.6%	60.0%	265	177	46	0	38	0	12	0	-17	0
NCAA Div. I-AA	GEORGETOWN UNIVERSITY	13.4	C	54.0%	40.5%	291	427	23	0			33	0		
NCAA Div. I-AA	HOWARD UNIVERSITY	23.8	F	67.1%	43.3%	193	253	-1	0	59	0	-33	0	11	0
NCAA Div. II	UNIVERSITY OF THE DISTRICT OF COLUMBIA	13.7	C	58.1%	44.4%	32	40	-5	0			-7	0		
Florida															
NCAA Div. II	BARRY UNIVERSITY	12.7	C	69.2%	56.4%	127	98	8	0			20	0		
NCAA Div. I-AA	BETHUNE COOKMAN COLLEGE	25.0	F	59.5%	34.6%	75	142	9	0	-13	0	2	-1	-52	0
NJCAA	BREVARD COMMUNITY COLLEGE-COCOA CAMPUS	12.1	C	56.3%	44.2%	38	48	-9	0			11	0		
NJCAA	BROWARD COMMUNITY COLLEGE	-1.3	A	58.1%	59.4%	60	41	3	0			1	0		
NJCAA	CENTRAL FLORIDA COMMUNITY COLLEGE	9.4	B-	61.2%	51.7%	45	42	3	0			7	0		
NJCAA	CHIPOLA COLLEGE	12.0	C+	56.9%	44.9%	31	38	0	0			1	0		
NCCAA	CLEARWATER CHRISTIAN COLLEGE	14.2	C-	52.8%	38.6%	39	62	-9	0			1	0		
NJCAA	DAYTONA BEACH COMMUNITY COLLEGE	1.9	A	55.7%	53.8%	43	37	-4	0			-5	0		
NCAA Div. II	ECKERD COLLEGE	9.9	B-	56.1%	46.2%	86	100	1	0	31	0	12	0	-8	0
NAIA	EDWARD WATERS COLLEGE	16.2	D+	49.8%	33.6%	73	144	-4	0			5	0		
NAIA	EMBRY RIDDLE AERONAUTICAL UNIV-DAYTONA BCH	-18.7	A	16.8%	35.5%	60	109	-13	1			-26	1		
NAIA	FLAGLER COLLEGE	21.7	D-	61.4%	39.8%	66	100	-1	0			-8	0		
NCAA Div. I-AA	FLORIDA AGRICULTURAL AND MECHANICAL UNIV	23.3	F	58.1%	34.8%	111	208	-7	0	29	0	-23	0	39	0
NCAA Div. I-A	FLORIDA ATLANTIC UNIVERSITY-BOCA RATON	20.8	D-	58.1%	37.2%	169	285	-2	0	17	1	18	0	120	0
NCCAA	FLORIDA CHRISTIAN COLLEGE INC	1.7	A	47.6%	45.8%	11	13	-6	0			3	0		
Other	FLORIDA COLLEGE	25.2	F	49.2%	24.0%	12	38	0	0			1	0		
NJCAA	FLORIDA COMMUNITY COLLEGE AT JACKSONVILLE	2.6	A-	60.4%	57.7%	56	41	-5	0			-2	0		
NCAA Div. II	FLORIDA GULF COAST UNIVERSITY	15.9	C-	62.7%	46.8%	73	83	45	1			49	1		
NCAA Div. II	FLORIDA INSTITUTE OF TECHNOLOGY-MELBOURNE	-21.7	A	32.1%	53.8%	134	115	52	0			-23	0		
NCAA Div. I-A	FLORIDA INTERNATIONAL UNIVERSITY	13.1	C	56.9%	43.9%	197	252	17	0	31	0	-16	0	81	0
NAIA	FLORIDA MEMORIAL COLLEGE	34.5	F	70.6%	36.1%	26	46	-7	0			1	0		
NCAA Div. II	FLORIDA SOUTHERN COLLEGE	11.8	C+	60.4%	48.5%	116	123	15	2	25	0	2	2	23	0
NCAA Div. I-A	FLORIDA STATE UNIVERSITY	6.2	B	56.8%	50.6%	292	285	4	0	10	0	-4	0	-6	0
NJCAA	GULF COAST COMMUNITY COLLEGE	2.2	A-	59.2%	57.0%	45	34	-2	0			0	0		
NJCAA	HILLSBOROUGH COMMUNITY COLLEGE	0.4	A	57.9%	57.5%	61	45	12	0			7	0		
NJCAA	INDIAN RIVER COMMUNITY COLLEGE	-1.2	A	52.6%	53.8%	78	67	8	0			5	0		
NCAA Div. I-AA	JACKSONVILLE UNIVERSITY	16.8	D+	49.2%	32.4%	126	263	12	0	15	0	10	0	135	-1
NJCAA	LAKE CITY COMMUNITY COLLEGE	1.9	A	58.5%	56.6%	30	23	10	0			2	0		
NJCAA	LAKE-SUMTER COMMUNITY COLLEGE	2.2	A-	61.8%	59.6%	34	23	10	0			2	0		
NCAA Div. II	LYNN UNIVERSITY	6.6	B	48.0%	41.3%	81	115	6	0			22	0		
NJCAA	MANATEE COMMUNITY COLLEGE	7.9	B	59.9%	52.1%	38	35	-5	0			1	0		
NJCAA	MIAMI DADE COLLEGE	4.5	B+	61.5%	57.0%	49	37	-3	0			-2	0		
NJCAA	NORTH FLORIDA COMMUNITY COLLEGE	7.7	B	66.6%	58.9%	33	23	4	0			-2	0		
NAIA	NORTHWOOD UNIV-FLORIDA EDUCATION CENTER	0.7	A	43.0%	42.4%	64	87	2	0			-7	0		
NCAA Div. II	NOVA SOUTHEASTERN UNIVERSITY	17.8	D+	74.1%	56.3%	103	80	21	0			0	1		
NJCAA	OKALOOSA-WALTON COLLEGE	8.0	B-	61.0%	52.9%	36	32	-6	0			-1	0		
NCAA Div. II	PALM BEACH ATLANTIC UNIV-WEST PALM BEACH	24.1	F	62.4%	38.4%	76	122	29	0			20	0		
NJCAA	PALM BEACH COMMUNITY COLLEGE	0.7	A	56.0%	55.3%	47	38	1	0			-2	0		
NJCAA	PASCO-HERNANDO COMMUNITY COLLEGE	6.4	B	62.6%	56.2%	41	32	-1	0			2	0		
NJCAA	PENSACOLA JUNIOR COLLEGE	3.9	A-	60.6%	56.7%	55	42	3	0			4	0		
NJCAA	POLK COMMUNITY COLLEGE	-5.9	A	55.4%	61.4%	54	34	14	0			0	0		
NCAA Div. II	ROLLINS COLLEGE	12.2	C	61.8%	49.6%	182	185	13	0	42	0	31	0	8	0
NJCAA	SAINT JOHNS RIVER COMMUNITY COLLEGE	0.1	A	55.6%	55.6%	40	32	-2	0			-6	0		
NCAA Div. II	SAINT LEO UNIVERSITY	11.7	C+	57.4%	45.7%	95	113	10	0			18	0		
NAIA	SAINT THOMAS UNIVERSITY	14.6	C-	58.8%	44.2%	61	77	-1	1			3	1		
NJCAA	SANTA FE COMMUNITY COLLEGE	3.5	A-	52.2%	48.7%	37	39	1	0			1	0		
NJCAA	SEMINOLE COMMUNITY COLLEGE	6.1	B	55.4%	49.4%	39	40	3	0			4	0		
NJCAA	SOUTH FLORIDA COMMUNITY COLLEGE	-4.4	A	53.0%	57.4%	35	26	16	0			4	0		
NCCAA	SOUTHEASTERN COLLEGE ASSEMBLIES OF GOD	17.1	D+	55.1%	38.0%	52	85	23	0			30	0		
NJCAA	ST PETERSBURG COLLEGE	4.0	B+	59.1%	55.1%	49	40	4	0			1	0		
NCAA Div. I-AAA	STETSON UNIVERSITY	8.0	B-	58.0%	50.0%	138	138	-2	0	-11	0	1	0	-22	0
NJCAA	TALLAHASSEE COMMUNITY COLLEGE	0.5	A	50.5%	50.0%	38	38	4	0			0	0		
NCAA Div. II	THE UNIVERSITY OF TAMPA	8.0	B-	62.2%	54.2%	182	154	29	0			-23	-1		
NCAA Div. II	THE UNIVERSITY OF WEST FLORIDA	9.2	B-	59.5%	50.2%	114	113	-6	0	25	1	8	1	-33	0
NCAA Div. I-A	UNIVERSITY OF CENTRAL FLORIDA	-0.2	A	55.2%	55.4%	272	219	42	0	20	0	30	0	-28	0

Org./Div.	Name	Proportionality Gap		Figures Underlying the Proportionality Gap				Changes in Women's Participation				Changes in Men's Participation			
		Amount	Grade	% Und, Fem	% Ath, Fem	# Ath, Fem	# Ath, Male	2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
								Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
NCAA Div. I-A	UNIVERSITY OF FLORIDA	8.7	B-	53.9%	45.2%	306	371	34	0			45	0		
NCAA Div. I-A	UNIVERSITY OF MIAMI	5.9	B+	57.9%	52.0%	235	217	-30	0			-16	0		
NCAA Div. II	UNIVERSITY OF NORTH FLORIDA	7.5	B	57.7%	50.1%	172	171	5	0	55	0	3	0	-10	2
NCAA Div. I-A	UNIVERSITY OF SOUTH FLORIDA	5.4	B+	59.6%	54.2%	271	229	17	0			0	0		
NAIA	WARNER SOUTHERN COLLEGE	17.5	D+	58.6%	41.1%	129	185	22	0			42	0		
NAIA	WEBBER INTERNATIONAL UNIVERSITY	0.7	A	33.7%	33.0%	125	254	2	0			101	-1		
Georgia															
NJCAA	ABRAHAM BALDWIN AGRICULTURAL COLLEGE	2.6	A-	49.1%	46.5%	40	46	6	0			-2	0		
NCAA Div. II	ALBANY STATE UNIVERSITY	29.3	F	65.5%	36.2%	102	180	8	0			42	0		
NJCAA	ANDREW COLLEGE	15.5	C-	47.7%	32.2%	29	61	-14	0			-16	0		
NCAA Div. II	ARMSTRONG ATLANTIC STATE UNIVERSITY	17.3	D+	65.0%	47.7%	51	56	2	0	20	-1	-1	0	14	-1
NCAA	ATLANTA CHRISTIAN COLLEGE	3.7	A-	50.4%	46.7%	43	49	8	1			4	1		
NCAA Div. II	AUGUSTA STATE UNIVERSITY	14.1	C-	62.9%	48.9%	64	67	4	0	-2	0	-2	-1	-19	0
NAIA	BERRY COLLEGE	11.9	C+	64.9%	53.0%	115	102	-14	0			-35	0		
NAIA	BREWTON-PARKER COLLEGE	14.3	C-	61.1%	46.8%	-59	67	8	0			-1	0		
NCAA Div. II	CLAYTON COLLEGE AND STATE UNIVERSITY	19.5	D	68.2%	48.7%	56	59	3	1	5	1	8	1	7	1
NJCAA	COASTAL GEORGIA COMMUNITY COLLEGE	10.9	C+	66.4%	55.6%	15	12	0	0			-2	0		
NAIA	COVENANT COLLEGE	7.7	B	59.8%	52.1%	75	69	0	0			9	0		
NJCAA	DARTON COLLEGE	24.6	F	66.9%	42.2%	49	67	1	0			10	0		
NAIA	EMMANUEL COLLEGE	3.7	A-	55.7%	52.1%	63	58	27	0			-7	0		
NCAA Div. III	EMORY UNIVERSITY	9.4	B-	56.7%	47.3%	177	197	-40	0	81	0	-20	0	34	0
NCAA Div. II	FORT VALLEY STATE UNIVERSITY	19.7	D	54.3%	34.6%	74	140	-3	0			-16	0		
NCAA Div. II	GEORGIA COLLEGE AND STATE UNIVERSITY	10.9	C+	60.1%	49.2%	94	97	43	0	-1	0	14	0	-1	0
NCAA Div. I-A	GEORGIA INSTITUTE OF TECHNOLOGY-MAIN CAMPUS	-9.1	A	27.7%	36.8%	191	328	13	0	20	0	1	0	19	0
NJCAA	GEORGIA MILITARY COLLEGE-MAIN CAMPUS	21.0	D-	46.0%	25.0%	33	99	15	0			21	0		
NJCAA	GEORGIA PERIMETER COLLEGE	15.5	C-	56.6%	41.2%	49	70	-2	0			2	0		
NCAA Div. I-AA	GEORGIA SOUTHERN UNIVERSITY	4.5	B+	49.1%	44.6%	179	222	-5	0	14	2	-5	0	-28	-1
NAIA	GEORGIA SOUTHWESTERN STATE UNIVERSITY	19.8	D	63.0%	43.2%	57	75	9	0			21	0		
NCAA Div. I-AAA	GEORGIA STATE UNIVERSITY	10.7	C+	60.5%	49.8%	117	118	6	0	7	2	15	0	-37	2
NJCAA	GORDON COLLEGE	20.6	D-	61.9%	41.2%	40	57	-4	0			-15	0		
NCAA Div. II	KENNESAW STATE UNIVERSITY	6.5	B	60.2%	53.7%	102	88	25	0	-1	0	5	0	-12	0
NCAA Div. III	LAGRANGE COLLEGE	21.0	D-	64.2%	43.2%	82	108	10	0			3	0		
NCAA Div. I-AAA	MERCER UNIVERSITY	22.5	F	67.0%	44.5%	89	111	0	0	6	0	-6	0	-4	0
NJCAA	MIDDLE GEORGIA COLLEGE	15.2	C-	57.7%	42.6%	46	62	13	0			-38	0		
NAIA	NORTH GEORGIA COLLEGE & STATE UNIVERSITY	18.5	D	57.9%	39.5%	60	92	-3	0			1	0		
NCAA Div. III	OGLETHORPE UNIVERSITY	23.0	F	64.8%	41.9%	67	93	6	0			8	0		
NCAA Div. II	PAINÉ COLLEGE	18.2	D	70.8%	52.6%	60	54	-11	0			0	0		
NCAA Div. III	PIEDMONT COLLEGE	19.4	D	64.5%	45.1%	73	89	0	0			11	0		
NAIA	REINHARDT COLLEGE	13.3	C	57.4%	44.1%	90	114	40	0			30	0		
NAIA	SAVANNAH COLLEGE OF ART AND DESIGN	-5.9	A	50.7%	56.6%	151	116	28	0			16	0		
NCAA Div. I-AA	SAVANNAH STATE UNIVERSITY	16.9	D+	56.4%	39.5%	94	144	1	0			-39	0		
NAIA	SHORTER COLLEGE	29.3	F	67.6%	38.3%	75	121	29	-1			70	-1		
NJCAA	SOUTH GEORGIA COLLEGE	21.0	D-	59.9%	38.8%	33	52	23	0			5	0		
NJCAA	SOUTH GEORGIA TECHNICAL COLLEGE	3.9	A-	55.8%	51.9%	14	13	14	0			0	0		
NAIA	SOUTHERN POLYTECHNIC STATE UNIVERSITY	-4.7	A	17.0%	21.7%	13	47	13	0			5	0		
NCAA Div. II	STATE UNIVERSITY OF WEST GEORGIA	31.2	F	59.2%	28.0%	56	144	6	-1			-2	-1		
NAIA	THOMAS UNIVERSITY	17.3	D+	59.3%	42.0%	42	58	-5	0			10	0		
NCCAA	TOCCOA FALLS COLLEGE	11.6	C+	55.2%	43.6%	48	62	-4	1			8	1		
NJCAA	TRUETT-MCCONNELL COLLEGE	12.0	C	43.3%	31.3%	25	55	-3	-1			-12	-1		
NCAA Div. I-A	UNIVERSITY OF GEORGIA	10.0	C+	57.1%	47.1%	316	355	52	0	36	0	-18	0	15	0
NCAA Div. II	VALDOSTA STATE UNIVERSITY	32.5	F	58.6%	26.2%	62	175	-1	0	-4	0	-7	0	36	0
NJCAA	YOUNG HARRIS COLLEGE	11.5	C+	53.7%	42.2%	46	63	-3	0			3	0		
Hawaii															
NCAA Div. II	BRIGHAM YOUNG UNIVERSITY-HAWAII CAMPUS	6.6	B	56.1%	49.5%	53	54	4	0			5	0		
NCAA Div. II	CHAMINADE UNIVERSITY OF HONOLULU	12.7	C	68.7%	56.0%	51	40	13	0	3	0	-1	0	-3	0
NCAA Div. II	HAWAII PACIFIC UNIVERSITY	20.2	D-	63.8%	43.6%	51	66	8	0	-26	0	20	0	-25	0
NCAA Div. II	UNIVERSITY OF HAWAII AT HILO	19.3	D	58.1%	38.8%	45	71	-2	0			-3	0		
NCAA Div. I-A	UNIVERSITY OF HAWAII AT MANOA	3.8	A-	56.2%	52.5%	275	249	24	1	40	1	-9	0	8	0
Idaho															
NAIA	ALBERTSON COLLEGE OF IDAHO	6.5	B	55.2%	48.8%	100	105	-13	0			6	2		
NCAA Div. I-A	BOISE STATE UNIVERSITY	16.3	D+	52.5%	36.2%	117	206	-5	0			-5	0		
NJCAA	COLLEGE OF SOUTHERN IDAHO	20.1	D-	61.3%	41.2%	35	50	0	0			0	0		
NCAA Div. I-AA	IDAHO STATE UNIVERSITY	9.1	B-	54.5%	45.3%	190	229	-1	0	9	0	-3	0	-6	0
NAIA	LEWIS-CLARK STATE COLLEGE	12.5	C	57.5%	45.0%	67	82	7	1			-11	1		
NJCAA	NORTH IDAHO COLLEGE	6.1	B	57.5%	51.4%	72	68	6	0			-9	0		
NCAA Div. II	NORTHWEST NAZARENE UNIVERSITY	8.7	B-	59.1%	50.4%	131	129	-2	0			1	0		
NCAA Div. I-A	UNIVERSITY OF IDAHO	3.3	A-	44.8%	41.5%	174	245	19	0	27	0	22	0	-8	0
Illinois															
NCAA Div. III	AUGUSTANA COLLEGE	19.2	D	57.1%	37.9%	206	338	-15	0			-25	0		
NCAA Div. III	AURORA UNIVERSITY	26.9	F	65.6%	38.7%	154	244	31	3			12	3		
NCAA Div. III	BENEDICTINE UNIVERSITY	21.1	D-	59.4%	38.2%	115	186	-18	1	-9	-1	-12	1	-82	-1
NJCAA	BLACK HAWK COLLEGE	9.4	B-	57.2%	47.8%	54	59	-2	0			4	0		
NCAA Div. III	BLACKBURN COLLEGE	17.2	D+	54.8%	37.6%	70	116	-9	1	2	0	-17	0	-36	0
NCAA Div. I-AAA	BRADLEY UNIVERSITY	-1.8	A	54.1%	55.9%	137	108	-24	0	10	0	-16	0	1	-2

Org./Div.	Name	Proportionality Gap		Figures Underlying the Proportionality Gap				Changes in Women's Participation				Changes in Men's Participation			
		Amount	Grade	% Und, Fem	% Ath, Fem	# Ath, Fem	# Ath, Male	2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
								Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
NJCAA	CARL SANDBURG COLLEGE	4.3	B+	61.4%	57.1%	40	30	9	0			6	0		
NCAA Div. I-AAA	CHICAGO STATE UNIVERSITY	25.0	F	71.1%	46.1%	47	55	-8	0	16	0	-10	0	8	0
NJCAA	CITY COLLEGES OF CHICAGO-KENNEDY-KING COLL	41.3	F	69.2%	27.9%	12	31	-8	0			-9	0		
NJCAA	CITY COLLEGES OF CHICAGO-MALCOLM X COLLEGE	19.5	D	69.5%	50.0%	12	12	0	0			-3	0		
NJCAA	CITY COLLEGES OF CHICAGO-OLIVE-HARVEY COLL	18.2	D	68.2%	50.0%	23	23	-7	0			-7	0		
NJCAA	CITY COLLEGES OF CHICAGO-WILBUR WRIGHT COLL	18.3	D	55.3%	37.0%	10	17	2	0			5	0		
NJCAA	COLLEGE OF DUPAGE	18.7	D	49.6%	30.9%	89	199	19	0			16	0		
NJCAA	COLLEGE OF LAKE COUNTY	6.2	B	50.7%	44.4%	56	70	-4	-1			-1	-1		
NCAA Div. III	CONCORDIA UNIVERSITY	26.3	F	64.9%	38.7%	104	165	-11	0			0	0		
NJCAA	DANVILLE AREA COMMUNITY COLLEGE	24.4	F	62.4%	38.0%	49	80	5	1			-5	1		
NCAA Div. I-AAA	DEPAUL UNIVERSITY	-0.1	A	57.6%	57.7%	150	110	8	0	23	0	4	0	0	0
NCAA Div. III	DOMINICAN UNIVERSITY	22.0	D-	69.7%	47.8%	75	82	4	0			-14	0		
NCAA Div. I-AA	EASTERN ILLINOIS UNIVERSITY	16.3	D+	56.9%	40.5%	199	292	9	0	34	0	-12	0	49	0
NJCAA	ELGIN COMMUNITY COLLEGE	2.9	A-	50.7%	47.7%	63	69	0	0			-2	0		
NCAA Div. III	ELMHURST COLLEGE	31.0	F	63.3%	32.3%	115	241	1	0	22	0	42	0	30	0
NCAA Div. III	EUREKA COLLEGE	20.7	D-	51.4%	30.7%	50	113	-11	-1	-10	0	-27	-1	-15	0
NCAA Div. III	GREENVILLE COLLEGE	19.7	D	52.1%	32.4%	120	250	14	0	2	0	59	0	-12	0
NJCAA	HIGHLAND COMMUNITY COLLEGE	13.1	C	58.1%	44.9%	31	38	1	0			5	0		
NJCAA	ILLINOIS CENTRAL COLLEGE	9.6	B-	50.6%	41.0%	66	95	19	1			38	1		
NCAA Div. III	ILLINOIS COLLEGE	22.6	F	54.3%	31.7%	106	228	-6	0	1	0	12	0	-31	0
NJCAA	ILLINOIS EASTERN COMM COLL-LINCOLN TRAIL COLL	6.5	B	48.9%	42.4%	28	38	-1	0			-1	0		
NJCAA	ILLINOIS EASTERN CC-OLNEY CENTRAL COLL	9.6	B-	55.2%	45.6%	31	37	-22	0			-11	0		
NJCAA	ILLINOIS EASTERN CC-WABASH VALLEY COLL	11.2	C+	52.2%	40.9%	27	39	-14	0			-4	0		
NAIA	ILLINOIS INSTITUTE OF TECHNOLOGY	-10.4	A	25.4%	35.9%	52	93	13	0			38	0		
NCAA Div. I-AA	ILLINOIS STATE UNIVERSITY	9.6	B-	57.5%	47.9%	182	198	2	0	42	0	9	0	-6	0
NJCAA	ILLINOIS VALLEY COMMUNITY COLLEGE	14.3	C-	57.2%	42.9%	42	56	-1	0			-10	0		
NCAA Div. III	ILLINOIS WESLEYAN UNIVERSITY	18.0	D+	56.3%	38.4%	163	262	-6	0			-4	0		
NJCAA	JOHN A LOGAN COLLEGE	2.5	A-	53.0%	50.5%	48	47	-2	0			0	0		
NJCAA	JOHN WOOD COMMUNITY COLLEGE	7.3	B	56.7%	49.4%	41	42	2	0			0	0		
NJCAA	JOLIET JUNIOR COLLEGE	30.4	F	53.3%	22.9%	51	172	-9	0			19	0		
NAIA	JUDSON COLLEGE	3.1	A-	55.0%	51.9%	54	50	4	0			-5	0		
NJCAA	KANKAKEE COMMUNITY COLLEGE	14.6	C-	60.1%	45.5%	40	48	6	0			11	0		
NJCAA	KASKASKIA COLLEGE	14.7	C-	63.4%	48.7%	56	59	17	0			16	0		
NJCAA	KISHWAUKEE COLLEGE	12.0	C+	50.6%	38.7%	41	65	-1	0			2	0		
NCAA Div. III	KNOX COLLEGE	15.2	C-	55.0%	39.8%	160	242	-11	0			2	0		
NCAA Div. III	LAKE FOREST COLLEGE	13.0	C	58.7%	45.8%	140	166	17	0	17	0	9	0	13	0
NJCAA	LAKE LAND COLLEGE	13.1	C	52.6%	39.4%	43	66	-5	0			20	0		
NJCAA	LEWIS AND CLARK COMMUNITY COLLEGE	12.4	C	58.6%	46.2%	60	70	0	0			-3	0		
NCAA Div. II	LEWIS UNIVERSITY	14.8	C-	57.5%	42.7%	135	181	-9	0			-10	0		
NCAA	LINCOLN CHRISTIAN COLLEGE AND SEMINARY	-0.6	A	49.1%	49.6%	67	68	28	1			6	1		
NJCAA	LINCOLN COLLEGE	9.7	B-	48.1%	38.5%	90	144	11	1			10	1		
NJCAA	LINCOLN LAND COMMUNITY COLLEGE	9.9	B-	53.3%	43.4%	46	60	11	0			0	0		
NCAA Div. I-AAA	LOYOLA UNIVERSITY CHICAGO	14.7	C-	65.9%	51.2%	147	140	-2	0	6	0	4	0	1	0
NCAA Div. III	MACMURRAY COLLEGE	34.2	F	58.1%	23.9%	50	159	-31	-1			-19	-1		
NJCAA	MCHENRY COUNTY COLLEGE	11.1	C+	51.1%	40.0%	42	63	6	0			9	0		
NAIA	MCKENDREE COLLEGE	27.3	F	54.1%	26.8%	145	396	18	0			135	0		
NCAA Div. III	MILLIKIN UNIVERSITY	21.8	D-	56.8%	35.1%	204	378	11	1	25	-1	-22	0	119	0
NCAA Div. III	MONMOUTH COLLEGE	15.5	C-	53.2%	37.7%	211	349	41	0	8	0	49	0	43	0
NJCAA	MORAIN VALLEY COMMUNITY COLLEGE	5.3	B+	52.4%	47.2%	75	84	9	-1			13	-1		
NJCAA	MORTON COLLEGE	20.2	D-	56.7%	36.5%	42	73	3	0			16	0		
NCAA Div. III	NORTH CENTRAL COLLEGE	26.0	F	60.2%	34.1%	168	324	-9	0	-6	0	-32	0	-14	0
NCAA Div. III	NORTH PARK UNIVERSITY	25.7	F	63.1%	37.3%	115	193	20	0	2	0	-13	0	10	0
NCAA Div. I-A	NORTHERN ILLINOIS UNIVERSITY	11.0	C+	52.7%	41.7%	181	253	-12	0	-2	2	-18	0	37	0
NCAA Div. I-A	NORTHWESTERN UNIVERSITY	3.7	A-	53.1%	49.5%	226	231	5	0	48	1	-3	0	4	0
NJCAA	OAKTON COMMUNITY COLLEGE	7.0	B	47.9%	40.9%	56	81	18	0			-6	0		
NAIA	OLIVET NAZARENE UNIVERSITY	26.7	F	60.1%	33.4%	118	235	-3	0			13	0		
NJCAA	PARKLAND COLLEGE	5.4	B+	51.4%	45.9%	68	80	8	0			2	0		
NJCAA	PRAIRIE STATE COLLEGE	16.7	D+	61.1%	44.4%	40	50	5	0			-9	0		
NCAA Div. II	QUINCY UNIVERSITY	29.1	F	56.9%	27.8%	80	208	10	0	2	-1	57	0	-26	-1
NJCAA	REND LAKE COLLEGE	17.8	D+	52.7%	34.9%	58	108	8	-1			1	0		
NAIA	ROBERT MORRIS COLLEGE	11.3	C+	66.2%	54.9%	128	105	49	0			40	0		
NCAA Div. III	ROCK VALLEY COLLEGE	21.5	D-	53.0%	31.5%	64	139	21	0			15	0		
NCAA Div. III	ROCKFORD COLLEGE	31.0	F	57.0%	26.1%	61	173	-11	0			24	0		
NAIA	SAINT XAVIER UNIVERSITY	36.3	F	70.1%	33.8%	81	159	-2	0			-15	1		
NJCAA	SAUK VALLEY COMMUNITY COLLEGE	11.8	C+	57.3%	45.6%	41	49	-6	0			-5	0		
NJCAA	SHAWNEE COMMUNITY COLLEGE	10.2	C+	64.1%	53.8%	49	42	-6	0			-2	0		
NJCAA	SOUTH SUBURBAN COLLEGE	19.3	D	65.3%	45.9%	51	60	1	-1			7	-1		
NJCAA	SOUTHEASTERN ILLINOIS COLLEGE	8.7	B-	51.1%	42.4%	28	38	-8	0			-8	0		
NCAA Div. I-AA	SOUTHERN ILLINOIS UNIVERSITY CARBONDALE	2.6	A-	43.0%	40.4%	182	268	-1	0	17	0	-17	0	7	0
NCAA Div. II	SOUTHERN ILLINOIS UNIVERSITY EDWARDSVILLE	8.9	B-	55.5%	46.6%	152	174	5	0	17	0	-7	0	12	0
NJCAA	SOUTHWESTERN ILLINOIS COLLEGE	8.5	B-	56.1%	47.6%	70	77	25	0			-8	0		
NJCAA	SPOON RIVER COLLEGE	13.2	C	51.2%	38.0%	19	31	-5	0			1	-2		
NJCAA	SPRINGFIELD COLLEGE IN ILLINOIS	11.8	C+	58.5%	46.7%	42	48	1	0			0	0		
NAIA	TRINITY CHRISTIAN COLLEGE	7.3	B	63.3%	56.0%	70	55	-3	0			-11	0		
NAIA	TRINITY INTERNATIONAL UNIVERSITY	13.0	C	54.2%	41.2%	75	107	-8	-1			-55	-1		

		Proportionality Gap						Changes in Women's Participation				Changes in Men's Participation			
Org./Div.	Name	Proportionality Gap		Figures Underlying the Proportionality Gap				2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
		Amount	Grade	% Und, Fem	% Ath, Fem	# Ath, Fem	# Ath, Male	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
NJCAA	TRITON COLLEGE	17.9	D+	52.6%	34.7%	34	64	-19	0			-25	0		
NCAA Div. III	UNIVERSITY OF CHICAGO	13.1	C	50.1%	37.0%	140	238	36	0	-41	0	31	0	-13	0
NCAA Div. I-AAA	UNIVERSITY OF ILLINOIS AT CHICAGO	8.9	B-	54.5%	45.6%	155	185	-1	0	-3	2	30	0	-34	2
NAIA	UNIVERSITY OF ILLINOIS AT SPRINGFIELD	3.9	A-	59.5%	55.6%	45	36	9	0			6	0		
NCAA Div. I-A	UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN	8.5	B-	47.5%	39.0%	233	364	-13	0	61	0	-29	0	-27	0
NAIA	UNIVERSITY OF ST FRANCIS	30.6	F	67.2%	36.6%	94	163	-2	0			7	0		
NJCAA	WAUBONSEE COMMUNITY COLLEGE	11.5	C+	52.7%	41.2%	63	90	2	0			-6	0		
NCAA Div. I-AA	WESTERN ILLINOIS UNIVERSITY	10.8	C+	48.2%	37.4%	202	338	7	0	20	0	4	0	8	0
NCAA Div. III	WHEATON COLLEGE	12.6	C	51.9%	39.2%	224	347	12	0	19	0	13	0	9	0
NJCAA	WILLIAM RAINY HARPER COLLEGE	24.9	F	50.7%	25.8%	84	241	11	0			31	0		
Indiana															
NJCAA	ANCILLA COLLEGE	28.3	F	67.0%	38.7%	48	76	13	0			17	-1		
NCAA Div. III	ANDERSON UNIVERSITY	26.0	F	57.7%	31.7%	139	299	-3	0	1	0	26	0	-7	0
NCAA Div. I-A	BALL STATE UNIVERSITY	1.3	A	52.8%	51.5%	238	224	-16	0	39	0	7	-3	-37	0
NAIA	BETHEL COLLEGE	20.1	D-	61.0%	40.9%	117	169	5	0			38	0		
NCAA Div. I-AA	BUTLER UNIVERSITY	21.7	D-	62.8%	41.1%	203	291	5	0	20	0	7	0	-37	0
NAIA	CALUMET COLLEGE OF SAINT JOSEPH	19.6	D	61.3%	41.7%	58	81	29	0			44	0		
NCAA Div. III	DEPAUW UNIVERSITY	15.0	C-	54.6%	39.6%	209	319	21	0	-50	0	14	0	-24	0
NCAA Div. III	EARLHAM COLLEGE	14.6	C-	57.9%	43.4%	144	188	-10	0	-1	0	-13	0	3	0
NCAA Div. III	FRANKLIN COLLEGE	18.7	D	52.3%	33.6%	131	259	-4	0	7	0	39	0	-1	0
NAIA	GOSHEN COLLEGE	14.1	C-	57.3%	43.2%	83	109	-5	-1			13	-1		
NAIA	GRACE COLLEGE AND THEOLOGICAL SEMINARY	-2.0	A	48.5%	50.5%	98	96	4	0			-7	0		
NCAA Div. III	HANOVER COLLEGE	17.5	D+	54.4%	36.9%	118	202	-14	0	9	0	-39	0	19	0
NAIA	HUNTINGTON COLLEGE	7.8	B	56.3%	48.6%	85	90	5	-1			-4	-1		
NAIA	INDIANA INSTITUTE OF TECHNOLOGY	7.1	B	52.1%	45.0%	107	131	30	0			22	0		
NCAA Div. I-AA	INDIANA STATE UNIVERSITY	7.3	B	50.4%	43.0%	192	254	-11	0	47	0	-1	0	-13	0
NCAA Div. I-A	INDIANA UNIVERSITY-BLOOMINGTON	7.6	B	51.7%	44.1%	343	434	-3	0	112	0	24	0	-6	0
NCAA Div. I-AAA	INDIANA UNIVERSITY-PURDUE UNIV-FORT WAYNE	2.0	A	56.0%	54.0%	128	109	6	0	23	2	12	-2	-7	2
NCAA Div. I-AAA	INDIANA UNIVERSITY-PURDUE UNIV-INDIANAPOLIS	6.3	B	59.2%	52.9%	111	99	-21	0	43	1	0	0	-71	1
NAIA	INDIANA UNIVERSITY-SOUTH BEND	11.1	C+	62.6%	51.5%	17	16	8	0			2	0		
NAIA	INDIANA UNIVERSITY-SOUTHEAST	23.3	F	62.7%	39.4%	39	60	-1	0			5	0		
NAIA	INDIANA WESLEYAN UNIVERSITY	10.9	C+	64.0%	53.1%	186	164	10	0			3	0		
NCAA Div. III	MANCHESTER COLLEGE	16.6	D+	54.9%	38.2%	161	260	2	1			-39	1		
NAIA	MARIAN COLLEGE	20.1	D-	70.6%	50.5%	107	105	3	1			-6	1		
NCAA Div. II	OAKLAND CITY UNIVERSITY	5.4	B+	52.5%	47.0%	71	80	5	0			16	0		
NAIA	PURDUE UNIVERSITY-CALUMET CAMPUS	15.2	C-	55.2%	40.0%	10	15	-3	0			1	0		
NCAA Div. I-A	PURDUE UNIVERSITY-MAIN CAMPUS	-2.8	A	40.1%	42.9%	234	312	16	0	29	0	9	0	10	0
NAIA	PURDUE UNIVERSITY-NORTH CENTRAL CAMPUS	20.6	D-	53.9%	33.3%	15	30	-8	0			7	0		
NCAA Div. III	ROSE-HULMAN INSTITUTE OF TECHNOLOGY	-8.1	A	19.5%	27.5%	117	308	-7	0	79	0	4	0	57	0
NCAA Div. II	SAINT JOSEPHS COLLEGE	21.7	D-	54.8%	33.1%	115	232	-16	0	-15	0	18	0	-50	0
Other	TAYLOR UNIVERSITY-FT WAYNE	12.2	C	58.1%	45.8%	22	26	2	0			1	0		
NAIA	TAYLOR UNIVERSITY-JPLAND	14.5	C-	53.7%	39.2%	105	163	-5	0			11	0		
NCAA Div. III	TRI-STATE UNIVERSITY	3.9	A-	32.1%	28.2%	121	308	11	0			-4	0		
NCAA Div. I-AAA	UNIVERSITY OF EVANSVILLE	13.4	C	61.3%	47.9%	112	122	-3	0	-11	0	7	0	-156	0
NCAA Div. II	UNIVERSITY OF INDIANAPOLIS	29.0	F	64.0%	35.0%	159	295	-11	0	22	0	18	0	28	0
NCAA Div. I-A	UNIVERSITY OF NOTRE DAME	3.7	A-	46.9%	43.2%	385	507	-19	0	122	0	-11	0	-15	0
NAIA	UNIVERSITY OF SAINT FRANCIS-FT WAYNE	37.7	F	67.3%	29.6%	107	254	-6	1			13	1		
NCAA Div. II	UNIVERSITY OF SOUTHERN INDIANA	13.2	C	58.9%	45.7%	123	146	19	2			9	0		
NCAA Div. I-AA	VALPARAISO UNIVERSITY	16.1	D+	51.6%	35.6%	174	315	13	0	32	0	18	0	32	0
NJCAA	VINCENNES UNIVERSITY	13.9	C	40.3%	26.3%	59	165	5	0			11	0		
Iowa															
NAIA	ASHFORD UNIVERSITY	7.5	B	56.1%	48.6%	88	93	8	0			-2	0		
NAIA	BRIAR CLIFF UNIVERSITY	21.9	D-	57.2%	35.3%	110	202	8	0			74	0		
NCAA Div. III	BUENA VISTA UNIVERSITY	28.3	F	62.2%	33.9%	152	296	-18	0	38	0	-16	0	20	0
NCAA Div. III	CENTRAL COLLEGE	22.6	F	53.9%	31.3%	191	419	-21	0	18	0	2	0	14	0
NCAA Div. III	CLARKE COLLEGE	25.0	F	73.9%	49.0%	95	99	23	0			4	0		
NCAA Div. III	COE COLLEGE	18.6	D	55.4%	36.8%	191	328	6	0			26	0		
NCAA Div. III	CORNELL COLLEGE	17.2	D+	57.3%	40.1%	160	239	-16	0	40	0	7	0	13	0
NJCAA	DES MOINES AREA COMMUNITY COLLEGE	12.5	C	52.2%	39.7%	27	41	-2	0			2	0		
NAIA	DORDT COLLEGE	2.9	A-	53.1%	50.2%	114	113	8	0			0	0		
NCAA Div. I-AA	DRAKE UNIVERSITY	15.4	C-	57.6%	42.3%	197	269	27	0	61	0	17	0	-10	0
NJCAA	EASTERN IOWA COMMUNITY COLLEGE DISTRICT	17.7	D+	58.7%	41.0%	48	69	12	0			-16	0		
NCCAA	EMMAUS BIBLE COLLEGE	12.5	C	56.0%	43.5%	10	13	-2	0			1	0		
NCCAA	FAITH BAPTIST BIBLE COLL/THEOLOGICAL SEMINARY	-4.5	A	50.0%	54.5%	36	30	7	0			1	0		
NAIA	GRACELAND UNIVERSITY-LAMONI	20.7	D-	54.6%	33.9%	169	330	-2	0			-26	0		
NAIA	GRAND VIEW COLLEGE	14.3	C-	68.8%	54.5%	127	106	52	1			36	1		
NCAA Div. III	GRINNELL COLLEGE	9.2	B-	54.6%	45.5%	280	336	-5	0			28	0		
NJCAA	INDIAN HILLS COMMUNITY COLLEGE	19.1	D	51.7%	32.6%	30	62	-2	0			10	0		
NJCAA	IOWA CENTRAL COMMUNITY COLLEGE	24.5	F	49.3%	24.9%	140	423	19	3			81	3		
NJCAA	IOWA LAKES COMMUNITY COLLEGE	5.5	B+	50.8%	45.3%	43	52	5	1			5	1		
NCAA Div. I-A	IOWA STATE UNIVERSITY	3.6	A-	43.8%	40.2%	204	303	-14	0	19	0	-14	0	-45	0
NAIA	IOWA WESLEYAN COLLEGE	24.1	F	55.1%	31.0%	76	169	-9	-1			1	0		
NJCAA	IOWA WESTERN COMMUNITY COLLEGE	11.9	C+	57.1%	45.2%	66	80	22	0			38	0		
NJCAA	KIRKWOOD COMMUNITY COLLEGE	3.8	A-	50.0%	46.2%	48	56	-4	0			4	0		
NCAA Div. III	LORAS COLLEGE	14.7	C-	49.9%	35.2%	224	412	8	0			24	0		

Org./Div.	Name	Proportionality Gap		Figures Underlying the Proportionality Gap				Changes in Women's Participation				Changes in Men's Participation			
		Amount	Grade	% Und. Fem	% Ath. Fem	# Ath. Fem	# Ath. Male	2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
								Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
NCAA Div.III	LUTHER COLLEGE	17.8	D+	60.2%	42.4%	312	424	-27	0	18	0	10	0	35	0
NAIA	MORNINGSIDE COLLEGE	13.7	C	54.9%	41.2%	110	157	26	0			61	1		
NAIA	MOUNT MERCY COLLEGE	28.9	F	72.5%	43.6%	95	123	2	0			12	0		
NJCAA	NORTH IOWA AREA COMMUNITY COLLEGE	25.6	F	50.3%	24.8%	54	164	-7	1			29	1		
NAIA	NORTHWESTERN COLLEGE	26.8	F	62.0%	35.3%	116	213	-18	0			-8	0		
NCAA Div.III	SIMPSON COLLEGE	18.9	D	58.8%	39.9%	182	274	15	0			9	0		
NJCAA	SOUTHEASTERN COMMUNITY COLLEGE	22.5	F	59.4%	36.9%	31	53	11	0			15	0		
NJCAA	SOUTHWESTERN COMMUNITY COLLEGE	17.3	D+	60.7%	43.5%	30	39	-9	0			-3	0		
NCAA Div.III	UNIVERSITY OF DUBUQUE	5.5	B+	35.3%	29.7%	135	319	5	0	21	0	87	0	30	0
NCAA Div.I-A	UNIVERSITY OF IOWA	10.1	C+	54.1%	44.1%	319	405	-36	0	45	0	10	0	-18	0
NCAA Div.I-AA	UNIVERSITY OF NORTHERN IOWA	16.8	D+	57.3%	40.5%	181	266	-13	0	12	0	-46	0	-18	0
NCAA Div.II	UPPER IOWA UNIVERSITY	34.2	F	57.7%	23.5%	79	257	8	-3	34	0	1	-3	63	0
NCCAA	VENNARD COLLEGE	17.4	D+	43.1%	25.7%	9	26	-9	0			0	0		
NAIA	WALDORF COLLEGE	16.8	D+	52.4%	35.5%	70	127	18	0			1	0		
NCAA Div.III	WARTBURG COLLEGE	20.8	D-	54.8%	34.0%	200	388	2	0	23	0	10	0	68	0
NAIA	WILLIAM PENN UNIVERSITY	18.5	D	50.4%	31.9%	142	303	7	1			17	1		
Kansas															
NJCAA	ALLEN COUNTY COMMUNITY COLLEGE	15.8	C-	57.9%	42.2%	62	85	-7	0			-2	0		
NAIA	BAKER UNIVERSITY COLLEGE OF ARTS AND SCIENCES	20.3	D-	53.0%	32.7%	107	220	-3	0			-6	0		
NCCAA	BARCLAY COLLEGE	8.9	B-	47.0%	38.1%	16	26	-4	0			-14	0		
NJCAA	BARTON COUNTY COMMUNITY COLLEGE	16.0	D+	58.0%	42.0%	94	130	-2	0			2	0		
NAIA	BENEDICTINE COLLEGE	21.1	D-	49.4%	28.2%	149	379	16	0			88	0		
NAIA	BETHANY COLLEGE	19.6	D	49.4%	29.7%	102	241	12	0			-7	0		
NAIA	BETHEL COLLEGE	22.5	F	52.2%	29.7%	55	130	-5	0			7	2		
NJCAA	BROWN MACKIE COLLEGE-SALINA	29.7	F	63.5%	33.8%	27	53	-1	0			13	0		
NJCAA	BUTLER COUNTY COMMUNITY COLLEGE	22.2	F	55.2%	33.0%	129	262	35	0			31	0		
NAIA	CENTRAL CHRISTIAN COLLEGE OF KANSAS	3.4	A-	50.3%	46.9%	76	86	10	0			21	0		
NJCAA	CLOUD COUNTY COMMUNITY COLLEGE	12.6	C	61.2%	48.7%	92	97	-11	0			-20	0		
NJCAA	COFFEYVILLE COMM COLL AND AREA TECH SCHOOL	26.3	F	44.1%	17.8%	45	208	5	0			63	0		
NJCAA	COLBY COMMUNITY COLLEGE	13.9	C	58.9%	45.1%	96	117	5	0			-26	0		
NJCAA	COWLEY COUNTY COMMUNITY COLLEGE	3.4	A-	54.5%	51.1%	90	86	-17	0			-15	0		
NJCAA	DODGE CITY COMMUNITY COLLEGE	17.0	D+	49.5%	32.4%	73	152	4	-1			9	0		
NCAA Div.II	EMPORIA STATE UNIVERSITY	25.4	F	61.6%	36.2%	139	245	-7	0	22	0	17	0	21	0
NCAA Div.II	FORT HAYS STATE UNIVERSITY	22.2	F	53.6%	31.4%	153	335	9	0	13	0	-29	0	26	0
NJCAA	FORT SCOTT COMMUNITY COLLEGE	22.5	F	43.0%	20.5%	55	213	-29	2			-1	3		
NAIA	FRIENDS UNIVERSITY	31.8	F	58.2%	26.4%	90	251	13	1			88	1		
NJCAA	GARDEN CITY COMMUNITY COLLEGE	18.7	D	49.4%	30.7%	69	156	5	0			5	0		
NAIA	HASKELL INDIAN NATIONS UNIVERSITY	11.4	C+	48.0%	36.6%	67	116	12	1			-12	1		
NJCAA	HESSTON COLLEGE	11.2	C+	50.6%	39.4%	41	63	-3	0			9	0		
NJCAA	HIGHLAND COMMUNITY COLLEGE	20.0	D-	48.8%	28.8%	59	146	-9	0			-43	0		
NJCAA	HUTCHINSON COMMUNITY COLLEGE	18.9	D	50.0%	31.1%	75	166	-2	0			-2	0		
NJCAA	INDEPENDENCE COMMUNITY COLLEGE	13.7	C	45.9%	32.3%	62	130	8	-1			6	-1		
NJCAA	JOHNSON COUNTY COMMUNITY COLLEGE	3.9	A-	51.3%	47.4%	119	132	2	0			-2	0		
NJCAA	KANSAS CITY KANSAS COMMUNITY COLLEGE	19.4	D	59.0%	39.6%	53	81	-5	0			-11	0		
NCAA Div.I-A	KANSAS STATE UNIVERSITY	-1.7	A	48.4%	50.1%	282	281	11	0	127	0	-1	0	19	0
NAIA	KANSAS WESLEYAN UNIVERSITY	24.9	F	60.0%	35.1%	87	161	19	1			10	1		
NJCAA	LABETTE COMMUNITY COLLEGE	18.7	D	50.6%	31.9%	44	94	3	0			14	0		
NCCAA	MANHATTAN CHRISTIAN COLLEGE	7.7	B	49.2%	41.6%	37	52	1	0			14	0		
NAIA	MCPHERSON COLLEGE	-0.2	A	37.0%	37.2%	87	147	31	1			48	1		
NAIA	MIDAMERICA NAZARENE UNIVERSITY	15.1	C-	52.3%	37.2%	201	339	-6	0			16	0		
NJCAA	NEOSHO COUNTY COMMUNITY COLLEGE	29.5	F	63.8%	34.3%	61	117	-31	0			-44	0		
NAIA	NEWMAN UNIVERSITY	27.9	F	63.4%	35.5%	126	229	35	0			106	0		
NAIA	OTTAWA UNIVERSITY	14.0	C	45.6%	31.7%	71	153	-9	1			-25	1		
NCAA Div.II	PITTSBURG STATE UNIVERSITY	23.5	F	49.4%	25.9%	85	243	-6	0	11	0	23	0	-7	0
NJCAA	PRATT COMMUNITY COLLEGE	6.1	B	44.5%	38.5%	70	112	13	0			10	0		
NJCAA	SEWARD COUNTY COMMUNITY COLLEGE	12.2	C	61.6%	49.5%	46	47	0	0			1	0		
NAIA	SOUTHWESTERN COLLEGE	12.5	C	52.6%	40.1%	97	145	36	1			-3	1		
NAIA	STERLING COLLEGE	11.4	C+	48.4%	37.0%	91	155	3	0			2	0		
NAIA	TABOR COLLEGE	14.7	C-	46.0%	31.3%	98	215	-1	0			29	0		
NCAA Div.I-A	UNIVERSITY OF KANSAS MAIN CAMPUS	5.7	B+	50.4%	44.7%	285	352	-37	0	37	0	11	0	2	0
NAIA	UNIVERSITY OF SAINT MARY	18.5	D	50.9%	32.4%	58	121	-5	0			14	0		
NCAA Div.II	WASHBURN UNIVERSITY	30.5	F	61.1%	30.6%	78	177	27	0	-4	0	34	0	21	0
NCAA Div.I-AAA	WICHITA STATE UNIVERSITY	4.3	B+	56.2%	51.9%	107	99	-9	0	18	0	-7	0	2	0
Kentucky															
NAIA	ALICE LLOYD COLLEGE	17.1	D+	52.9%	35.8%	29	52	19	0			17	0		
NAIA	ASBURY COLLEGE	10.1	C+	58.9%	48.8%	62	65	-13	0			1	0		
NCAA Div.II	BELLARMINE UNIVERSITY	18.7	D	65.7%	46.9%	160	181	7	0	6	2	14	0	17	2
NAIA	BEREA COLLEGE	12.7	C	58.6%	45.9%	106	125	-5	0			7	0		
NAIA	BRESCIA UNIVERSITY	11.1	C+	56.8%	45.8%	81	96	18	0			29	0		
NAIA	CAMPBELLVILLE UNIVERSITY	29.6	F	51.5%	21.9%	93	332	5	1			117	1		
NCAA Div.III	CENTRE COLLEGE	18.0	D+	52.3%	34.4%	131	250	0	0	3	0	29	0	-27	0
NAIA	CUMBERLAND COLLEGE	10.8	C+	51.2%	40.4%	143	211	-35	0			-133	0		
NCAA Div.I-AA	EASTERN KENTUCKY UNIVERSITY	29.6	F	60.2%	30.6%	88	200	-13	0	-4	0	-3	0	9	0
NAIA	GEORGETOWN COLLEGE	26.4	F	54.7%	28.3%	100	253	4	2			30	2		
NCCAA	KENTUCKY CHRISTIAN COLLEGE	2.2	A-	56.5%	54.3%	44	37	-17	0			-9	0		

Org./Div.	Name	Proportionality Gap		Figures Underlying the Proportionality Gap				Changes in Women's Participation				Changes in Men's Participation			
		Amount	Grade	% Und. Fem	% Ath. Fem	# Ath. Fem	# Ath. Male	2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
								Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
NCAA Div. II	KENTUCKY STATE UNIVERSITY	20.1	D-	55.3%	35.1%	84	155	-2	0	-9	0	-14	0	7	0
NCAA Div. II	KENTUCKY WESLEYAN COLLEGE	15.5	C-	48.5%	33.1%	79	160	-5	0			-39	0		
NAIA	LINDSEY WILSON COLLEGE	17.5	D+	64.6%	47.1%	98	110	4	2			10	0		
NAIA	MID-CONTINENT UNIVERSITY	20.4	D-	54.2%	33.8%	25	49	6	0			2	0		
NCAA Div. I-AA	MOREHEAD STATE UNIVERSITY	25.5	F	56.9%	31.4%	115	251	2	0	27	0	-25	0	59	2
NCAA Div. I-AA	MURRAY STATE UNIVERSITY	15.1	C-	56.7%	41.6%	169	237	-82	0	149	0	35	0	-22	0
NCAA Div. II	NORTHERN KENTUCKY UNIVERSITY	16.2	D+	58.6%	42.4%	86	117	-3	0	29	1	-14	0	13	2
NAIA	PIKEVILLE COLLEGE	21.6	D-	56.8%	35.2%	70	129	13	0			4	0		
NJCAA	SAINT CATHARINE COLLEGE	34.7	F	67.7%	33.1%	39	79	-15	0			4	0		
NAIA	SPALDING UNIVERSITY	32.7	F	78.7%	46.0%	52	61	-15	-1			-4	-1		
NCAA Div. III	THOMAS MORE COLLEGE	23.3	F	48.9%	25.5%	71	207	-3	0	23	0	25	0	-25	0
NCAA Div. III	TRANSYLVANIA UNIVERSITY	4.8	B+	58.9%	54.1%	145	123	41	0			22	0		
NAIA	UNION COLLEGE	16.1	D+	45.6%	29.5%	61	146	-23	0			-35	0		
NCAA Div. I-A	UNIVERSITY OF KENTUCKY	12.4	C	51.9%	39.5%	223	342	5	0	25	0	-6	0	31	0
NCAA Div. I-A	UNIVERSITY OF LOUISVILLE	6.1	B	53.4%	47.3%	249	277	48	0	46	0	5	0	24	-1
NCAA Div. I-AA	WESTERN KENTUCKY UNIVERSITY	20.8	D-	57.1%	36.2%	188	331	19	0	51	0	39	0	6	0
Louisiana															
NJCAA	BOSSIER PARISH COMMUNITY COLLEGE	20.3	D-	64.6%	44.3%	31	39	4	0			-7	0		
NCAA Div. I-AAA	CENTENARY COLLEGE OF LOUISIANA	12.6	C	64.0%	51.4%	112	106	-1	0	28	0	3	0	8	0
NJCAA	DELGADO COMMUNITY COLLEGE	40.8	F	67.4%	26.7%	16	44	-2	0			-19	0		
NCAA Div. I-AA	GRAMBLING STATE UNIVERSITY	20.3	D-	59.3%	39.0%	105	164	-3	0	33	0	-28	0	-24	0
NCAA Div. III	LOUISIANA COLLEGE	27.3	F	56.3%	29.0%	63	154	3	0			-16	0		
NCAA Div. I-A	LOUISIANA ST U & AG & MECH & HEBERT LAWS CTR	13.3	C	52.1%	38.9%	197	310	2	0	4	0	-7	0	42	0
NJCAA	LOUISIANA STATE UNIVERSITY-EUNICE	41.8	F	68.9%	27.1%	13	35	-3	0			-2	0		
NAIA	LOUISIANA STATE UNIVERSITY-SHREVEPORT	40.4	F	63.5%	23.1%	15	50	15	0			15	0		
NCAA Div. I-A	LOUISIANA TECH UNIVERSITY	11.7	C+	46.9%	35.3%	132	242	26	0	-5	0	1	0	-15	0
NCAA Div. I-AA	MCNEESE STATE UNIVERSITY	24.5	F	58.2%	33.7%	148	291	14	0	32	0	24	0	0	0
NCAA Div. I-AA	NICHOLLS STATE UNIVERSITY	18.0	D	61.3%	43.3%	138	181	-21	0	48	0	-2	-2	-3	0
NCAA Div. I-AA	NORTHWESTERN STATE UNIVERSITY OF LOUISIANA	25.4	F	62.1%	36.7%	158	273	4	0	30	0	4	0	6	0
NCAA Div. I-AA	SOUTHEASTERN LOUISIANA UNIVERSITY	20.9	D-	60.0%	39.1%	117	182	-1	0	3	0	62	0	1	0
NCAA Div. I-AA	SOUTHERN UNIVERSITY AND A & M COLLEGE	22.8	F	60.9%	38.2%	124	201	25	0			3	0		
NAIA	SOUTHERN UNIVERSITY AT NEW ORLEANS	28.1	F	68.1%	40.0%	12	18	-5	0			-5	0		
NJCAA	SOUTHERN UNIVERSITY AT SHREVEPORT	37.5	F	77.5%	40.0%	10	15	6	0			-3	0		
NCAA Div. I-A	UNIVERSITY OF LOUISIANA AT LAFAYETTE	21.8	D-	56.8%	35.1%	122	226	0	0	35	0	12	0	-32	0
NCAA Div. I-A	UNIVERSITY OF LOUISIANA AT MONROE	22.6	F	63.0%	40.4%	156	230	3	0	36	0	2	0	-22	0
NCAA Div. I-AAA	UNIVERSITY OF NEW ORLEANS	7.1	B	54.8%	47.7%	74	81	3	0	5	0	-2	0	10	0
Maine															
NCAA Div. III	BATES COLLEGE	6.0	B	50.8%	44.8%	323	398	-2	0	71	0	6	0	113	0
NCAA Div. III	BOWDOIN COLLEGE	1.8	A	49.0%	47.1%	304	341	33	0	20	0	-19	0	33	0
Other	CENTRAL MAINE COMMUNITY COLLEGE	0.9	A	45.4%	44.4%	24	30	9	0			-15	0		
NCAA Div. III	COLBY COLLEGE	9.5	B-	53.4%	43.8%	341	437	-12	0	24	0	17	0	23	0
NCAA Div. III	HUSSON COLLEGE	21.1	D-	56.9%	35.9%	90	161	6	0			91	0		
NCAA Div. III	MAINE MARITIME ACADEMY	-12.0	A	15.2%	27.2%	66	177	-1	0	41	0	7	0	31	0
Other	NORTHERN MAINE TECHNICAL COLLEGE	24.7	F	40.9%	16.1%	10	52	-5	0			7	0		
NCAA Div. III	SAINT JOSEPHS COLLEGE	11.9	C+	63.4%	51.6%	98	92	16	0			-1	0		
Other	SOUTHERN MAINE COMMUNITY COLLEGE	8.5	B-	44.0%	35.6%	32	58	1	0			1	0		
NCAA Div. III	THOMAS COLLEGE	3.4	A-	44.8%	41.4%	75	106	20	0			20	0		
Other	UNITY COLLEGE	-26.8	A	35.5%	62.3%	48	29	19	-1			-6	-1		
NCAA Div. I-AA	UNIVERSITY OF MAINE	1.7	A	49.0%	47.3%	260	290	-4	0	46	0	-4	0	-18	0
Other	UNIVERSITY OF MAINE AT AUGUSTA	-2.7	A	68.7%	71.4%	20	8	1	0			-1	0		
NCAA Div. III	UNIVERSITY OF MAINE AT FARMINGTON	10.4	C+	64.9%	54.5%	96	80	9	0	4	1	4	0	-4	1
NAIA	UNIVERSITY OF MAINE AT FORT KENT	12.6	C	59.4%	46.8%	29	33	6	0			-5	-1		
NAIA	UNIVERSITY OF MAINE AT MACHIAS	17.0	D+	65.0%	48.0%	36	39	-4	0			1	0		
NCAA Div. III	UNIVERSITY OF MAINE AT PRESQUE ISLE	16.4	D+	63.1%	46.7%	56	64	-1	0			-5	0		
NCAA Div. III	UNIVERSITY OF NEW ENGLAND	12.2	C	77.0%	64.8%	149	81	53	0			16	0		
NCAA Div. III	UNIVERSITY OF SOUTHERN MAINE	10.9	C+	59.1%	48.2%	163	175	-53	0			-25	0		
Maryland															
NJCAA	ALLEGANY COLLEGE OF MARYLAND	18.2	D	68.2%	50.0%	51	51	11	0			-5	0		
NJCAA	ANNE ARUNDEL COMMUNITY COLLEGE	8.7	B-	55.4%	46.7%	77	88	7	-1			-11	0		
NJCAA	BALTIMORE CITY COMMUNITY COLLEGE	28.0	F	67.7%	39.6%	21	32	-6	0			2	0		
NCAA Div. II	BOWIE STATE UNIVERSITY	22.1	F	62.8%	40.7%	66	96	-3	0			-10	0		
NJCAA	CECIL COMMUNITY COLLEGE	18.1	D	60.6%	42.5%	31	42	-20	0			-10	0		
NJCAA	CHESAPEAKE COLLEGE	38.9	F	59.2%	20.3%	13	51	-22	0			1	0		
NJCAA	COLLEGE OF SOUTHERN MARYLAND	7.9	B	59.0%	51.1%	46	44	-4	0			-16	0		
NCAA Div. II	COLUMBIA UNION COLLEGE	26.1	F	61.9%	35.8%	38	68	-24	-2			-26	0		
NCAA Div. I-AAA	COPPIN STATE UNIVERSITY	26.4	F	75.6%	49.3%	101	104	-6	0	-17	0	5	0	-4	0
NJCAA	FREDERICK COMMUNITY COLLEGE	22.8	F	54.9%	32.1%	27	57	-12	0			3	0		
NCAA Div. III	FROSTBURG STATE UNIVERSITY	10.2	C+	48.8%	38.6%	205	326	-2	0	23	0	9	0	5	0
NJCAA	GARRETT COLLEGE	9.1	B-	52.2%	43.1%	25	33	3	0			-1	0		
NCAA Div. III	GOUCHER COLLEGE	4.1	B+	67.4%	63.3%	157	91	16	0	-7	2	3	0	3	2
NJCAA	HAGERSTOWN COMMUNITY COLLEGE	18.1	D	55.3%	37.2%	67	113	11	0			-1	-1		
NJCAA	HARFORD COMMUNITY COLLEGE	12.3	C	56.2%	43.8%	57	73	-13	0			-10	0		
NCAA Div. III	HOOD COLLEGE	17.8	D+	83.2%	65.4%	134	71	17	1			65	1		
NJCAA	HOWARD COMMUNITY COLLEGE	19.9	D	52.5%	32.5%	41	85	-2	-1			5	-1		

Org./Div.	Name	Proportionality Gap		Figures Underlying the Proportionality Gap				Changes in Women's Participation				Changes in Men's Participation			
		Amount	Grade	% Und. Fem	% Ath. Fem	# Ath. Fem	# Ath. Male	2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
								Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
NCAA Div. III	JOHNS HOPKINS UNIVERSITY	10.9	C+	47.0%	36.1%	261	462	-3	0	-8	0	26	0	-30	0
NCAA Div. I-AAA	LOYOLA COLLEGE IN MARYLAND	3.1	A-	58.8%	55.8%	218	173	-19	2	54	0	-4	0	43	0
NCAA Div. III	MCDANIEL COLLEGE	17.6	D+	57.9%	40.2%	177	263	5	0	10	0	-36	0	55	0
NCAA Div. III	MONTGOMERY COLLEGE	16.8	D+	50.7%	34.0%	73	142	-2	-1			-78	0		
NCAA Div. I-AA	MORGAN STATE UNIVERSITY	23.5	F	56.8%	33.3%	74	148	-11	0			4	0		
NCAA Div. I-AAA	MOUNT ST MARY'S UNIVERSITY	11.2	C+	57.2%	46.0%	142	167	7	0	17	0	20	0	2	0
NJCAA	PRINCE GEORGES COMMUNITY COLLEGE	12.9	C	57.4%	44.6%	37	46	-10	0			-32	0		
NCAA Div. III	SALISBURY UNIVERSITY	16.7	D+	56.3%	39.6%	191	291	4	1	-4	0	13	1	23	0
Other	ST JOHN'S COLLEGE	-1.3	A	44.6%	45.9%	45	53	20	0			18	0		
NCAA Div. III	ST MARY'S COLLEGE OF MARYLAND	7.7	B	58.6%	50.9%	149	144	10	0	14	0	5	0	-2	0
NJCAA	THE COMMUNITY COLLEGE OF BALTIMORE COUNTY	16.1	D+	56.4%	40.3%	126	187	-23	0			-40	0		
NCAA Div. I-AA	TOWSON UNIVERSITY	11.8	C+	62.0%	50.2%	264	262	0	0	2	1	-44	-3	35	1
NCAA Div. I-AAA	UNIVERSITY OF MARYLAND-BALTIMORE COUNTY	-1.6	A	46.3%	47.9%	207	225	-1	0	51	0	-13	0	7	0
NCAA Div. I-A	UNIVERSITY OF MARYLAND-COLLEGE PARK	-0.5	A	49.2%	49.7%	390	395	69	0	14	0	26	0	-7	0
NCAA Div. I-AAA	UNIVERSITY OF MARYLAND-EASTERN SHORE	7.6	B	59.0%	51.3%	115	109	19	0	6	0	-2	0	-20	0
NCAA Div. III	VILLA JULIE COLLEGE	24.5	F	71.4%	47.0%	108	122	-8	-1			16	-2		
NCAA	WASHINGTON BIBLE COLL-CAPITAL BIBLE SEMINARY	-16.3	A	46.6%	63.0%	17	10	-20	0			-16	0		
NCAA Div. III	WASHINGTON COLLEGE	9.7	B-	61.4%	51.7%	165	154	-6	0	22	0	14	0	6	0

Massachusetts

NCAA Div. II	AMERICAN INTERNATIONAL COLLEGE	25.6	F	58.6%	32.9%	112	228	-1	0			1	0		
NCAA Div. III	AMHERST COLLEGE	4.1	B+	48.0%	44.0%	266	339	15	0	1	0	1	0	-25	0
NCAA Div. III	ANNA MARIA COLLEGE	15.3	C-	64.5%	49.2%	60	62	-5	0	12	0	-2	0	4	1
NCAA Div. II	ASSUMPTION COLLEGE	18.8	D	60.2%	41.5%	209	295	-18	2	36	0	2	2	1	0
NCAA Div. III	BABSON COLLEGE	-1.3	A	39.5%	40.9%	143	207	5	0	-19	1	21	0	-30	1
NCAA Div. III	BECKER COLLEGE	20.7	D-	75.4%	54.7%	93	77	-7	0			8	0		
NCAA Div. II	BENTLEY COLLEGE	6.6	B	41.0%	34.4%	159	303	-8	0			2	0		
Other	BOSTON BAPTIST COLLEGE	17.5	D+	42.5%	25.0%	8	24	-10	0			-3	0		
NCAA Div. I-A	BOSTON COLLEGE	1.0	A	52.6%	51.6%	376	352	19	0	79	0	-58	0	-60	0
NCAA Div. I-AAA	BOSTON UNIVERSITY	9.9	B-	60.0%	50.1%	324	323	-27	0	8	0	16	0	-124	0
NCAA Div. III	BRANDEIS UNIVERSITY	7.0	B	55.9%	48.9%	157	164	13	0	-5	0	9	0	-7	0
NCAA Div. III	BRIDGEWATER STATE COLLEGE	18.6	D	60.4%	41.8%	176	245	-1	0	-13	0	8	0	-4	0
NJCAA	BUNKER HILL COMMUNITY COLLEGE	26.4	F	56.4%	30.0%	24	56	-12	0			7	0		
NCAA Div. III	CLARK UNIVERSITY	8.3	B-	60.9%	52.5%	145	131	3	2	-17	0	7	2	-9	0
NCAA Div. III	COLLEGE OF OUR LADY OF THE ELMS	18.8	D	77.8%	59.0%	108	75	20	0			28	0		
NCAA Div. I-AA	COLLEGE OF THE HOLY CROSS	4.5	B+	53.9%	49.4%	424	434	3	0	62	0	-4	0	30	0
NCAA Div. III	CURRY COLLEGE	25.1	F	53.7%	28.7%	94	234	13	0	21	1	48	0	22	0
NJCAA	DEAN COLLEGE	20.4	D-	47.1%	26.7%	63	173	9	0			23	0		
NCAA Div. III	EASTERN NAZARENE COLLEGE	11.1	C+	62.5%	51.4%	74	70	9	0	12	0	-8	0	3	0
NCAA Div. III	EMERSON COLLEGE	5.9	B+	57.7%	51.8%	101	94	20	1	-17	1	3	2	-7	0
NCAA Div. III	EMMANUEL COLLEGE	15.2	C-	72.8%	57.5%	126	93	9	0			4	0		
NCAA Div. III	ENDICOTT COLLEGE	21.0	D-	60.7%	39.7%	151	229	-11	0			88	0		
NAIA	FISHER COLLEGE	26.6	F	69.9%	43.3%	26	34	4	0			5	0		
NCAA Div. III	FITCHBURG STATE COLLEGE	25.9	F	55.9%	30.0%	110	257	-9	0	-2	0	25	0	-3	0
NCAA Div. III	FRAMINGHAM STATE COLLEGE	34.0	F	67.8%	33.8%	74	145	-8	0	16	1	21	0	-15	0
NCAA Div. I-AA	HARVARD UNIVERSITY	3.2	A-	48.3%	45.0%	670	818	23	0	78	0	-32	0	53	0
NCAA Div. III	LASELL COLLEGE	14.1	C	71.2%	57.1%	105	79	13	0			7	0		
NJCAA	MASSACHUSETTS BAY COMMUNITY COLLEGE	16.2	D+	47.1%	30.9%	30	67	-7	0			6	0		
NCAA Div. III	MASSACHUSETTS COLLEGE OF LIBERAL ARTS	19.4	D	59.4%	40.0%	56	84	-3	0	11	-1	-18	1	10	-1
NCAA Div. III	MASSACHUSETTS INSTITUTE OF TECHNOLOGY	0.3	A	42.8%	42.5%	397	537	-42	0	70	1	-51	0	-91	0
NCAA Div. III	MASSACHUSETTS MARITIME ACADEMY	-10.3	A	11.5%	21.8%	75	269	-25	0	35	0	66	0	7	0
NJCAA	MASSASOIT COMMUNITY COLLEGE	10.8	C+	51.8%	41.1%	39	56	9	0			1	0		
NCAA Div. II	MERRIMACK COLLEGE	16.0	C-	53.4%	37.5%	130	217	1	0			-5	0		
NCAA Div. III	MOUNT IDA COLLEGE	32.3	F	68.6%	36.3%	85	149	-2	0			22	-1		
NCAA Div. III	NEWBURY COLLEGE-BROOKLINE	16.0	D+	59.2%	43.2%	54	71	5	0			1	0		
NCAA Div. III	NICHOLS COLLEGE	5.7	B+	34.7%	29.0%	83	203	2	0	12	-1	-27	0	54	-1
NCAA Div. I-AAA	NORTHEASTERN UNIVERSITY	3.4	A-	50.8%	47.5%	245	271	25	0	-2	0	1	0	-62	0
NJCAA	NORTHERN ESSEX COMMUNITY COLLEGE	39.0	F	56.3%	17.3%	9	43	-12	0			10	0		
NJCAA	QUINSIGAMOND COMMUNITY COLLEGE	6.2	B	48.1%	41.9%	26	36	-2	0			3	0		
NCAA Div. III	SALEM STATE COLLEGE	19.0	D	62.2%	43.2%	111	146	-25	0	24	0	-24	0	27	0
NCAA Div. III	SPRINGFIELD COLLEGE	19.9	D	58.0%	38.1%	353	574	49	0			51	0		
NJCAA	SPRINGFIELD TECHNICAL COMMUNITY COLLEGE	8.5	B-	52.3%	43.8%	39	50	-4	0			-26	0		
NCAA Div. II	STONEHILL COLLEGE	12.1	C	58.4%	46.2%	197	229	-7	0	23	0	5	0	-42	0
NCAA Div. III	SUFFOLK UNIVERSITY	23.5	F	57.4%	33.9%	57	111	6	0	-8	0	6	0	8	0
NCAA Div. III	TUFTS UNIVERSITY	4.4	B+	53.4%	49.0%	504	525	73	0	5	0	44	0	-5	0
NCAA Div. I-AA	UNIVERSITY OF MASSACHUSETTS-AMHERST	2.1	A-	49.6%	47.5%	327	361	-71	0			-45	0		
NCAA Div. III	UNIVERSITY OF MASSACHUSETTS-BOSTON	11.0	C+	57.7%	46.7%	92	105	22	0	2	1	-23	0	-54	0
NCAA Div. III	UNIVERSITY OF MASSACHUSETTS-DARTMOUTH	12.8	C	50.0%	37.2%	184	311	-55	0	95	0	-4	0	41	0
NCAA Div. II	UNIVERSITY OF MASSACHUSETTS-LOWELL	-2.7	A	41.7%	44.4%	122	153	-37	0	16	0	-82	0	-33	0
NCAA Div. III	WENTWORTH INSTITUTE OF TECHNOLOGY	-14.0	A	19.8%	33.7%	83	163	16	0	19	0	3	0	52	0
NCAA Div. III	WESTERN NEW ENGLAND COLLEGE	4.4	B+	40.5%	36.1%	156	276	-26	0			25	0		
NCAA Div. III	WESTFIELD STATE COLLEGE	9.0	B-	55.1%	46.1%	195	228	33	0	19	0	10	0	1	0
NCAA Div. III	WHEATON COLLEGE	8.6	B-	63.1%	54.5%	192	160	2	0	-39	0	8	0	3	0
NCAA Div. III	WHEELOCK COLLEGE	-5.1	A	94.9%	100.0%	62	0	-8	0			0	0		
NCAA Div. III	WILLIAMS COLLEGE	6.9	B	50.6%	43.8%	361	464	31	0	17	0	22	0	-6	0
NCAA Div. III	WORCESTER POLYTECHNIC INSTITUTE	-10.4	A	24.5%	34.9%	179	334	14	0	16	0	-21	0	71	0

								Changes in Women's Participation				Changes in Men's Participation			
		Proportionality Gap		Figures Underlying the Proportionality Gap				2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
Org./Div.	Name	Amount	Grade	% Und, Fem	% Ath, Fem	# Ath, Fem	# Ath, Male	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
NCAA Div. III	WORCESTER STATE COLLEGE	19.9	D	58.5%	38.6%	145	231	-10	0	29	0	-7	0	38	0
Michigan															
NCAA Div. III	ADRIAN COLLEGE	26.5	F	52.8%	26.4%	97	271	-12	0	-14	1	32	0	-2	1
NCAA Div. III	ALBION COLLEGE	17.9	D+	55.3%	37.4%	213	356	7	0			43	0		
NCAA Div. III	ALMA COLLEGE	19.6	D	58.8%	39.2%	165	256	4	0	5	0	1	0	12	0
NJCAA	ALPENA COMMUNITY COLLEGE	-10.7	A	52.1%	62.7%	32	19	-2	0			-4	0		
NAIA	AQUINAS COLLEGE	16.9	D+	65.1%	48.2%	204	219	11	0			22	0		
NCAA Div. III	CALVIN COLLEGE	5.8	B+	54.7%	48.9%	136	142	3	1	-26	0	0	1	-32	0
NCAA Div. I-A	CENTRAL MICHIGAN UNIVERSITY	18.8	D	57.8%	39.1%	132	206	-15	0	44	0	10	0	-27	0
NAIA	CONCORDIA UNIVERSITY	0.6	A	56.4%	55.8%	82	65	24	-2			14	-2		
NAIA	CORNERSTONE UNIVERSITY	15.5	C-	63.1%	47.5%	106	117	-3	0			9	0		
NJCAA	DELTA COLLEGE	-1.3	A	54.1%	55.4%	36	29	-5	0			-10	0		
NCAA Div. I-A	EASTERN MICHIGAN UNIVERSITY	16.5	D+	60.1%	43.6%	298	385	-16	0	99	0	-30	0	-32	0
NCAA Div. II	FERRIS STATE UNIVERSITY	7.3	B	44.9%	37.6%	129	214	-8	0	24	0	-7	0	39	3
NCAA Div. III	FINLANDIA UNIVERSITY	12.9	C	65.2%	52.3%	103	94	68	1			45	1		
NJCAA	GLEN OAKS COMMUNITY COLLEGE	24.7	F	64.7%	40.0%	22	33	-13	0			-21	0		
NJCAA	GOGEBIC COMMUNITY COLLEGE	5.8	B+	53.4%	47.6%	10	11	-1	0			0	0		
NCCAA	GRACE BIBLE COLLEGE	10.3	C+	54.1%	43.9%	25	32	6	0			3	0		
NJCAA	GRAND RAPIDS COMMUNITY COLLEGE	23.5	F	48.9%	25.4%	51	150	-6	0			26	0		
NCAA Div. II	GRAND VALLEY STATE UNIVERSITY	18.9	D	60.4%	41.5%	306	431	3	0	29	0	8	0	9	0
NCCAA	GREAT LAKES CHRISTIAN COLLEGE	5.9	B+	44.4%	38.5%	10	16	-11	0			-6	0		
NJCAA	HENRY FORD COMMUNITY COLLEGE	16.5	D+	53.9%	37.3%	25	42	-7	0			7	0		
NCAA Div. III	HOPE COLLEGE	21.7	D-	61.9%	40.1%	193	288	5	0	1	0	-29	0	21	0
NCAA Div. III	KALAMAZOO COLLEGE	15.7	C-	57.9%	42.2%	122	167	1	0	-14	0	-20	0	3	0
NJCAA	KALAMAZOO VALLEY COMMUNITY COLLEGE	6.2	B	49.6%	43.4%	46	60	-10	0			7	0		
NJCAA	KIRTLAND COMMUNITY COLLEGE	38.5	F	62.8%	24.3%	9	28	-2	0			1	1		
NJCAA	LAKE MICHIGAN COLLEGE	6.1	B	58.4%	52.3%	34	31	1	0			2	0		
NCAA Div. II	LAKE SUPERIOR STATE UNIVERSITY	4.8	B+	48.6%	43.8%	120	154	-4	0	10	2	-1	0	15	0
NJCAA	LANSING COMMUNITY COLLEGE	3.6	A-	53.3%	49.7%	84	85	-2	0			4	0		
NJCAA	MACOMB COMMUNITY COLLEGE	7.2	B	49.7%	42.5%	85	115	-5	0			0	0		
NAIA	MADONNA UNIVERSITY	27.4	F	73.8%	46.5%	59	68	15	0			-4	0		
Other	MARYGROVE COLLEGE	37.8	F	76.1%	38.2%	13	21	3	0			8	0		
NCAA Div. I-A	MICHIGAN STATE UNIVERSITY	1.1	A	53.4%	52.2%	402	368	16	0	102	0	7	0	-76	0
NCAA Div. II	MICHIGAN TECHNOLOGICAL UNIVERSITY	1.2	A	22.8%	21.6%	79	286	1	0	3	0	14	0	3	0
NJCAA	MOTT COMMUNITY COLLEGE	4.5	B+	56.0%	51.5%	52	49	16	0			4	0		
NJCAA	MUSKEGON COMMUNITY COLLEGE	14.5	C-	50.1%	35.6%	42	76	-1	0			3	0		
NCAA Div. II	NORTHERN MICHIGAN UNIVERSITY	-1.6	A	52.0%	53.6%	173	150	-17	2			0	0		
NCAA Div. II	NORTHWOOD UNIVERSITY	12.2	C	42.4%	30.2%	135	312	3	0	7	0	6	0	23	0
NJCAA	OAKLAND COMMUNITY COLLEGE	-14.0	A	51.9%	65.9%	54	28	7	0			-1	0		
NCAA Div. I-AAA	OAKLAND UNIVERSITY	9.1	B-	63.1%	54.0%	129	110	-2	0	39	0	-23	0	23	0
NCAA Div. III	OLIVET COLLEGE	10.6	C+	42.3%	31.7%	132	285	33	0	7	2	45	0	-36	2
Other	ROCHESTER COLLEGE	10.5	C+	59.3%	48.8%	60	63	19	-1			12	-1		
NCAA Div. II	SAGINAW VALLEY STATE UNIVERSITY	32.1	F	60.0%	27.9%	113	292	-25	0			-10	0		
NJCAA	SCHOOLCRAFT COLLEGE	-8.9	A	51.6%	60.5%	52	34	-3	0			-2	0		
NAIA	SIENA HEIGHTS UNIVERSITY	13.4	C	60.5%	47.1%	123	138	7	0			1	0		
NAIA	SPRING ARBOR UNIVERSITY	22.2	F	66.0%	43.8%	74	95	-3	0			10	0		
NJCAA	ST CLAIR COUNTY COMMUNITY COLLEGE	9.8	B-	56.9%	47.1%	40	45	4	0			-5	0		
NCAA Div. I-AAA	UNIVERSITY OF DETROIT MERCY	10.1	C+	62.0%	51.9%	137	127	14	0	-16	0	-22	0	-8	0
NCAA Div. I-A	UNIVERSITY OF MICHIGAN-ANN ARBOR	-0.9	A	50.9%	51.8%	423	394	34	0	139	0	15	0	27	0
NAIA	UNIVERSITY OF MICHIGAN-DEARBORN	-16.6	A	51.7%	68.3%	28	13	10	0			3	0		
NJCAA	WAYNE COUNTY COMMUNITY COLLEGE DISTRICT	25.2	F	70.2%	45.0%	27	33	0	0			-1	0		
NCAA Div. II	WAYNE STATE UNIVERSITY	25.5	F	59.1%	33.5%	122	242	12	0	50	0	-14	0	63	0
NCAA Div. I-A	WESTERN MICHIGAN UNIVERSITY	1.1	A	50.4%	49.3%	216	222	-52	0	84	0	-2	-3	-10	0
Minnesota															
NJCAA	ANOKA-RAMSEY CC-COON RAPIDS CAMPUS	24.7	F	60.4%	35.7%	20	36	-1	0			4	0		
NCAA Div. III	AUGSBURG COLLEGE	24.1	F	56.1%	32.1%	125	265	-4	0	23	0	-32	0	41	0
NCAA Div. II	BEMIDJI STATE UNIVERSITY	13.4	C	50.4%	37.0%	143	243	-19	0	61	0	-7	0	6	-1
NCAA Div. III	BETHANY LUTHERAN COLLEGE	3.6	A-	56.8%	53.3%	73	64	4	0			-4	0		
NCAA Div. III	BETHEL UNIVERSITY	25.4	F	59.7%	34.3%	193	369	16	0	15	0	10	0	32	0
NCAA Div. III	CARLETON COLLEGE	6.8	B	52.3%	45.5%	197	236	-17	0	15	0	-30	0	-44	0
NJCAA	CENTRAL LAKES COLLEGE-BRAINERD	20.9	D-	51.1%	30.2%	38	88	-11	0			-2	0		
NCAA Div. III	CONCORDIA COLLEGE AT MOORHEAD	21.2	D-	63.1%	41.9%	276	382	14	0	34	0	-5	0	60	0
NCAA Div. II	CONCORDIA UNIVERSITY-ST PAUL	27.3	F	58.6%	31.3%	87	191	-14	0			-24	0		
Other	CROSSROADS COLLEGE	-12.0	A	43.8%	55.9%	19	15	7	0			-5	0		
NCAA Div. III	CROWN COLLEGE	23.1	F	56.6%	33.5%	54	107	-14	0			-2	0		
NJCAA	DAKOTA COUNTY TECHNICAL COLLEGE	15.7	C-	43.8%	28.1%	18	46	18	0			39	0		
NCAA Div. III	GUSTAVUS ADOLPHUS COLLEGE	16.6	D+	57.0%	40.4%	310	458	14	0	44	0	7	0	13	0
NCAA Div. III	HAMLIN UNIVERSITY	23.4	F	62.2%	38.8%	195	307	27	0	10	0	23	0	-12	0
NJCAA	HIBBING CC-A TECHNICAL AND COMM COLL	17.8	D+	43.5%	25.7%	37	107	5	0			27	0		
NJCAA	ITASCA COMMUNITY COLLEGE	21.3	D-	44.9%	23.6%	33	107	-2	0			-1	0		
NCAA Div. III	MACALESTER COLLEGE	8.6	B-	56.1%	47.5%	250	276	3	0			7	0		
NCAA Div. III	MARTIN LUTHER COLLEGE	7.6	B	50.0%	42.4%	109	148	0	0	20	1	-2	0	-22	1
NJCAA	MESABI RANGE COMM AND TECHNICAL COLLEGE	21.0	D-	45.4%	24.4%	33	102	1	0			24	0		
NJCAA	MINNEAPOLIS COMM AND TECHNICAL COLLEGE	12.9	C	52.2%	39.3%	11	17	1	0			-8	0		
NJCAA	MINNESOTA STATE COMM AND TECH COLLEGE	22.5	F	51.0%	28.5%	39	98	5	0			-5	0		

								Changes in Women's Participation				Changes in Men's Participation			
		Proportionality Gap		Figures Underlying the Proportionality Gap				2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
Org./Div.	Name	Amount	Grade	% Und, Fem	% Ath, Fem	# Ath, Fem	# Ath, Male	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
NCAA Div. II	MINNESOTA STATE UNIVERSITY-MANKATO	2.6	A-	52.8%	50.2%	300	298	-5	0	74	0	11	0	-4	0
NCAA Div. II	MINNESOTA STATE UNIVERSITY-MOORHEAD	18.3	D	59.7%	41.4%	149	211	-4	0	-14	0	10	0	18	0
NJCAA	MINNESOTA WEST COMM AND TECHNICAL COLLEGE	26.2	F	48.1%	22.0%	29	103	-4	0			0	0		
NCCAA	NORTH CENTRAL UNIVERSITY	5.2	B+	57.0%	51.8%	72	67	13	0			12	0		
NJCAA	NORTHLAND COMMUNITY AND TECHNICAL COLLEGE	30.8	F	54.5%	23.7%	32	103	-18	0			-8	0		
NAIA	NORTHWESTERN COLLEGE	25.8	F	62.1%	36.3%	103	181	3	0			2	0		
Other	OAK HILLS CHRISTIAN COLLEGE	5.7	B+	49.7%	44.0%	11	14	-10	0			-6	0		
NJCAA	RAINY RIVER COMMUNITY COLLEGE	12.2	C	47.5%	35.4%	35	64	13	0			6	0		
NJCAA	RIDGEWATER COLLEGE	25.3	F	53.2%	27.9%	46	119	1	0			6	0		
NJCAA	RIVERLAND COMMUNITY COLLEGE	12.6	C	49.0%	36.4%	20	35	-18	0			-12	0		
NJCAA	ROCHESTER COMMUNITY AND TECHNICAL COLLEGE	30.8	F	55.8%	25.0%	45	135	-14	0			5	0		
NCAA Div. II	SAINT CLOUD STATE UNIVERSITY	14.2	C-	54.0%	39.8%	208	315	9	0	14	0	-1	0	37	0
NCAA Div. III	SAINT MARY'S UNIVERSITY OF MINNESOTA	1.9	A	54.5%	52.6%	181	163	-5	0	38	0	-20	0	15	0
NCAA Div. II	SAINT OLAF COLLEGE	13.2	C	58.6%	45.3%	334	403	-8	0			-4	0		
NCAA Div. II	SOUTHWEST MINNESOTA STATE UNIVERSITY	21.7	D-	55.2%	33.6%	97	192	3	0			35	0		
NCAA Div. III	THE COLLEGE OF SAINT SCHOLASTICA	20.0	D	70.6%	50.6%	160	156	33	1	-3	1	19	2	14	0
NCAA Div. II	UNIVERSITY OF MINNESOTA-CROOKSTON	6.9	B	45.2%	38.3%	102	164	6	0			9	0		
NCAA Div. II	UNIVERSITY OF MINNESOTA-DULUTH	-3.4	A	48.3%	51.7%	303	283	12	0	33	0	5	0	-28	0
NCAA Div. III	UNIVERSITY OF MINNESOTA-MORRIS	1.4	A	59.8%	58.3%	161	115	18	0	22	1	-45	0	-28	0
NCAA Div. I-A	UNIVERSITY OF MINNESOTA-TWIN CITIES	5.9	B+	52.8%	47.0%	410	463	-37	0	135	0	-5	0	11	0
NCAA Div. III	UNIVERSITY OF ST THOMAS	12.8	C	50.5%	37.7%	261	431	-4	0	10	0	36	0	-62	0
NJCAA	VERMILION COMMUNITY COLLEGE	0.1	A	24.7%	24.6%	29	89	-11	0			1	-1		
NCAA Div. II	WINONA STATE UNIVERSITY	8.9	B-	62.7%	53.8%	235	202	4	0	0	0	2	0	2	1
Mississippi															
NCAA Div. I-AA	ALCORN STATE UNIVERSITY	22.7	F	60.9%	38.2%	105	170	6	0			-13	0		
NAIA	BELHAVEN COLLEGE	39.1	F	68.3%	29.2%	81	196	-13	0			-6	0		
NJCAA	COPIAH-LINCOLN COMMUNITY COLLEGE	31.2	F	56.7%	25.5%	42	123	-13	0			1	0		
NCAA Div. II	DELTA STATE UNIVERSITY	31.7	F	59.2%	27.5%	96	253	26	0			58	0		
NJCAA	EAST CENTRAL COMMUNITY COLLEGE	34.4	F	58.3%	23.9%	39	124	-9	0			-28	0		
NJCAA	EAST MISSISSIPPI COMMUNITY COLLEGE	36.4	F	61.9%	25.5%	40	117	-20	0			-14	0		
NJCAA	HOLMES COMMUNITY COLLEGE	44.0	F	63.6%	19.6%	30	123	-15	0			-4	0		
NJCAA	ITAWAMBA COMMUNITY COLLEGE	34.9	F	60.5%	25.7%	49	142	11	0			13	0		
NCAA Div. I-AA	JACKSON STATE UNIVERSITY	24.6	F	61.2%	36.6%	86	149	11	0	37	0	-13	0	9	0
NJCAA	JONES COUNTY JUNIOR COLLEGE	32.9	F	59.2%	26.3%	46	129	-23	0			-13	0		
NJCAA	MERIDIAN COMMUNITY COLLEGE	27.3	F	70.5%	43.3%	61	80	20	0			-11	0		
NCAA Div. III	MILLSAPS COLLEGE	19.8	D	52.1%	32.4%	100	209	-8	0			12	0		
NCAA Div. III	MISSISSIPPI COLLEGE	34.2	F	59.2%	25.1%	100	299	17	1	21	1	102	1	40	0
NJCAA	MISSISSIPPI DELTA COMMUNITY COLLEGE	37.6	F	64.3%	26.7%	39	107	11	0			-6	0		
NJCAA	MISSISSIPPI GULF COAST COMMUNITY COLLEGE	34.8	F	61.7%	26.9%	49	133	-7	0			-9	0		
NCAA Div. I-A	MISSISSIPPI STATE UNIVERSITY	7.0	B	46.8%	39.8%	160	242	-13	0	21	0	-24	0	14	-1
NCAA Div. I-AA	MISSISSIPPI VALLEY STATE UNIVERSITY	29.8	F	69.0%	39.2%	103	160	27	0	8	0	25	0	-15	0
NJCAA	NORTHEAST MISSISSIPPI COMMUNITY COLLEGE	36.3	F	58.3%	22.0%	29	103	2	0			1	0		
NJCAA	NORTHWEST MISSISSIPPI COMMUNITY COLLEGE	35.6	F	62.5%	26.9%	46	125	13	0			21	0		
NJCAA	PEARL RIVER COMMUNITY COLLEGE	31.6	F	59.4%	27.8%	54	140	1	0			13	0		
NCAA Div. III	RUST COLLEGE	11.5	C+	65.1%	53.6%	74	64	-3	0	37	0	-12	0	18	0
NAIA	TOUGALOO COLLEGE	25.0	F	67.9%	42.9%	24	32	-6	0			-3	0		
NCAA Div. I-A	UNIVERSITY OF MISSISSIPPI MAIN CAMPUS	19.7	D	52.4%	32.7%	130	268	1	0	31	0	-1	0	30	0
NCAA Div. I-A	UNIVERSITY OF SOUTHERN MISSISSIPPI	21.0	D-	60.2%	39.1%	135	210	8	0	49	0	-12	1	9	-2
NAIA	WILLIAM CAREY COLLEGE	38.3	F	72.3%	34.1%	46	89	-6	0			15	0		
Missouri															
NAIA	AVILA UNIVERSITY	26.7	F	61.9%	35.2%	95	175	9	0			29	0		
NCCAA	BAPTIST BIBLE COLLEGE AND GRADUATE SCHOOL	4.1	B+	46.1%	42.0%	21	29	-1	0			-2	0		
NCCAA	CALVARY BIBLE COLL AND THEOLOGICAL SEMINARY	12.4	C	48.2%	35.8%	19	34	-6	0			-1	0		
NCCAA	CENTRAL BIBLE COLLEGE	3.0	A-	43.7%	40.7%	24	35	14	0			-7	0		
NAIA	CENTRAL METHODIST UNIV-COLL OF LIB ARTS & SCI	20.8	D-	50.3%	29.4%	96	230	-7	0			22	0		
NCAA Div. II	CENTRAL MISSOURI STATE UNIVERSITY	18.9	D	54.4%	35.4%	140	255	14	0	11	0	-37	0	65	0
NAIA	COLLEGE OF THE OZARKS	16.2	D+	55.1%	38.9%	28	44	4	0			5	0		
NAIA	COLUMBIA COLLEGE	4.5	B+	58.3%	53.8%	35	30	-4	0			-7	0		
NJCAA	CROWDER COLLEGE	30.9	F	61.3%	30.4%	14	32	2	0			4	0		
NAIA	CULVER-STOCKTON COLLEGE	23.0	F	56.7%	33.7%	90	177	18	0			4	0		
NCAA Div. II	DRURY UNIVERSITY	13.2	C	63.7%	50.5%	98	96	17	1	7	0	1	1	-10	0
NJCAA	EAST CENTRAL COLLEGE	21.8	D-	60.7%	38.9%	14	22	-13	0			-18	0		
NAIA	EVANGEL UNIVERSITY	28.4	F	61.6%	33.2%	77	155	6	0			10	0		
NCAA Div. III	FONTBONNE UNIVERSITY	20.2	D-	75.0%	54.8%	86	71	13	-1	17	1	-4	0	0	0
NAIA	HANNIBAL-LAGRANGE COLLEGE	12.2	C	64.0%	51.8%	72	67	-10	1			-16	1		
NAIA	HARRIS-STOWE STATE COLLEGE	15.5	C-	63.9%	48.4%	61	65	12	-1			-18	0		
NJCAA	JEFFERSON COLLEGE	8.5	B-	55.7%	47.3%	26	29	1	0			-12	0		
NCAA Div. II	LINCOLN UNIVERSITY	25.1	F	56.0%	30.9%	85	190	-6	0	5	0	11	0	82	0
NAIA	LINDENWOOD UNIVERSITY	24.8	F	56.1%	31.3%	330	726	174	0			506	0		
NJCAA	LONGVIEW COMMUNITY COLLEGE	19.4	D	52.1%	32.7%	17	35	3	0			8	0		
NJCAA	MAPLE WOODS COMMUNITY COLLEGE	25.3	F	56.1%	30.8%	16	36	6	0			8	0		
NCAA Div. III	MARYVILLE UNIVERSITY OF SAINT LOUIS	23.7	F	74.9%	51.2%	86	82	20	0	-7	0	10	0	0	0
Other	MESSENGER COLLEGE	-15.4	A	43.9%	59.3%	16	11	6	0			0	0		
NJCAA	MINERAL AREA COLLEGE	29.4	F	64.9%	35.5%	22	40	-4	0			-12	0		
NAIA	MISSOURI BAPTIST UNIVERSITY	17.1	D+	55.0%	37.8%	143	235	52	2			108	0		

Org./Div.	Name	Proportionality Gap		Figures Underlying the Proportionality Gap				Changes in Women's Participation				Changes in Men's Participation			
		Amount	Grade	% Und, Fem	% Ath, Fem	# Ath, Fem	# Ath, Male	2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
								Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
NCAA Div. II	MISSOURI SOUTHERN STATE UNIVERSITY	25.8	F	57.9%	32.1%	105	222	-5	0			8	0		
NAIA	MISSOURI VALLEY COLLEGE	0.5	A	42.9%	42.4%	176	239	13	0			-109	0		
NCAA Div. II	MISSOURI WESTERN STATE COLLEGE	34.7	F	58.9%	24.2%	68	213	19	0	-1	0	42	0	40	0
NJCAA	MOBERLY AREA COMMUNITY COLLEGE	16.0	C-	62.4%	46.4%	13	15	1	0			3	0		
NJCAA	NORTH CENTRAL MISSOURI COLLEGE	28.6	F	70.6%	42.0%	29	40	2	0			3	0		
NCAA Div. II	NORTHWEST MISSOURI STATE UNIVERSITY	22.9	F	55.8%	33.0%	153	311	-1	0	33	0	-5	0	77	0
NCCAA	OZARK CHRISTIAN COLLEGE	5.1	B+	44.3%	39.2%	20	31	-5	0			1	0		
NAIA	PARK UNIVERSITY	11.4	C+	59.7%	48.3%	83	89	9	1			-4	1		
NJCAA	PENN VALLEY COMMUNITY COLLEGE	21.4	D-	71.4%	50.0%	16	16	0	0			0	0		
NCAA Div. II	ROCKHURST UNIVERSITY	14.6	C-	55.5%	40.9%	90	130	16	0	6	-1	3	0	28	-1
NCCAA	SAINT LOUIS CHRISTIAN COLLEGE	14.9	C-	44.0%	29.0%	9	22	-1	0			-14	0		
NJCAA	SAINT LOUIS COMMUNITY COLL-FLOISSANT VALLEY	17.9	D+	61.9%	44.0%	62	79	6	0			4	0		
NJCAA	SAINT LOUIS COMMUNITY COLLEGE-FOREST PARK	33.5	F	62.0%	28.6%	24	60	3	0			2	0		
NJCAA	SAINT LOUIS COMMUNITY COLLEGE-MERAMEC	8.0	B	52.0%	44.0%	59	75	-8	0			-13	0		
NCAA Div. I-AAA	SAINT LOUIS UNIVERSITY-MAIN CAMPUS	0.7	A	55.5%	54.8%	149	123	16	0	23	0	-2	0	-2	0
NCAA Div. I-AA	SOUTHEAST MISSOURI STATE UNIVERSITY	17.7	D+	58.0%	40.3%	114	169	-3	0	20	0	8	0	-3	0
NCAA Div. II	SOUTHWEST BAPTIST UNIVERSITY	25.8	F	61.2%	35.4%	90	164	-1	0	5	0	-29	0	6	0
NCAA Div. I-AA	SOUTHWEST MISSOURI STATE UNIVERSITY	11.1	C+	56.3%	45.2%	219	265	7	0	76	0	-15	0	33	0
NJCAA	SOUTHWEST MISSOURI STATE UNIV-WEST PLAINS	19.7	D	65.6%	45.8%	11	13	-2	0			0	0		
NJCAA	ST CHARLES COMMUNITY COLLEGE	18.6	D	55.0%	36.4%	12	21	-3	0			-9	0		
NAIA	ST LOUIS COLLEGE OF PHARMACY	-10.7	A	63.3%	74.0%	37	13	16	0			-2	0		
NJCAA	STATE FAIR COMMUNITY COLLEGE	-4.8	A	61.8%	66.7%	24	12	2	0			-18	0		
NJCAA	THREE RIVERS COMMUNITY COLLEGE	11.2	C+	64.7%	53.5%	38	33	-2	0			-6	0		
NCAA Div. II	TRUMAN STATE UNIVERSITY	20.4	D-	58.9%	38.5%	194	310	-2	0	32	0	-18	0	11	0
NCAA Div. I-A	UNIVERSITY OF MISSOURI-COLUMBIA	10.6	C+	51.4%	40.9%	264	382	5	0	30	0	15	0	2	0
NCAA Div. I-AAA	UNIVERSITY OF MISSOURI-KANSAS CITY	12.1	C	60.3%	48.2%	121	130	-2	0	2	1	-4	0	-9	1
NCAA Div. II	UNIVERSITY OF MISSOURI-ROLLA	-3.0	A	21.6%	24.6%	100	306	8	0	2	0	-24	0	43	0
NCAA Div. II	UNIVERSITY OF MISSOURI-ST LOUIS	14.7	C-	59.7%	45.0%	68	83	-11	0	23	0	-2	0	-15	0
NCAA Div. III	WASHINGTON UNIVERSITY IN ST LOUIS	9.4	B-	50.6%	41.2%	227	324	6	0	17	0	12	0	-27	0
NCAA Div. III	WEBSTER UNIVERSITY	12.1	C	62.1%	50.0%	102	102	3	0	32	0	15	0	18	0
NCAA Div. III	WESTMINSTER COLLEGE	19.2	D	42.7%	23.5%	52	169	-24	0			-19	0		
NAIA	WILLIAM JEWELL COLLEGE	24.7	F	59.1%	34.4%	141	269	-19	0			38	0		
NAIA	WILLIAM WOODS UNIVERSITY	27.9	F	76.1%	48.2%	82	88	9	0			12	0		
Montana															
NAIA	CARROLL COLLEGE	27.0	F	57.9%	30.9%	58	130	-5	0			13	0		
NJCAA	DAWSON COMMUNITY COLLEGE	16.1	D+	50.1%	34.0%	32	62	-5	0			1	0		
Other	FLATHEAD VALLEY COMMUNITY COLLEGE	18.9	D	60.1%	41.2%	14	20	9	0			6	0		
NJCAA	MILES COMMUNITY COLLEGE	39.5	F	65.0%	25.6%	23	67	-1	0			-1	0		
NCAA Div. II	MONTANA STATE UNIVERSITY-BILLINGS	7.8	B	66.8%	58.9%	89	62	15	0			18	0		
NCAA Div. I-AA	MONTANA STATE UNIVERSITY-BOZEMAN	-0.3	A	45.1%	45.4%	169	203	12	0	-29	0	21	0	-39	0
NAIA	MONTANA STATE UNIVERSITY-NORTHERN	30.0	F	48.9%	18.8%	36	155	-9	0			-1	0		
NAIA	MONTANA TECH OF THE UNIVERSITY OF MONTANA	18.6	D	40.6%	22.0%	42	149	10	0			5	0		
NAIA	ROCKY MOUNTAIN COLLEGE	21.1	D-	55.1%	33.9%	58	113	-16	0			17	0		
NCAA Div. I-AA	THE UNIVERSITY OF MONTANA-MISSOULA	15.3	C-	53.2%	37.9%	175	287	-13	0	6	0	10	0	10	0
NAIA	THE UNIVERSITY OF MONTANA-WESTERN	16.2	D+	50.6%	34.4%	76	145	18	0			7	0		
NAIA	UNIVERSITY OF GREAT FALLS	26.5	F	65.3%	38.8%	47	74	25	0			60	0		
Nebraska															
NAIA	BELLEVUE UNIVERSITY	3.5	A-	47.6%	44.1%	49	62	10	0			-6	0		
Other	CENTRAL COMMUNITY COLLEGE	11.5	C+	58.0%	46.4%	13	15	0	0			1	0		
NCAA Div. II	CHADRON STATE COLLEGE	26.4	F	55.9%	29.5%	100	239	4	0			22	0		
NAIA	CONCORDIA UNIVERSITY	14.3	C-	56.2%	41.9%	194	269	3	0			-13	0		
NCAA Div. I-AAA	CREIGHTON UNIVERSITY	3.2	A-	59.9%	56.7%	152	116	24	0	-13	0	7	0	-12	0
NAIA	DANA COLLEGE	19.2	D	44.1%	24.9%	105	316	8	0			94	0		
NAIA	DOANE COLLEGE	19.8	D	55.3%	35.6%	175	317	24	0			100	0		
NCCAA	GRACE UNIVERSITY	34.1	F	60.6%	26.5%	9	25	-9	0			-1	0		
NJCAA	HAMILTON COLLEGE-LINCOLN CAMPUS	36.8	F	70.1%	33.3%	8	16	-2	0			3	0		
NAIA	HASTINGS COLLEGE	14.0	C-	49.2%	35.2%	193	356	33	0			28	0		
NJCAA	MID PLAINS COMMUNITY COLLEGE	6.7	B	55.0%	48.3%	70	75	4	0			17	0		
NAIA	MIDLAND LUTHERAN COLLEGE	18.1	D	59.3%	41.1%	137	196	11	0			3	0		
NCCAA	NEBRASKA CHRISTIAN COLLEGE	10.6	C+	44.0%	33.3%	14	28	-7	0			0	0		
Other	NEBRASKA COLLEGE OF TECHNICAL AGRICULTURE	18.6	D	51.4%	32.8%	20	41	8	0			-6	0		
NCAA Div. III	NEBRASKA WESLEYAN UNIVERSITY	21.0	D-	55.7%	34.7%	182	342	-19	0	10	0	-13	0	58	0
NJCAA	NORTHEAST COMMUNITY COLLEGE	-9.3	A	44.8%	54.2%	13	11	-13	0			-13	0		
NAIA	PERU STATE COLLEGE	22.8	F	55.7%	32.9%	54	110	5	1			-12	0		
NJCAA	SOUTHEAST COMMUNITY COLLEGE AREA	-0.9	A	47.1%	47.9%	23	25	1	0			3	0		
Other	UNION COLLEGE	6.2	B	55.0%	48.8%	20	21	1	0			-1	0		
NCAA Div. II	UNIVERSITY OF NEBRASKA AT KEARNEY	25.6	F	54.6%	29.0%	120	294	4	0	3	0	30	0	19	0
NCAA Div. I-A	UNIVERSITY OF NEBRASKA AT LINCOLN	8.6	B-	47.2%	38.6%	265	421	9	0	13	0	-54	0	-26	0
NCAA Div. II	UNIVERSITY OF NEBRASKA AT OMAHA	5.0	B+	53.8%	48.8%	202	212	16	0	74	0	-19	0	49	0
NCAA Div. II	WAYNE STATE COLLEGE	25.1	F	54.9%	29.7%	83	196	-10	0			27	0		
NJCAA	WESTERN NEBRASKA COMMUNITY COLLEGE	12.7	C	62.3%	49.6%	60	61	9	0			10	0		
NAIA	YORK COLLEGE	12.8	C	48.1%	35.3%	71	130	13	0			47	1		
Nevada															
NJCAA	COMMUNITY COLLEGE OF SOUTHERN NEVADA	22.3	F	57.5%	35.1%	13	24	-6	0			-4	0		
Other	SIERRA NEVADA COLLEGE	-1.6	A	48.4%	50.0%	9	9	4	0			4	0		

Org./Div.	Name	Proportionality Gap		Figures Underlying the Proportionality Gap				Changes in Women's Participation				Changes in Men's Participation			
		Amount	Grade	% Und, Fem	% Ath, Fem	# Ath, Fem	# Ath, Male	2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
								Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
NCAA Div. I-A	UNIVERSITY OF NEVADA-LAS VEGAS	3.7	A-	56.4%	52.7%	252	226	13	0			14	0		
NCAA Div. I-A	UNIVERSITY OF NEVADA-RENO	-3.6	A	55.0%	58.6%	273	193	22	0	31	0	8	0	-9	0
Other	WESTERN NEVADA COMMUNITY COLLEGE	-9.4	A	57.3%	66.7%	2	1	0	0			1	0		
New Hampshire															
NCAA Div. III	COLBY-SAWYER COLLEGE	7.1	B	65.2%	58.1%	151	109	5	0	31	0	-2	0	9	0
NCAA Div. III	DANIEL WEBSTER COLLEGE	-21.7	A	23.9%	45.6%	62	74	12	0	-14	1	6	0	-6	0
NCAA Div. I-AA	DARTMOUTH COLLEGE	4.1	B+	49.7%	45.6%	504	601	19	0	43	0	67	0	47	0
NCAA Div. II	FRANKLIN PIERCE COLLEGE	3.1	A-	49.7%	46.5%	153	176	0	0	82	1	36	0	57	1
Other	HESSER COLLEGE	17.3	D+	66.9%	49.5%	52	53	2	0			5	0		
NCAA Div. III	KEENE STATE COLLEGE	6.2	B	57.9%	51.8%	188	175	0	0	35	0	-27	0	59	0
NCAA Div. III	NEW ENGLAND COLLEGE	0.3	A	50.1%	49.8%	125	126	19	0			-3	0		
Other	NEW HAMPSHIRE TECHNICAL INSTITUTE	4.9	B+	50.9%	46.0%	58	68	0	0			6	0		
NCAA Div. III	PLYMOUTH STATE UNIVERSITY	9.3	B-	50.8%	41.5%	165	233	6	0	-6	0	-15	0	-6	0
NCAA Div. III	RIVIER COLLEGE	33.3	F	77.5%	44.2%	65	82	4	0	-1	0	5	0	21	0
NCAA Div. II	SAINT ANSELM COLLEGE	20.6	D-	57.5%	36.9%	150	257	22	0			5	0		
NCAA Div. II	SOUTHERN NEW HAMPSHIRE UNIVERSITY	15.6	C	56.5%	40.9%	117	169	33	0			21	0		
NCAA Div. I-AA	UNIVERSITY OF NEW HAMPSHIRE-MAIN CAMPUS	3.4	A-	56.7%	53.3%	407	356	-7	0	-57	0	-3	0	-88	0
New Jersey															
NJCAA	ATLANTIC CAPE COMMUNITY COLLEGE	44.4	F	59.8%	15.4%	4	22	-16	0			1	0		
NJCAA	BERGEN COMMUNITY COLLEGE	14.5	C-	51.9%	37.4%	68	114	14	0			25	0		
NCAA Div. II	BLOOMFIELD COLLEGE	21.9	D-	67.7%	45.8%	54	64	-2	0			4	0		
NJCAA	BROOKDALE COMMUNITY COLLEGE	9.8	B-	50.9%	41.1%	51	73	-16	0			-5	0		
NJCAA	BURLINGTON COUNTY COLLEGE	32.3	F	55.8%	23.5%	20	65	-3	0			6	0		
NCAA Div. II	CALDWELL COLLEGE	20.1	D-	63.7%	43.6%	65	84	5	1			12	0		
NJCAA	CAMDEN COUNTY COLLEGE	18.0	D+	54.4%	36.4%	39	68	3	0			5	0		
NCAA Div. III	CENTENARY COLLEGE	29.1	F	66.9%	37.7%	83	137	-2	0			24	0		
NJCAA	CUMBERLAND COUNTY COLLEGE	23.7	F	63.4%	39.7%	25	38	-22	0			-20	1		
NCAA Div. III	DREW UNIVERSITY	7.0	B	59.3%	52.4%	154	140	-17	0	18	0	7	0	6	0
NJCAA	ESSEX COUNTY COLLEGE	14.6	C-	61.8%	47.2%	42	47	5	-1			7	-1		
NCAA Div. III	FAIRLEIGH DICKINSON UNIV-COLL AT FLORHAM	18.0	D	52.0%	34.0%	132	256	2	0			50	0		
NCAA Div. I-AAA	FAIRLEIGH DICKINSON UNIV-METROPOLITAN CAMP	9.6	B-	58.3%	48.8%	99	104	9	0	31	0	10	0	-6	0
NCAA Div. II	FELICIAN COLLEGE	31.9	F	75.5%	43.5%	64	83	8	0			0	0		
NJCAA	GLOUCESTER COUNTY COLLEGE	20.1	D-	54.8%	34.7%	60	113	-6	0			-1	0		
NCAA Div. III	KEAN UNIVERSITY	22.9	F	62.0%	39.2%	166	258	10	0	16	3	13	0	13	3
NJCAA	MERCER COUNTY COMMUNITY COLLEGE	11.0	C+	52.1%	41.2%	49	70	-5	0			-2	0		
NJCAA	MIDDLESEX COUNTY COLLEGE	26.6	F	51.4%	24.8%	31	94	-12	0			-22	0		
NCAA Div. I-AA	MONMOUTH UNIVERSITY	12.7	C	57.3%	44.7%	238	295	15	0	20	0	0	0	-37	0
NCAA Div. III	MONTCLAIR STATE UNIVERSITY	26.4	F	60.9%	34.5%	167	317	10	0	-5	0	-2	0	22	0
NCAA Div. III	NEW JERSEY CITY UNIVERSITY	20.6	D-	62.1%	41.5%	71	100	-5	0	14	2	-63	3	-29	0
NCAA Div. II	NEW JERSEY INSTITUTE OF TECHNOLOGY	-19.2	A	20.1%	39.3%	81	125	-22	1	37	-1	9	1	26	-2
NJCAA	OCEAN COUNTY COLLEGE	13.1	C	56.8%	43.7%	62	80	-9	0			-1	0		
NJCAA	PASSAIC COUNTY COMMUNITY COLLEGE	23.7	F	60.7%	37.0%	20	34	12	0			6	0		
NCAA Div. I-AA	PRINCETON UNIVERSITY	7.7	B	46.9%	39.3%	424	656	13	0	-8	0	-18	0	-16	0
NCAA Div. III	RAMAPO COLLEGE OF NEW JERSEY	12.1	C	59.8%	47.7%	142	156	43	0	4	1	6	0	14	1
NJCAA	RARITAN VALLEY COMMUNITY COLLEGE	11.0	C+	50.2%	39.2%	20	31	6	0			-21	0		
NCAA Div. I-AAA	RIDER UNIVERSITY	15.3	C-	58.2%	42.9%	151	201	2	0	24	0	17	0	-16	0
NCAA Div. III	ROWAN UNIVERSITY	13.9	C	54.1%	40.3%	159	236	-19	0	26	1	-7	0	16	1
NCAA Div. III	RUTGERS UNIVERSITY-CAMDEN	14.9	C-	57.6%	42.7%	82	110	0	0	35	0	13	0	-1	0
NCAA Div. I-A	RUTGERS UNIVERSITY-NEW BRUNSWICK	11.4	C+	51.6%	40.2%	369	549	-20	0	-12	0	14	0	-61	0
NCAA Div. III	RUTGERS UNIVERSITY-NEWARK	13.5	C	57.9%	44.4%	72	90	15	0	-1	0	-5	0	4	0
NCAA Div. I-AA	SAINT PETERS COLLEGE	6.0	B+	48.1%	42.2%	145	199	-20	0			-80	0		
NJCAA	SALEM COMMUNITY COLLEGE	35.4	F	56.6%	21.3%	10	37	-15	0			-8	0		
NCAA Div. I-AAA	SETON HALL UNIVERSITY	1.8	A	52.4%	50.6%	159	155	1	0			2	0		
NCAA Div. III	STEVENS INSTITUTE OF TECHNOLOGY	-19.6	A	23.8%	43.5%	146	190	31	1	39	1	43	1	1	1
NJCAA	SUSSEX COUNTY COMMUNITY COLLEGE	19.7	D	52.2%	32.6%	28	58	4	0			7	0		
NCAA Div. III	THE COLLEGE OF NEW JERSEY	18.6	D	58.8%	40.2%	234	348	-3	0	9	0	-23	0	58	0
NCAA Div. III	THE RICHARD STOCKTON COLLEGE OF NEW JERSEY	4.5	B+	57.3%	52.8%	168	150	8	0	44	0	-9	0	-2	0
NJCAA	UNION COUNTY COLLEGE	34.2	F	62.3%	28.0%	23	59	7	0			4	0		
NCAA Div. III	WILLIAM PATERSON UNIVERSITY OF NEW JERSEY	18.5	D	58.0%	39.5%	137	210	-6	0	24	0	3	0	6	0
New Mexico															
NAIA	COLLEGE OF THE SOUTHWEST	18.9	D	60.7%	41.8%	51	71	17	0			18	0		
NCAA Div. II	EASTERN NEW MEXICO UNIVERSITY-MAIN CAMPUS	23.0	F	54.1%	31.1%	135	299	54	1	4	0	120	1	-5	1
Other	MESALANDS COMMUNITY COLLEGE	30.4	F	51.8%	21.4%	12	44	12	0			19	0		
NJCAA	NEW MEXICO JUNIOR COLLEGE	21.7	D-	55.8%	34.1%	29	56	-3	2			-15	0		
NJCAA	NEW MEXICO MILITARY INSTITUTE	9.3	B-	16.3%	7.0%	10	133	0	0			25	0		
NCAA Div. I-A	NEW MEXICO STATE UNIVERSITY-MAIN CAMPUS	5.6	B+	54.2%	48.6%	192	203	39	0	-12	1	15	0	-2	-1
NCAA Div. I-A	UNIVERSITY OF NEW MEXICO-MAIN CAMPUS	10.7	C+	57.2%	46.5%	306	352	30	0	-15	0	-11	0	-41	0
NCAA Div. II	WESTERN NEW MEXICO UNIVERSITY	28.8	F	60.6%	31.9%	58	124	-7	1	23	0	-20	1	49	0
New York															
NCAA Div. II	ADELPHI UNIVERSITY	20.9	D-	70.4%	49.4%	134	137	8	2			-7	2		
NJCAA	ADIRONDACK COMMUNITY COLLEGE	7.0	B	57.0%	50.0%	53	53	12	0			-2	0		
Other	ALBANY COLLEGE OF PHARMACY	10.7	C+	56.7%	46.0%	29	34	5	0			6	0		
NCAA Div. III	ALFRED UNIVERSITY	12.4	C	49.6%	37.3%	174	293	27	0			6	0		
NCAA Div. III	BARD COLLEGE	10.9	C+	57.1%	46.2%	67	78	-11	0	-6	0	-15	0	23	0

Org./Div.	Name	Proportionality Gap		Figures Underlying the Proportionality Gap				Changes in Women's Participation				Changes in Men's Participation			
		Amount	Grade	% Und. Fem	% Ath. Fem	# Ath. Fem	# Ath. Male	2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
								Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
Other	BRIARCLIFFE COLLEGE	5.9	B+	47.4%	41.5%	61	86	16	1			38	1		
NJCAA	BROOME COMMUNITY COLLEGE	17.6	D+	53.9%	36.4%	64	112	6	0			-14	0		
NJCAA	BRYANT AND STRATTON COLLEGE-MAIN SYRACUSE	21.0	D-	75.6%	54.5%	24	20	7	0			-4	0		
NCAA Div. I-AAA	CANISIUS COLLEGE	11.7	C+	56.0%	44.4%	118	148	-20	-2	22	0	-77	-2	-72	0
NJCAA	CAYUGA COUNTY COMMUNITY COLLEGE	13.2	C	55.5%	42.3%	52	71	0	0			0	0		
NCAA Div. III	CAZENOVIA COLLEGE	8.0	B-	77.3%	69.3%	205	91	116	0			-16	0		
NCAA Div. III	CLARKSON UNIVERSITY	-13.4	A	23.2%	36.6%	123	213	15	0	4	0	-16	0	28	0
NJCAA	CLINTON COMMUNITY COLLEGE	13.5	C	55.4%	41.8%	41	57	-7	0			3	0		
NCAA Div. I-AA	COLGATE UNIVERSITY	8.1	B-	51.7%	43.6%	304	394	17	0	66	0	44	1	22	-1
NCAA Div. III	COLLEGE OF MOUNT SAINT VINCENT	22.8	F	73.6%	50.8%	91	88	14	-2	5	0	35	-1	2	1
NCAA Div. I-AA	COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK	1.6	A	45.8%	44.2%	370	467	8	0	26	0	16	0	10	0
NJCAA	COLUMBIA-GREENE COMMUNITY COLLEGE	10.0	C+	58.6%	48.6%	34	36	18	0			-9	0		
NCAA Div. II	CONCORDIA COLLEGE	10.1	C+	55.6%	45.5%	65	78	4	1	3	0	-13	1	17	0
NCAA Div. I-AA	CORNELL UNIVERSITY-ENDOWED COLLEGES	5.2	B+	49.5%	44.3%	496	623	-12	0	-15	0	14	0	-138	0
NJCAA	CORNING COMMUNITY COLLEGE	2.9	A-	55.8%	52.8%	56	50	5	0			14	0		
NCAA Div. III	CUNY BERNARD M BARUCH COLLEGE	6.3	B	54.1%	47.8%	75	82	8	0	11	0	14	0	9	0
NJCAA	CUNY BOROUGH OF MANHATTAN COMMUNITY COLL	14.3	C-	60.8%	46.5%	47	54	24	0			4	0		
NJCAA	CUNY BRONX COMMUNITY COLLEGE.	16.3	D+	63.9%	47.7%	61	67	14	0			-1	0		
NCAA Div. III	CUNY BROOKLYN COLLEGE	11.6	C+	59.0%	47.4%	72	80	-5	1	8	-1	-11	1	41	-1
NCAA Div. III	CUNY CITY COLLEGE	2.2	A-	48.2%	45.9%	85	100	-3	0	14	-1	-4	0	-52	-1
NCAA Div. III	CUNY COLLEGE OF STATEN ISLAND	6.1	B	56.1%	50.0%	86	86	18	0	21	0	0	0	23	0
NCAA Div. III	CUNY HUNTER COLLEGE	15.5	C-	69.6%	54.1%	164	139	25	0	26	0	3	0	12	0
NCAA Div. III	CUNY JOHN JAY COLLEGE CRIMINAL JUSTICE	8.5	B-	61.6%	53.1%	86	76	11	0	17	0	3	0	-18	0
NJCAA	CUNY KINGSBOROUGH COMMUNITY COLLEGE	9.4	B-	56.1%	46.7%	70	80	13	1			-3	1		
NCAA Div. III	CUNY LEHMAN COLLEGE	20.0	D-	70.3%	50.3%	91	90	-11	0	22	0	-4	0	-11	0
NCAA Div. III	CUNY MEDGAR EVERS COLLEGE	17.1	D+	73.6%	56.5%	108	83	22	0	-10	0	-1	0	14	0
NCAA Div. III	CUNY NEW YORK CITY COLLEGE OF TECHNOLOGY	0.7	A	46.4%	45.7%	53	63	-2	-2			-4	-2		
NCAA Div. II	CUNY QUEENS COLLEGE	6.7	B	60.3%	53.7%	102	88	9	0			-16	0		
NJCAA	CUNY QUEENSBOROUGH COMMUNITY COLLEGE	8.2	B-	53.0%	44.8%	99	122	-8	0			-14	0		
NCAA Div. III	CUNY YORK COLLEGE	22.5	F	67.0%	44.5%	69	86	3	0	28	0	5	0	18	0
NAIA	DAEMEN COLLEGE	24.1	F	76.1%	52.0%	52	48	4	0			7	0		
NCAA	DAVIS COLLEGE	8.0	B-	43.7%	35.7%	15	27	-7	0			-2	0		
NCAA Div. II	DOMINICAN COLLEGE OF BLAUVELT .	20.1	D-	61.9%	41.8%	77	107	10	0			15	0		
NCAA Div. II	DOWLING COLLEGE	20.0	D	60.3%	40.3%	87	129	13	0	4	1	8	0	-12	0
NJCAA	DUTCHESS COMMUNITY COLLEGE	7.7	B	52.9%	45.2%	71	86	18	0			-11	0		
NCAA Div. III	D'YOUVILLE COLLEGE	21.8	D-	75.6%	53.8%	71	61	15	0			2	0		
NCAA Div. III	ELMIRA COLLEGE	14.4	C-	70.6%	56.1%	151	118	-10	0			-11	0		
NJCAA	ERIE COMMUNITY COLLEGE	24.6	F	50.8%	26.2%	83	234	21	0			35	0		
NCAA Div. III	FARMINGDALE STATE UNIVERSITY OF NEW YORK	2.7	A-	36.1%	33.3%	78	156	1	0			-16	0		
NJCAA	FASHION INSTITUTE OF TECHNOLOGY	18.0	D+	84.9%	67.0%	73	36	15	1			2	0		
NJCAA	FINGER LAKES COMMUNITY COLLEGE	9.5	B-	54.2%	44.7%	96	119	8	0			-14	0		
NCAA Div. I-AA	FORDHAM UNIVERSITY	20.9	D	59.3%	38.4%	232	372	8	0	54	0	19	0	20	0
NJCAA	FULTON-MONTGOMERY COMMUNITY COLLEGE	11.2	C+	54.7%	43.5%	54	70	7	0			22	0		
NJCAA	GENESEE COMMUNITY COLLEGE	21.1	D-	63.4%	42.3%	74	101	9	-1			25	-1		
NCAA Div. III	HAMILTON COLLEGE	8.4	B-	50.3%	41.9%	256	355	-24	0	55	0	-12	0	59	0
NCAA Div. III	HARTWICK COLLEGE	11.8	C+	57.0%	45.2%	232	281	-14	0	60	0	-8	0	31	0
NJCAA	HERKIMER COUNTY COMMUNITY COLLEGE	4.3	B+	53.3%	49.0%	142	148	38	0			9	0		
NCAA Div. III	HILBERT COLLEGE	14.0	C-	58.1%	44.1%	67	85	-5	0			11	1		
NCAA Div. III	HOBART WILLIAM SMITH COLLEGES	11.4	C+	54.5%	43.1%	222	293	42	0	-13	0	25	0	39	0
NCAA Div. I-AA	HOFSTRA UNIVERSITY	17.8	D+	53.9%	36.1%	145	257	-5	0			0	0		
NAIA	HOUGHTON COLLEGE	7.1	B	62.5%	60.4%	99	65	-3	0			-7	0		
NJCAA	HUDSON VALLEY COMMUNITY COLLEGE	17.6	D+	43.1%	25.5%	78	228	17	0			53	0		
NCAA Div. I-AA	IONA COLLEGE	14.3	C-	53.6%	39.3%	187	289	47	0	5	0	-34	0	50	0
NCAA Div. III	ITHACA COLLEGE	9.7	B-	57.0%	47.2%	403	450	-20	0	59	0	31	0	77	0
NJCAA	JAMESTOWN COMMUNITY COLLEGE	15.7	C	56.6%	40.9%	70	101	12	0			47	0		
NJCAA	JEFFERSON COMMUNITY COLLEGE	18.1	D	61.6%	43.4%	66	86	-1	0			3	0		
NCAA Div. III	KELUKA COLLEGE	19.8	D	69.8%	50.0%	115	115	18	0	-12	0	21	0	22	0
NCAA Div. II	LE MOYNE COLLEGE	17.7	D+	60.5%	42.9%	126	168	5	0	14	0	23	0	38	0
NCAA Div. I-AAA	LONG ISLAND UNIVERSITY-BROOKLYN CAMPUS	19.7	D	71.1%	51.5%	140	132	18	0	35	0	-13	0	14	0
NCAA Div. II	LONG ISLAND UNIVERSITY-CW POST CAMPUS	21.7	D-	61.6%	39.9%	204	307	14	0	67	0	2	0	63	0
NCAA Div. I-AAA	MANHATTAN COLLEGE	2.7	A-	50.0%	47.3%	203	226	10	0	12	0	-9	0	14	0
NCAA Div. III	MANHATTANVILLE COLLEGE	22.9	F	69.5%	46.6%	117	134	2	0	3	0	-16	0	77	0
NCAA Div. I-AA	MARIST COLLEGE	16.3	D+	56.9%	40.6%	300	439	-1	0	51	0	5	0	20	0
NCAA Div. III	MEDAILLE COLLEGE	22.3	F	66.2%	43.9%	97	124	19	0			56	0		
NCAA Div. II	MERCY COLLEGE-MAIN CAMPUS	24.4	F	69.1%	44.7%	59	73	-7	2			-7	2		
NJCAA	MOHAWK VALLEY COMMUNITY COLL-UTICA BRANCH	15.9	C-	50.1%	34.2%	101	194	7	0			7	0		
NCAA Div. II	MOLLOY COLLEGE	31.7	F	74.6%	42.9%	76	101	-2	0	-7	0	11	0	37	0
NJCAA	MONROE COLLEGE-MAIN CAMPUS	25.9	F	72.3%	46.4%	39	45	22	0			7	0		
NJCAA	MONROE COMMUNITY COLLEGE	20.1	D-	52.3%	32.2%	69	145	-2	0			-2	0		
NJCAA	MORRISVILLE STATE COLLEGE	4.3	B+	42.2%	37.9%	188	308	-37	1			29	0		
NCAA Div. III	MOUNT SAINT MARY COLLEGE	23.9	F	74.3%	50.3%	76	75	-12	0	15	0	-3	0	2	0
NJCAA	NASSAU COMMUNITY COLLEGE	15.6	C-	49.3%	33.7%	134	264	-25	0			-25	0		
NCAA Div. III	NAZARETH COLLEGE OF ROCHESTER	15.7	C-	76.5%	60.8%	214	138	-2	3			2	2		
NCAA Div. II	NEW YORK INSTITUTE OF TECH-OLD WESTBURY	2.6	A-	38.8%	36.2%	64	113	7	0	16	0	24	0	-12	0
NCAA Div. III	NEW YORK UNIVERSITY	13.6	C	60.7%	47.1%	211	237	28	0	-49	0	35	0	-45	0

		Proportionality Gap						Figures Underlying the Proportionality Gap				Changes in Women's Participation				Changes in Men's Participation			
Org./Div.	Name	Amount		Grade		% Und, Fem		% Ath, Fem		# Ath, Fem		2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
		Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
NJCAA	NIAGARA COUNTY COMMUNITY COLLEGE	18.2	D	57.1%	38.9%	51	80	0	0					4	0				
NCAA Div. I-AAA	NIAGARA UNIVERSITY	8.0	B	61.6%	53.6%	157	136	-30	0	78	0			1	0	12	0		
NJCAA	NORTH COUNTRY COMMUNITY COLLEGE	14.0	C-	62.0%	47.9%	46	50	7	0					-2	0				
NCAA Div. II	NYACK COLLEGE	16.5	D+	59.6%	43.1%	59	78	2	0					12	0				
NJCAA	ONONDAGA COMMUNITY COLLEGE	16.4	D+	48.9%	32.5%	41	85	-7	0					1	0				
NJCAA	ORANGE COUNTY COMMUNITY COLLEGE	14.9	C-	55.9%	41.1%	46	66	-3	0					0	0				
NCAA Div. II	PACE UNIVERSITY-NEW YORK	20.9	D-	62.0%	41.1%	111	159	19	-1					-12	1				
Other	PAUL SMITHS COLLEGE OF ARTS AND SCIENCE	-6.6	A	31.0%	37.6%	47	78	15	1					34	1				
NCAA Div. III	POLYTECHNIC UNIVERSITY	-19.2	A	18.9%	38.1%	56	91	17	-3					-2	0				
Other	PRATT INSTITUTE-MAIN	5.5	B+	57.5%	52.0%	52	48	11	0					8	0				
NCAA Div. III	RENSSELAER POLYTECHNIC INSTITUTE	-6.6	A	24.7%	31.3%	175	385	-3	0	20	0			-6	0	98	0		
NAIA	ROBERTS WESLEYAN COLLEGE	16.2	D+	67.0%	50.8%	98	95	-4	0					15	0				
NJCAA	ROCKLAND COMMUNITY COLLEGE	10.4	C+	49.2%	38.7%	43	68	11	0					6	0				
NCAA Div. I-AAA	SAINT BONAVENTURE UNIVERSITY	0.8	A	50.2%	49.4%	122	125	-1	0	16	0			-2	0	8	0		
NCAA Div. III	SAINT JOHN FISHER COLLEGE	30.2	F	57.2%	27.0%	98	265	-2	0					10	0				
Other	SAINT JOSEPHS COLLEGE-MAIN CAMPUS	1.0	A	78.2%	77.2%	44	13	1	0					0	0				
NCAA Div. III	SAINT JOSEPHS COLLEGE-SUFFOLK CAMPUS	23.8	F	74.6%	50.8%	95	92	-9	0					18	0				
NCAA Div. II	SAINT THOMAS AQUINAS COLLEGE	8.1	B-	55.5%	47.4%	93	103	22	1					18	2				
Other	SARAH LAWRENCE COLLEGE	-5.7	A	72.4%	78.0%	71	20	24	0					-5	0				
NJCAA	SCHENECTADY COUNTY COMMUNITY COLLEGE	19.4	D	53.8%	34.3%	23	44	-4	0					0	0				
NCAA Div. I-AAA	SIENA COLLEGE	0.7	A	56.8%	56.1%	180	141	-29	0	88	0			-72	0	21	0		
NCAA Div. III	SKIDMORE COLLEGE	7.4	B	58.4%	51.0%	175	168	13	0	-49	0			4	0	-30	0		
NCAA Div. I-AAA	ST FRANCIS COLLEGE	13.7	C	53.4%	39.7%	85	129	0	0	6	0			4	0	4	0		
NCAA Div. I-AAA	ST JOHN'S UNIVERSITY-NEW YORK	-1.3	A	57.7%	59.0%	204	142	7	0	3	0			-53	-3	8	0		
NCAA Div. III	ST LAWRENCE UNIVERSITY	5.3	B+	52.0%	46.8%	357	406	24	0	68	0			59	0	41	0		
NJCAA	SUFFOLK COUNTY COMMUNITY COLLEGE	14.0	C-	52.2%	38.1%	45	73	27	0					-3	1				
NJCAA	SULLIVAN COUNTY COMMUNITY COLLEGE	12.7	C	61.6%	49.0%	24	25	3	1					3	0				
NCAA Div. I-AAA	SUNY AT ALBANY	9.6	B-	50.4%	40.7%	224	326	1	0	-3	0			13	0	4	0		
NCAA Div. I-AAA	SUNY AT BINGHAMTON	-2.0	A	48.7%	50.7%	221	215	-2	0	29	0			-30	0	26	0		
NCAA Div. I-A	SUNY AT BUFFALO	-1.5	A	45.7%	47.2%	282	316	8	0	82	0			-3	0	48	0		
NCAA Div. I-AAA	SUNY AT STONY BROOK	11.7	C+	48.7%	37.1%	186	316	40	0					34	0				
NCAA Div. III	SUNY COLLEGE AT BROCKPORT	13.2	C	56.1%	42.9%	281	374	6	0	19	0			-18	0	63	0		
NCAA Div. III	SUNY COLLEGE AT BUFFALO	19.7	D	60.8%	41.1%	166	238	17	0	1	0			10	0	-5	0		
NCAA Div. III	SUNY COLLEGE AT CORTLAND	12.1	C	57.5%	45.4%	256	308	19	0	8	0			-1	0	-20	0		
NCAA Div. III	SUNY COLLEGE AT FREDONIA	5.7	B+	57.5%	51.8%	184	171	34	0	-7	0			6	0	-6	0		
NCAA Div. III	SUNY COLLEGE AT GENESEO	7.7	B	61.1%	53.4%	195	170	14	0	14	0			-1	0	-6	0		
NCAA Div. III	SUNY COLLEGE AT NEW PALTZ	8.1	B-	66.4%	58.3%	141	101	-14	-2	61	2			-14	-2	-4	2		
NCAA Div. III	SUNY COLLEGE AT ONEONTA	7.5	B	57.9%	50.3%	219	216	5	0	10	2			7	0	20	2		
NCAA Div. III	SUNY COLLEGE AT OSWEGO	12.0	C+	54.0%	42.0%	200	276	22	1	9	1			10	1	-14	1		
NCAA Div. III	SUNY COLLEGE AT PLATTSBURGH	10.8	C+	57.3%	46.6%	176	202	2	0	42	0			-1	0	52	0		
NCAA Div. III	SUNY COLLEGE AT PURCHASE	7.5	B	54.8%	47.4%	72	80	8	0					27	0				
NJCAA	SUNY COLLEGE OF AGRIC AND TECHN AT COBLESKILL	8.3	B-	45.2%	36.9%	104	178	26	1					-17	1				
NJCAA	SUNY COLLEGE OF TECHNOLOGY AT ALFRED	4.3	B+	30.4%	26.1%	92	260	11	0					51	0				
NJCAA	SUNY COLLEGE OF TECHNOLOGY AT CANTON	15.1	C-	49.1%	34.0%	49	95	2	0					-68	0				
NJCAA	SUNY COLLEGE OF TECHNOLOGY AT DELHI	6.0	B+	40.8%	34.8%	96	180	-6	0					8	0				
NCAA Div. III	SUNY INSTITUTE OF TECHNOLOGY AT UTICA-ROME	-9.5	A	37.7%	47.2%	59	66	8	0	-17	1			-26	1	1	0		
NCAA Div. III	SUNY MARITIME COLLEGE	-7.8	A	10.7%	18.4%	67	297	-64	-1					69	0				
NJCAA	SUNY WESTCHESTER COMMUNITY COLLEGE	9.9	B-	49.9%	40.0%	44	66	3	0					-13	0				
NCAA Div. III	SUNY-POTSDAM	4.0	A-	58.5%	54.5%	156	130	9	0	33	1			6	0	-18	1		
NCAA Div. I-A	SYRACUSE UNIVERSITY	11.8	C+	56.7%	44.9%	270	331	-12	0	83	0			5	0	-77	0		
NJCAA	TECHNICAL CAREER INSTITUTES	-15.4	A	31.5%	46.9%	15	17	7	0					6	0				
NCAA Div. III	THE COLLEGE OF NEW ROCHELLE	-11.9	A	88.1%	100.0%	57	0	-3	1					0	0				
NCAA Div. II	THE COLLEGE OF SAINT ROSE	27.1	F	74.3%	47.2%	119	133	35	0	-10	-2			37	0	-17	-2		
NJCAA	TOMPKINS-CORTLAND COMMUNITY COLLEGE	0.8	A	56.9%	56.1%	55	43	-7	0					-11	0				
NJCAA	ULSTER COUNTY COMMUNITY COLLEGE	18.5	D	54.1%	35.7%	41	74	12	0					24	1				
NCAA Div. III	UNION COLLEGE	2.4	A-	45.1%	42.7%	259	347	-27	0	89	0			18	0	5	0		
NCAA Div. III	UNITED STATES MERCHANT MARINE ACADEMY	-6.0	A	14.0%	20.1%	101	402	32	0	-23	0			3	0	-140	0		
NCAA Div. I-A	UNITED STATES MILITARY ACADEMY	-8.9	A	15.3%	24.1%	224	704	-10	0	26	0			64	0	-159	0		
NCAA Div. III	UNIVERSITY OF ROCHESTER	2.4	A-	46.7%	44.3%	212	267	9	0	17	0			7	0	-10	0		
NCAA Div. III	UTICA COLLEGE	16.5	D+	56.0%	39.5%	183	280	26	0	68	0			54	0	138	0		
NCAA Div. III	VASSAR COLLEGE	7.7	B	60.5%	52.7%	193	173	-12	0	48	0			3	0	9	0		
NCAA Div. I-AAA	WAGNER COLLEGE	20.9	D-	60.2%	39.3%	190	294	0	0	63	0			12	0	28	0		
Other	WEBB INSTITUTE	0.3	A	22.4%	22.1%	21	74	16	1					-4	0				
North Carolina																			
NCAA Div. I-AA	APPALACHIAN STATE UNIVERSITY	7.3	B	49.0%	41.7%	238	333	3	0	35	0			-9	0	-5	0		
NCAA Div. II	BARTON COLLEGE	25.9	F	69.8%	43.8%	78	100	3	0	7	1			10	0	0	1		
NCAA Div. II	BELMONT ABBEY COLLEGE	13.8	C	58.5%	44.7%	72	89	7	0	5	0			-13	0	5	0		
NJCAA	BRUNSWICK COMMUNITY COLLEGE	30.4	F	66.7%	36.4%	8	14	8	0					1	0				
NJCAA	CALDWELL COMMUNITY COLL AND TECHNICAL INST	3.7	A-	53.7%	50.0%	12	12	7	0					-3	0				
NCAA Div. I-AAA	CAMPBELL UNIVERSITY INC	6.1	B	51.9%	45.8%	131	155	11	-1	7	1			5	-1	23	1		
NJCAA	CAPE FEAR COMMUNITY COLLEGE	30.7	F	51.5%	20.8%	10	38	-2	0					-7	0				
NCAA Div. II	CATAWBA COLLEGE	21.1	D-	52.5%	31.5%	118	257	-27	0					2	0				
NJCAA	CATAWBA VALLEY COMMUNITY COLLEGE	20.4	D-	58.5%	38.1%	8	13	8	0					6	0				
NJCAA	CENTRAL CAROLINA COMMUNITY COLLEGE	-0.3	A	55.9%	56.3%	18	14	10	0					-4	0				
NCAA Div. III	CHOWAN COLLEGE	19.0	D	44.1%	25.1%	65	194	-3	1	1	0			-1	0	29	0		

		Proportionality Gap						Figures Underlying the Proportionality Gap				Changes in Women's Participation				Changes in Men's Participation			
Org./Div.	Name	Proportionality Gap		Figures Underlying the Proportionality Gap				2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02					
		Amount	Grade	% Und, Fem	% Ath, Fem	# Ath, Fem	# Ath, Male	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms				
NCAA Div. I-AA	DAVIDSON COLLEGE	7.2	B	50.6%	43.4%	197	257	-16	0	26	0	0	0	-20	0				
NCAA Div. I-A	DUKE UNIVERSITY	6.8	B	48.8%	42.0%	271	374	12	0	72	0	34	0	-24	0				
NCAA Div. I-A	EAST CAROLINA UNIVERSITY	22.6	F	59.1%	36.6%	159	276	8	0	7	0	-33	0	29	0				
NCAA Div. II	ELIZABETH CITY STATE UNIVERSITY	26.8	F	57.6%	30.9%	75	168	-4	0	25	-2	51	0	17	-2				
NCAA Div. I-AA	ELON UNIVERSITY	20.3	D-	61.5%	41.2%	159	227	2	0	2	2	8	0	24	0				
NCAA Div. II	FAYETTEVILLE STATE UNIVERSITY	28.1	F	63.6%	35.4%	74	135	3	2	12	0	34	1	-28	1				
Other	FORSYTH TECHNICAL COMMUNITY COLLEGE	1.8	A	58.9%	57.1%	20	15	-2	0			3	0						
NCAA Div. I-AA	GARDNER-WEBB UNIVERSITY	29.0	F	63.6%	34.5%	137	260	-8	0			-9	0						
NCAA Div. III	GREENSBORO COLLEGE	18.8	D	49.8%	31.1%	106	235	-1	0	25	0	29	0	83	0				
NCAA Div. III	GUILFORD COLLEGE	20.3	D-	59.8%	39.4%	127	195	48	1			7	1						
NCAA Div. I-AAA	HIGH POINT UNIVERSITY	19.1	D	62.0%	42.9%	121	161	9	0	8	2	-5	1	9	-1				
NCAA Div. II	JOHNSON C SMITH UNIVERSITY	14.3	C-	58.5%	44.3%	77	97	-4	0	19	0	-24	0	26	-1				
NJCAA	LENOIR COMMUNITY COLLEGE	28.5	F	67.4%	38.9%	21	33	11	0			-8	0						
NCAA Div. II	LENOIR-RHYNE COLLEGE	30.6	F	62.1%	31.5%	90	196	7	0			6	0						
NCAA Div. II	LIVINGSTONE COLLEGE	6.9	B	49.9%	43.0%	68	90	3	-2	32	0	-7	0	12	0				
NJCAA	LOUISBURG COLLEGE	-8.1	A	38.2%	46.3%	57	66	8	0			-7	0						
NCAA Div. II	MARS HILL COLLEGE	26.7	F	57.2%	30.5%	130	296	9	0	10	1	25	0	18	1				
NCAA Div. III	METHODIST COLLEGE	11.7	C+	42.6%	30.9%	154	345	5	0	36	0	-7	0	-3	0				
NAIA	MONTREAT COLLEGE	20.0	D	62.8%	42.9%	60	80	-20	0			6	0						
NCAA Div. II	MOUNT OLIVE COLLEGE	19.6	D	59.8%	40.2%	80	119	4	0	-2	0	6	0	13	0				
NCAA Div. I-AA	NORTH CAROLINA A & T STATE UNIVERSITY	19.2	D	51.9%	32.7%	86	177	-14	0	36	0	-22	0	42	0				
NCAA Div. II	NORTH CAROLINA CENTRAL UNIVERSITY	24.7	F	64.6%	39.9%	97	146	19	0	18	0	32	0	-8	0				
NCAA Div. I-A	NORTH CAROLINA STATE UNIVERSITY AT RALEIGH	1.1	A	42.5%	41.4%	272	385	18	0	30	0	15	0	2	0				
NCAA Div. III	NORTH CAROLINA WESLEYAN COLLEGE	25.9	F	47.7%	21.9%	70	250	11	0	7	0	165	0	13	0				
NCAA Div. II	PFEIFFER UNIVERSITY	9.2	B-	56.3%	47.1%	121	136	9	0	36	0	-33	2	60	0				
NCCAA	PIEDMONT BAPTIST COLLEGE	-3.9	A	43.1%	47.1%	24	27	6	0			19	0						
NJCAA	PITT COMMUNITY COLLEGE	30.2	F	59.3%	29.1%	25	61	13	0			17	0						
NCAA Div. II	QUEENS UNIVERSITY OF CHARLOTTE	24.7	F	73.8%	49.1%	113	117	14	1	18	1	41	1	15	1				
Other	ROANOKE BIBLE COLLEGE	17.2	D+	46.7%	29.5%	13	31	-6	0			0	0						
NJCAA	ROCKINGHAM COMMUNITY COLLEGE	44.5	F	65.7%	21.2%	11	41	-5	0			-6	0						
NCAA Div. II	SAINT AUGUSTINES COLLEGE	11.7	C+	48.2%	36.6%	106	184	-12	0	2	0	63	0	-28	0				
NJCAA	SAMPSON COMMUNITY COLLEGE	69.5	F	69.5%	0.0%	0	11	0	0			-2	0						
NCAA Div. II	SHAW UNIVERSITY	25.9	F	63.5%	37.7%	90	149	-7	0			53	0						
NJCAA	SOUTHEASTERN COMMUNITY COLLEGE	43.0	F	67.3%	24.2%	8	25	-12	0			1	0						
NCAA Div. II	ST ANDREWS PRESBYTERIAN COLLEGE	19.8	D	61.3%	41.5%	105	148	26	0	1	0	12	0	16	0				
NJCAA	SURRY COMMUNITY COLLEGE	34.7	F	55.8%	21.1%	8	30	0	0			-10	0						
NCAA Div. I-AAA	UNIVERSITY OF NORTH CAROLINA AT ASHEVILLE	13.7	C	57.8%	44.0%	74	94	1	1	2	-1	3	1	-1	-1				
NCAA Div. I-A	UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL	15.0	C-	58.2%	43.2%	382	502	-18	0	107	0	-2	0	93	0				
NCAA Div. I-AAA	UNIVERSITY OF NORTH CAROLINA AT CHARLOTTE	1.3	A	53.0%	51.7%	215	201	0	0	-2	1	1	0	-8	1				
NCAA Div. I-AAA	UNIVERSITY OF NORTH CAROLINA AT GREENSBORO	25.0	F	68.2%	43.2%	111	146	1	0	2	1	-4	0	3	1				
NCAA Div. II	UNIVERSITY OF NORTH CAROLINA AT PEMBROKE	23.0	F	59.7%	36.7%	87	150	-11	0	40	0	-29	0	25	-1				
NCAA Div. I-AAA	UNIVERSITY OF NORTH CAROLINA-WILMINGTON	4.0	A-	59.3%	55.3%	233	188	7	0	20	0	11	0	-16	0				
NCAA Div. I-A	WAKE FOREST UNIVERSITY	12.2	C	50.9%	38.7%	172	273	2	0	20	0	0	0	-16	0				
Other	WARREN WILSON COLLEGE	13.6	C	59.6%	46.0%	52	61	-8	0			-6	0						
NCAA Div. I-AA	WESTERN CAROLINA UNIVERSITY	18.4	D	50.5%	32.0%	108	229	7	0	15	0	9	0	-5	0				
NJCAA	WILKES COMMUNITY COLLEGE	31.1	F	59.2%	28.1%	16	41	-3	0			8	0						
NCAA Div. II	WINGATE UNIVERSITY	21.0	D-	53.4%	32.4%	122	255	9	0	12	0	27	0	0	0				
NCAA Div. II	WINSTON-SALEM STATE UNIVERSITY	41.5	F	69.1%	27.6%	67	176	-10	0	21	0	55	0	5	-1				
North Dakota																			
NJCAA	BISMARCK STATE COLLEGE	9.9	B-	43.8%	33.9%	21	41	0	0			3	0						
NAIA	DICKINSON STATE UNIVERSITY	26.3	F	55.4%	29.1%	118	287	17	0			22	0						
NAIA	JAMESTOWN COLLEGE	18.8	D	56.9%	38.1%	136	221	27	0			52	0						
NJCAA	LAKE REGION STATE COLLEGE	15.8	C-	57.2%	41.4%	12	17	-11	0			-1	0						
NAIA	MAYVILLE STATE UNIVERSITY	14.3	C-	51.5%	37.2%	64	108	17	0			2	0						
NAIA	MINOT STATE UNIVERSITY	30.1	F	62.3%	32.2%	75	158	14	0			25	0						
NJCAA	MINOT STATE UNIVERSITY-BOTTINEAU CAMPUS	22.5	F	47.5%	25.0%	20	60	-4	0			6	0						
NJCAA	NORTH DAKOTA STATE COLLEGE OF SCIENCE	6.6	B	34.3%	27.7%	31	81	0	-2			-4	-3						
NCAA Div. I-AA	NORTH DAKOTA STATE UNIVERSITY-MAIN CAMPUS	12.6	C	43.9%	31.3%	144	316	2	0	13	0	-21	0	30	0				
NCCAA	TRINITY BIBLE COLLEGE	27.0	F	52.3%	25.4%	17	50	1	0			3	0						
NJCAA	UNITED TRIBES TECHNICAL COLLEGE	13.4	C	62.1%	48.7%	19	20	9	0			6	0						
NCAA Div. II	UNIVERSITY OF MARY	23.8	F	60.6%	36.8%	163	280	15	0			3	0						
NCAA Div. II	UNIVERSITY OF NORTH DAKOTA-MAIN CAMPUS	3.0	A-	46.3%	43.2%	240	315	13	0			-3	0						
NAIA	VALLEY CITY STATE UNIVERSITY	20.7	D-	48.3%	27.5%	46	121	3	-2			-12	-3						
NJCAA	WILLISTON STATE COLLEGE	15.1	C-	65.1%	50.0%	27	27	5	0			-8	0						
Ohio																			
NCAA Div. II	ASHLAND UNIVERSITY	22.9	F	57.2%	34.4%	135	258	-7	0	15	0	-35	0	2	0				
NCAA Div. III	BALDWIN-WALLACE COLLEGE	22.3	F	58.8%	36.5%	252	439	-14	0	29	0	8	0	14	0				
NCAA Div. III	Bluffton University	21.8	D-	56.0%	34.3%	159	305	-9	0	-2	0	7	0	48	0				
NCAA Div. I-A	BOWLING GREEN STATE UNIVERSITY-MAIN CAMPUS	4.3	B+	55.7%	51.5%	244	230	-5	0	29	0	-25	-2	21	0				
NCAA Div. III	CAPITAL UNIVERSITY	24.8	F	61.7%	36.8%	180	309	6	0	19	2	41	0	52	2				
NCAA Div. III	CASE WESTERN RESERVE UNIVERSITY	-0.1	A	40.0%	40.1%	164	245	-23	0	13	0	-66	0	1	0				
NAIA	CEDARVILLE UNIVERSITY	10.0	C+	55.2%	45.2%	103	125	-4	0			9	0						
NCAA Div. II	CENTRAL STATE UNIVERSITY	2.6	A-	50.4%	47.8%	66	72	20	0			23	0						
NCCAA	CINCINNATI CHRISTIAN UNIVERSITY	7.8	B	45.8%	38.1%	32	52	-5	0			14	0						
NJCAA	CINCINNATI STATE TECHNICAL AND COMM COLL	15.6	C-	57.4%	41.8%	28	39	-2	0			1	0						

Org./Div.	Name	Proportionality Gap		Figures Underlying the Proportionality Gap				Changes in Women's Participation				Changes in Men's Participation			
		Amount	Grade	% Und. Fem	% Ath. Fem	# Ath. Fem	# Ath. Male	2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
								Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
NCCAA	CIRCLEVILLE BIBLE COLLEGE	6.6	B	49.9%	43.2%	16	21	7	0			-14	0		
NJCAA	CLARK STATE COMMUNITY COLLEGE	6.0	B+	64.3%	58.3%	35	25	0	0			-7	0		
NCAA Div. I-AAA	CLEVELAND STATE UNIVERSITY	13.8	C	54.5%	40.7%	103	150	15	0			11	0		
NCAA Div. III	COLLEGE OF MOUNT SAINT JOSEPH	30.4	F	64.1%	33.6%	115	227	0	2	25	1	34	3	51	0
NCAA Div. III	COLLEGE OF WOOSTER	11.0	C+	53.3%	42.2%	278	380	-10	0	35	0	53	0	44	0
NJCAA	COLUMBUS STATE COMMUNITY COLLEGE	18.6	D	55.8%	37.2%	42	71	-31	0			-24	0		
NJCAA	CUYAHOGA COMMUNITY COLLEGE DISTRICT	10.7	C+	61.6%	50.9%	58	56	-1	0			-14	-3		
NCAA Div. III	DEFIANCE COLLEGE	17.8	D+	51.4%	33.6%	117	231	-10	0	16	0	-8	0	61	0
NCAA Div. III	DENISON UNIVERSITY	13.8	C	56.5%	42.7%	206	277	13	0	36	0	9	0	-24	0
NCAA Div. III	HEIDELBERG COLLEGE	17.2	D+	49.0%	31.8%	123	264	13	0	-15	0	9	0	-19	0
NCAA Div. III	HIRAM COLLEGE	16.2	D+	55.4%	39.2%	116	180	2	0	15	0	-23	0	10	0
NCAA Div. III	JOHN CARROLL UNIVERSITY	23.1	F	53.8%	30.7%	160	361	-2	0	-22	0	11	0	-8	0
NCAA Div. I-A	KENT STATE UNIVERSITY-MAIN CAMPUS	16.0	D+	59.7%	43.7%	167	215	-2	0	26	0	-4	0	-46	0
NCAA Div. III	KENYON COLLEGE	5.8	B+	52.6%	46.8%	230	261	22	0	3	0	19	0	-8	0
NCAA Div. III	LAKE ERIE COLLEGE	32.5	F	73.8%	41.4%	67	95	-2	0			10	1		
NJCAA	LAKELAND COMMUNITY COLLEGE	14.3	C-	54.6%	40.2%	37	55	0	0			-18	0		
NAIA	MALONE COLLEGE	28.1	F	60.6%	32.5%	119	247	-3	0			8	0		
NCAA Div. III	MARIETTA COLLEGE	15.0	C-	49.7%	34.6%	158	298	-4	3	23	0	-14	3	20	0
NCAA Div. I-A	MIAMI UNIVERSITY-OXFORD	1.5	A	54.2%	52.6%	302	272	15	0	61	0	-1	0	-100	-1
NCAA Div. III	MOUNT UNION COLLEGE	22.1	F	51.5%	29.4%	208	499	-13	0			15	0		
NAIA	MOUNT VERNON NAZARENE UNIVERSITY	12.5	C	57.8%	45.3%	63	76	2	0			-1	0		
NCAA Div. III	MUSKINGUM COLLEGE	17.9	D+	47.4%	29.5%	159	380	23	0			69	0		
NAIA	NOTRE DAME COLLEGE	16.7	D+	59.0%	42.3%	94	128	25	1			58	2		
NCAA Div. III	OBERLIN COLLEGE	7.3	B	54.9%	47.6%	201	221	14	0			11	0		
NAIA	OHIO DOMINICAN UNIVERSITY	37.4	F	62.7%	25.3%	74	219	10	0			152	0		
NCAA Div. III	OHIO NORTHERN UNIVERSITY	13.4	C	47.3%	33.9%	206	402	-19	0			-19	0		
NCAA Div. I-A	OHIO STATE UNIVERSITY-MAIN CAMPUS	1.5	A	47.4%	45.9%	438	516	-3	0	71	0	-11	0	4	0
NCAA Div. I-A	OHIO UNIVERSITY-MAIN CAMPUS	11.5	C+	53.0%	41.5%	256	361	5	0	72	0	8	0	-3	0
NCAA Div. III	OHIO WESLEYAN UNIVERSITY	9.1	B-	53.2%	44.1%	239	303	19	0	34	0	-18	0	20	0
NCAA Div. III	OTTERBEIN COLLEGE	25.9	F	63.5%	37.6%	193	320	13	0			43	0		
NJCAA	OWENS COMMUNITY COLLEGE	14.8	C-	58.9%	44.1%	45	57	5	0			-3	0		
NAIA	SHAWNEE STATE UNIVERSITY	10.7	C+	59.5%	48.8%	84	88	13	0			2	0		
NJCAA	SINCLAIR COMMUNITY COLLEGE	26.5	F	55.2%	28.7%	29	72	-2	0			13	0		
NJCAA	SOUTHERN STATE COMMUNITY COLLEGE	19.4	D	69.4%	50.0%	27	27	-6	0			1	0		
NJCAA	TERRA STATE COMMUNITY COLLEGE	-4.6	A	51.7%	56.3%	9	7	-2	0			1	0		
NCAA Div. II	THE UNIVERSITY OF FINDLAY	12.3	C	58.0%	45.7%	279	331	-20	0			-60	0		
NCAA Div. II	TIFFIN UNIVERSITY	14.2	C-	50.7%	36.4%	207	361	49	0			26	0		
NCAA Div. I-A	UNIVERSITY OF AKRON MAIN CAMPUS	8.7	B-	52.6%	43.9%	177	226	22	0	63	0	-9	0	1	0
Other	UNIVERSITY OF AKRON-WAYNE COLLEGE	1.2	A	54.0%	52.8%	19	17	1	0			4	0		
NCAA Div. I-A	UNIVERSITY OF CINCINNATI-MAIN CAMPUS	-3.2	A	47.3%	50.5%	291	285	22	0	53	0	5	0	-15	-1
NCAA Div. I-AA	UNIVERSITY OF DAYTON	-0.9	A	49.8%	50.7%	230	224	-1	0	61	0	18	0	-14	0
NAIA	UNIVERSITY OF RIO GRANDE	24.4	F	59.8%	35.4%	79	144	-18	0			6	0		
NCAA Div. I-A	UNIVERSITY OF TOLEDO	-3.7	A	50.0%	53.7%	223	192	8	0	-3	0	-16	-2	3	0
NAIA	URBANA UNIVERSITY	21.6	D-	48.8%	27.2%	79	211	-18	0			60	0		
NAIA	WALSH UNIVERSITY	21.4	D-	58.0%	36.6%	126	218	12	0			-1	0		
NAIA	WILBERFORCE UNIVERSITY	16.0	C-	61.0%	45.0%	18	22	2	-2			-9	-2		
NCAA Div. III	WILMINGTON COLLEGE	18.0	D+	54.8%	36.8%	159	273	-26	0			-33	0		
NCAA Div. III	WITTENBERG UNIVERSITY	18.7	D	55.9%	37.3%	221	372	16	0	-18	0	33	0	24	0
NCAA Div. I-AAA	WRIGHT STATE UNIVERSITY-MAIN CAMPUS	1.0	A	57.1%	56.1%	170	133	-4	0	0	2	7	0	-1	0
NCAA Div. I-AAA	XAVIER UNIVERSITY	10.8	C+	55.5%	44.6%	121	150	-16	1	19	0	1	1	5	0
NCAA Div. I-AA	YOUNGSTOWN STATE UNIVERSITY	7.7	B	54.5%	46.8%	200	227	-11	0	61	0	-14	0	-64	0
Oklahoma															
NAIA	BACONE COLLEGE	15.8	C-	48.5%	32.7%	113	233	21	0			-55	0		
NCAA Div. II	CAMERON UNIVERSITY	15.2	C-	57.6%	42.4%	50	68	8	0	-5	0	17	0	-8	0
NJCAA	CARL ALBERT STATE COLLEGE	28.6	F	66.2%	37.6%	35	58	7	0			16	0		
NJCAA	CONNORS STATE COLLEGE	30.9	F	66.1%	35.2%	56	103	13	0			38	0		
NCAA Div. II	EAST CENTRAL UNIVERSITY	30.4	F	58.8%	28.4%	82	207	2	0	25	0	-18	0	65	0
NJCAA	EASTERN OKLAHOMA STATE COLLEGE	19.0	D	61.0%	42.0%	42	58	-5	0			0	0		
NCCAA	HILLSDALE FREE WILL BAPTIST COLLEGE	14.3	C	39.9%	25.6%	20	58	-20	0			3	0		
NAIA	LANGSTON UNIVERSITY	23.3	F	54.6%	31.4%	48	105	-4	-2			-4	-1		
NCCAA	MID-AMERICA CHRISTIAN UNIVERSITY	9.0	B-	46.5%	37.4%	49	82	30	0			22	0		
NJCAA	MURRAY STATE COLLEGE	22.0	D-	62.8%	40.8%	31	45	-5	0			11	0		
NJCAA	NORTHEASTERN OKLAHOMA AGRI AND MECH COLL	28.0	F	49.4%	21.4%	43	158	0	0			11	0		
NCAA Div. II	NORTHEASTERN STATE UNIVERSITY	30.5	F	58.7%	28.2%	70	178	-9	0	3	0	-25	0	30	0
NJCAA	NORTHERN OKLAHOMA COLLEGE	14.0	C-	54.6%	40.6%	69	101	12	0			-9	0		
NAIA	NORTHWESTERN OKLAHOMA STATE UNIVERSITY	17.9	D+	53.1%	35.2%	103	190	41	1			45	0		
NAIA	OKLAHOMA BAPTIST UNIVERSITY	16.7	D+	59.9%	43.2%	124	163	10	0			16	0		
NAIA	OKLAHOMA CHRISTIAN UNIVERSITY	-0.3	A	50.7%	51.0%	74	71	-5	0			-5	0		
NCAA Div. II	OKLAHOMA PANHANDLE STATE UNIVERSITY	17.7	D+	47.9%	30.2%	60	139	15	0	5	0	38	1	-30	0
NCAA Div. I-A	OKLAHOMA STATE UNIVERSITY-MAIN CAMPUS	-0.7	A	48.6%	49.2%	261	269	3	0	93	0	-6	0	-12	0
NAIA	OKLAHOMA WESLEYAN UNIVERSITY	10.9	C+	58.8%	47.9%	57	62	7	0			6	0		
NCAA Div. I-AAA	ORAL ROBERTS UNIVERSITY	14.9	C-	58.1%	43.1%	119	157	-3	0	3	0	3	0	19	0
NJCAA	REDLANDS COMMUNITY COLLEGE	12.3	C	60.2%	47.9%	35	38	2	0			-15	0		
NJCAA	ROSE STATE COLLEGE	10.8	C+	60.8%	50.0%	40	40	-3	0			-8	0		
NAIA	SAINT GREGORYS UNIVERSITY	11.7	C+	49.3%	37.6%	73	121	-1	0			20	0		

								Changes in Women's Participation				Changes in Men's Participation			
		Proportionality Gap		Figures Underlying the Proportionality Gap				2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
Org./Div.	Name	Amount	Grade	% Und, Fem	% Ath, Fem	# Ath, Fem	# Ath, Male	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
NJCAA	SEMINOLE STATE COLLEGE	16.5	D+	63.3%	46.8%	58	66	14	0			-1	0		
NCAA Div. II	SOUTHEASTERN OKLAHOMA STATE UNIVERSITY	23.0	F	51.5%	28.5%	67	168	11	0			-9	0		
NAIA	SOUTHERN NAZARENE UNIVERSITY	17.1	D+	50.7%	33.6%	99	196	5	0			12	0		
NCCAA	SOUTHWESTERN CHRISTIAN UNIVERSITY	3.9	A-	50.9%	47.0%	31	35	21	0			18	0		
NCAA Div. II	SOUTHWESTERN OKLAHOMA STATE UNIVERSITY	23.4	F	55.8%	32.4%	81	169	-6	0	34	0	-28	0	59	0
NCAA Div. II	UNIVERSITY OF CENTRAL OKLAHOMA	26.9	F	57.7%	30.8%	110	247	35	1	21	-3	32	0	51	-3
NCAA Div. I-A	UNIVERSITY OF OKLAHOMA NORMAN CAMPUS	4.8	B+	49.8%	45.0%	292	357	17	0	31	0	-5	0	9	0
NAIA	UNIVERSITY OF SCIENCE AND ARTS OF OKLAHOMA	20.2	D-	63.4%	43.3%	45	59	-7	0			-8	0		
NCAA Div. I-A	UNIVERSITY OF TULSA	3.5	A-	49.3%	45.8%	185	219	14	0	27	0	9	0	-12	0
NJCAA	WESTERN OKLAHOMA STATE COLLEGE	22.4	F	51.4%	29.0%	36	88	-17	0			17	0		
Oregon															
NWAAC	BLUE MOUNTAIN COMMUNITY COLLEGE	21.9	D-	66.6%	44.7%	42	52	-4	0			-3	0		
NAIA	CASCADE COLLEGE	0.1	A	54.2%	54.2%	39	33	3	0			-8	0		
NWAAC	CHEMEKETA COMMUNITY COLLEGE	9.9	B-	55.9%	45.9%	34	40	-3	-3			4	-3		
NWAAC	CLACKAMAS COMMUNITY COLLEGE	6.6	B	51.6%	45.0%	72	88	15	0			6	0		
NAIA	CONCORDIA UNIVERSITY	17.6	D+	64.1%	46.5%	67	77	6	0			20	0		
NAIA	DBA CORBAN COLLEGE	13.0	C	61.6%	48.7%	73	77	20	1			12	1		
NAIA	EASTERN OREGON UNIVERSITY	9.8	B-	56.9%	47.2%	150	168	-15	0			-71	0		
NCAA Div. III	GEORGE FOX UNIVERSITY	12.2	C	60.9%	48.7%	112	118	3	0	-17	0	-13	0	0	0
NWAAC	LANE COMMUNITY COLLEGE	17.7	D+	52.5%	34.8%	32	60	-10	0			-1	0		
NCAA Div. III	LEWIS & CLARK COLLEGE	6.9	B	61.5%	54.5%	216	180	72	0	26	0	21	0	4	0
NCAA Div. III	LINFIELD COLLEGE	16.9	D+	54.3%	37.4%	211	353	-23	0			15	0		
NWAAC	LINN-BENTON COMMUNITY COLLEGE	12.6	C	53.3%	40.7%	24	35	0	0			-2	-1		
NWAAC	MT HOOD COMMUNITY COLLEGE	5.1	B+	54.6%	49.6%	59	60	-9	0			-4	0		
NCCAA	MULTNOMAH BIBLE COLL AND BIBLICAL SEMINARY	7.9	B	48.8%	40.9%	9	13	-9	0			5	0		
Other	NORTHWEST CHRISTIAN COLLEGE	-4.5	A	64.3%	68.8%	33	15	19	0			2	0		
NAIA	OREGON INSTITUTE OF TECHNOLOGY	-5.6	A	44.4%	50.0%	96	96	14	0			12	0		
NCAA Div. I-A	OREGON STATE UNIVERSITY	-1.6	A	46.4%	47.9%	255	277	12	3	21	0	-18	0	2	0
NCAA Div. III	PACIFIC UNIVERSITY	9.5	B-	60.4%	50.9%	138	133	35	1	0	0	9	1	1	0
NWAAC	PORTLAND COMMUNITY COLLEGE	5.4	B+	53.1%	47.6%	10	11	-1	0			0	0		
NCAA Div. I-AA	PORTLAND STATE UNIVERSITY	12.6	C	53.8%	41.3%	137	195	-14	0	21	0	-2	0	-40	0
NAIA	SOUTHERN OREGON UNIVERSITY	22.2	F	54.7%	32.6%	98	203	-5	1			14	1		
NWAAC	SOUTHWESTERN OREGON COMMUNITY COLLEGE	15.0	C-	51.6%	36.6%	71	123	-1	0			34	0		
NWAAC	TREASURE VALLEY COMMUNITY COLLEGE	16.5	D+	57.1%	40.6%	78	114	30	0			18	0		
NWAAC	UMPOUA COMMUNITY COLLEGE	11.1	C+	54.0%	42.9%	9	12	-17	0			-29	0		
NCAA Div. I-A	UNIVERSITY OF OREGON	13.4	C	52.9%	39.4%	185	284	24	0	26	0	7	0	20	1
NCAA Div. I-AAA	UNIVERSITY OF PORTLAND	16.4	D+	60.9%	44.5%	162	202	-1	0	17	0	7	0	0	0
NAIA	WARNER PACIFIC COLLEGE	7.1	B	58.8%	51.7%	45	42	13	1			-4	1		
NCAA Div. II	WESTERN OREGON UNIVERSITY	25.6	F	58.8%	33.2%	131	263	-14	0	22	0	17	0	0	0
NCAA Div. III	WILLAMETTE UNIVERSITY	14.9	C-	55.8%	40.8%	225	326	-1	0	32	0	3	0	51	-1
Pennsylvania															
NCAA Div. III	ALBRIGHT COLLEGE	19.1	D	58.9%	39.8%	192	291	4	0	18	0	38	0	-3	0
NCAA Div. III	ALLEGHENY COLLEGE	12.0	C	52.1%	40.1%	258	386	29	0			50	0		
NCAA Div. III	ALVERNIA COLLEGE	15.2	C-	68.2%	53.0%	133	118	25	0	42	0	34	0	-6	0
NCAA Div. III	ARCADIA UNIVERSITY	19.1	D	72.8%	53.6%	133	115	5	0			28	0		
NCAA Div. III	BAPTIST BIBLE COLLEGE AND SEMINARY	17.6	D+	57.1%	39.5%	73	112	-8	2			32	2		
NCAA Div. II	BLOOMSBURG UNIVERSITY OF PENNSYLVANIA	20.3	D-	60.0%	39.7%	190	288	1	1	-7	0	19	1	-4	0
NCAA Div. I-AA	BUCKNELL UNIVERSITY	-0.4	A	49.9%	50.3%	410	405	13	0	52	0	-26	0	-48	0
NJCAA	BUTLER COUNTY COMMUNITY COLLEGE	11.3	C+	53.7%	42.4%	28	38	4	0			5	0		
NCAA Div. III	CABRINI COLLEGE	7.6	B	65.3%	57.7%	139	102	7	0	38	1	-4	0	14	1
NCAA Div. II	CALIFORNIA UNIVERSITY OF PENNSYLVANIA	14.4	C-	50.6%	36.2%	141	249	38	1	2	-1	4	1	29	-1
NAIA	CARLOW UNIVERSITY	-5.5	A	94.5%	100.0%	73	0	4	0			0	0		
NCAA Div. III	CARNEGIE MELLON UNIVERSITY	3.9	A-	39.4%	35.5%	164	298	-6	0	4	0	-30	0	31	0
NJCAA	CENTRAL PENNSYLVANIA COLLEGE	25.5	F	60.9%	35.5%	22	40	10	0			16	-1		
NCAA Div. II	CHEYNEY UNIVERSITY OF PENNSYLVANIA	15.7	C-	51.7%	36.0%	49	87	-14	0			-33	0		
NCAA Div. II	CLARION UNIVERSITY OF PENNSYLVANIA	17.3	D+	59.7%	42.4%	186	253	6	1	22	-1	4	1	-7	-1
NCAA Div. III	COLLEGE MISERICORDIA	19.3	D	73.0%	53.7%	217	187	7	0	78	2	6	0	45	2
NJCAA	COMMUNITY COLLEGE OF ALLEGHENY COUNTY	15.9	C-	55.3%	39.4%	91	140	19	0			-5	0		
NJCAA	COMMUNITY COLLEGE OF BEAVER COUNTY	-10.9	A	51.6%	62.5%	25	15	1	0			4	0		
Other	DELAWARE COUNTY COMMUNITY COLLEGE	14.0	C	51.5%	37.5%	33	55	3	0			4	0		
NCAA Div. III	DELAWARE VALLEY COLLEGE	26.9	F	51.8%	24.9%	87	263	-8	0			-8	0		
NCAA Div. III	DESALES UNIVERSITY	14.4	C-	54.6%	40.2%	109	162	14	0			5	0		
NCAA Div. III	DICKINSON COLLEGE	12.6	C	55.4%	42.7%	227	304	-7	0	32	0	27	0	3	0
NCAA Div. I-AAA	DREXEL UNIVERSITY	-4.4	A	38.8%	43.2%	153	201	14	0			-5	0		
NCAA Div. I-AA	DUQUESNE UNIVERSITY	7.8	B	59.0%	51.1%	296	283	34	0	42	0	12	0	-19	1
NCAA Div. II	EAST STROUDSBURG UNIVERSITY OF PENNSYLVANIA	11.7	C+	59.0%	47.3%	270	301	9	0	-15	0	0	0	4	0
NCAA Div. III	EASTERN UNIVERSITY	10.7	C+	65.7%	55.0%	104	85	-10	0	14	-1	4	0	13	-1
NCAA Div. II	EDINBORO UNIVERSITY OF PENNSYLVANIA	9.8	B-	56.8%	47.1%	160	180	15	-1	29	0	4	-1	-19	0
NCAA Div. III	ELIZABETHTOWN COLLEGE	18.9	D	65.4%	46.5%	178	205	-19	0	41	2	20	0	22	2
NCAA Div. III	FRANKLIN AND MARSHALL COLLEGE	8.6	B-	46.5%	37.9%	222	364	-33	0	42	0	11	0	-72	0
NCAA Div. II	GANNON UNIVERSITY	18.2	D	58.7%	40.5%	155	228	0	0	27	0	10	0	-29	0
NAIA	GENEVA COLLEGE	21.5	D-	57.5%	35.9%	111	198	31	-1			-16	-1		
NCAA Div. III	GETTYSBURG COLLEGE	10.7	C+	51.1%	40.4%	240	354	-15	0	12	0	50	0	-30	0
NCAA Div. III	GWYNEDD MERCY COLLEGE	19.4	D	75.2%	55.9%	124	98	26	0	36	3	-1	0	53	3
Other	HARRISBURG AREA COMMUNITY COLL-HARRISBURG	22.1	F	55.4%	33.3%	20	40	-6	0			20	0		

Org./Div.	Name	Proportionality Gap		Figures Underlying the Proportionality Gap				Changes in Women's Participation				Changes in Men's Participation			
		Amount	Grade	% Und, Fem	% Ath, Fem	# Ath, Fem	# Ath, Male	2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
								Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
NCAA Div. III	HAVERFORD COLLEGE	9.0	B-	53.0%	44.0%	234	298	-12	0	3	0	14	0	-26	0
NCAA Div. II	HOLY FAMILY UNIVERSITY	19.1	D	75.6%	56.5%	74	57	21	0			2	0		
NCAA Div. II	INDIANA UNIV OF PENNSYLVANIA-MAIN CAMPUS	8.2	B-	56.3%	48.1%	242	261	14	0	-2	0	-8	0	6	0
Other	JOHNSON COLLEGE	-2.5	A	23.1%	25.6%	10	29	8	0			-1	0		
NCAA Div. III	JUNIATA COLLEGE	10.1	C+	54.5%	44.3%	187	235	-27	0	27	1	-14	0	17	1
NCAA Div. III	KEYSTONE COLLEGE	17.9	D+	58.2%	40.2%	68	101	-9	1			23	1		
NCAA Div. III	KINGS COLLEGE	13.2	C	45.9%	32.6%	142	293	15	0	11	0	60	0	2	0
NCAA Div. II	KUTZTOWN UNIVERSITY OF PENNSYLVANIA	11.5	C+	58.1%	46.6%	257	295	-5	0	30	0	14	0	-2	0
NCAA Div. III	LA ROCHE COLLEGE	16.4	D+	61.4%	45.0%	72	88	0	0	32	0	13	0	10	0
NCAA Div. I-AA	LA SALLE UNIVERSITY	29.8	B	55.7%	48.8%	236	248	0	0	48	0	10	0	59	0
NJCAA	LACKAWANNA COLLEGE	2.9	F	45.0%	15.2%	30	167	0	0			23	0		
NCAA Div. I-AA	LAFAYETTE COLLEGE	2.5	A-	48.3%	45.8%	285	337	-8	0	21	0	-21	0	5	0
NCCAA	LANCASTER BIBLE COLLEGE	8.7	B-	52.4%	43.8%	42	54	22	0			0	0		
NCAA Div. III	LEBANON VALLEY COLLEGE	14.1	C-	56.4%	42.3%	167	228	-11	0	62	0	-17	0	-12	0
NJCAA	LEHIGH CARBON COMMUNITY COLLEGE	13.6	C	53.8%	40.3%	31	46	-2	0			-6	0		
NCAA Div. I-AA	LEHIGH UNIVERSITY	-1.6	A	40.8%	42.4%	290	394	60	0	18	0	-3	0	40	0
NCAA Div. III	LINCOLN UNIVERSITY	12.5	C	58.7%	46.2%	86	100	-1	0	24	0	0	0	4	0
NCAA Div. II	LOCK HAVEN UNIVERSITY OF PENNSYLVANIA	13.1	C	58.0%	44.9%	253	310	1	0	27	0	6	0	-3	0
NCAA Div. III	LYCOMING COLLEGE	21.7	D-	54.5%	32.8%	134	274	15	0	-29	-2	29	0	-28	-2
Other	MANOR COLLEGE	33.8	F	76.9%	43.1%	25	33	-4	0			5	0		
NCAA Div. II	MANSFIELD UNIVERSITY OF PENNSYLVANIA	17.6	D+	59.9%	42.3%	146	199	15	0	0	0	21	0	-25	0
NCAA Div. III	MARYWOOD UNIVERSITY	13.1	C	74.4%	61.3%	100	63	4	0	20	1	3	0	11	0
NCAA Div. II	MERCYHURST COLLEGE	17.1	D+	59.5%	42.4%	241	327	-30	0	157	0	-3	0	103	0
NCAA Div. III	MESSIAH COLLEGE	12.5	C	63.1%	50.6%	183	179	6	0	8	1	-7	0	19	1
NCAA Div. II	MILLERSVILLE UNIVERSITY OF PENNSYLVANIA	12.9	C	56.5%	43.5%	232	301	13	0	-4	0	20	0	-27	0
NCAA Div. III	MORAVIAN COLLEGE AND THEOLOGICAL SEMINARY	19.2	D	61.7%	42.5%	182	246	15	0	14	0	31	0	-14	0
Other	MOUNT ALOYSIUS COLLEGE	23.6	F	70.9%	47.3%	61	68	-8	1			2	0		
NCAA Div. III	MUHLENBERG COLLEGE	17.9	D+	58.7%	40.8%	216	314	-1	0			11	0		
NCAA Div. III	NEUMANN COLLEGE	13.8	C	66.2%	52.5%	149	135	36	0	75	-1	9	0	22	0
Other	NORTHAMPTON COUNTY AREA COMMUNITY COLL	25.6	F	54.3%	28.7%	43	107	6	0			8	0		
Other	PENNSYLVANIA COLLEGE OF TECHNOLOGY	-10.8	A	30.3%	41.1%	86	123	21	0			9	0		
Other	PENNSYLVANIA STATE UNIV-DELAWARE COUNTY	8.2	B-	42.6%	34.4%	33	63	2	0			9	0		
NCAA Div. I-A	PENNSYLVANIA STATE UNIVERSITY-MAIN CAMPUS	3.2	A-	46.5%	43.4%	377	492	-6	0	19	0	-16	0	-10	0
Other	PENNSYLVANIA STATE UNIVERSITY-MCKEESPORT	-8.4	A	39.7%	48.1%	26	28	-1	0			0	0		
Other	PENNSYLVANIA STATE UNIVERSITY-ABINGTON	2.0	A	47.0%	45.0%	45	55	0	0			-2	0		
NCAA Div. III	PENNSYLVANIA STATE UNIVERSITY-ALTOONA	5.0	B+	48.2%	43.1%	88	116	-3	1			14	1		
NJCAA	PENNSYLVANIA STATE UNIVERSITY-BEAVER	-5.4	A	38.9%	44.3%	31	39	12	0			-6	0		
NCAA Div. III	PENNSYLVANIA STATE UNIVERSITY-PENN STATE BERKS	-0.0	A	39.1%	39.2%	58	90	10	0			6	0		
Other	PENNSYLVANIA STATE UNIVERSITY-DUBOIS	11.7	C+	48.9%	37.1%	13	22	1	0			13	0		
Other	PENNSYLVANIA STATE UNIVERSITY-HAZLETON	-8.0	A	38.7%	46.7%	43	49	21	0			-7	0		
Other	PENNSYLVANIA STATE UNIVERSITY-MONT ALTO	1.2	A	51.6%	50.5%	56	55	-6	0			-3	0		
NCAA Div. III	PENNSYLVANIA STATE UNIV-ERIE-BEHREND COLL	-11.6	A	33.1%	44.7%	143	177	8	0	32	3	10	0	34	3
NCAA Div. III	PENNSYLVANIA STATE UNIV-WORTHINGTON SCRNTN	13.2	C	44.7%	31.5%	23	50	10	0			-13	0		
Other	PENNSYLVANIA ST UNIV-FAYETTE- EBERLY CAMPUS	33.0	F	55.2%	22.2%	8	28	-12	0			3	0		
NCAA Div. III	PHILADELPHIA BIBLICAL UNIVERSITY-LANGHORNE	9.3	B-	56.3%	46.9%	69	78	-17	0			14	-1		
NCAA Div. II	PHILADELPHIA UNIVERSITY	8.9	B-	69.1%	60.2%	115	76	-14	0	34	0	-8	0	7	0
NAIA	POINT PARK UNIVERSITY	9.3	B-	60.5%	51.2%	63	60	20	0			2	0		
NCAA Div. I-AA	ROBERT MORRIS UNIVERSITY	4.0	B+	44.6%	40.6%	203	297	28	0			25	0		
NCAA Div. I-AA	SAINT FRANCIS UNIVERSITY	13.8	C	59.6%	45.8%	164	194	-5	0	42	0	2	0	-16	0
NCAA Div. I-AAA	SAINT JOSEPHS UNIVERSITY	4.5	B+	51.2%	46.7%	212	242	10	0	30	0	19	0	24	0
NAIA	SAINT VINCENT COLLEGE	1.4	A	53.5%	52.1%	162	149	66	0			19	0		
NAIA	SETON HILL UNIVERSITY	25.1	F	68.8%	43.7%	143	184	53	0			172	1		
NCAA Div. II	SHIPPENSBURG UNIVERSITY OF PENNSYLVANIA	8.8	B-	51.6%	42.8%	244	326	-12	0	12	0	-10	0	30	0
NCAA Div. II	SLIPPERY ROCK UNIVERSITY OF PENNSYLVANIA	5.8	B+	55.2%	49.3%	336	345	24	0	0	0	24	0	-19	0
NCAA Div. III	SUSQUEHANNA UNIVERSITY	12.8	C	55.2%	42.5%	256	347	13	0	-24	0	34	0	-29	0
NCAA Div. III	SWARTHMORE COLLEGE	1.9	A	51.7%	49.8%	223	225	-15	0	-6	0	1	0	-76	0
NCAA Div. I-A	TEMPLE UNIVERSITY	8.9	B-	57.0%	48.1%	267	288	31	0	12	0	-38	1	34	0
NJCAA	THADDEUS STEVENS COLLEGE OF TECHNOLOGY	4.4	B+	10.0%	5.6%	7	119	-2	0			30	0		
NCAA Div. III	THIEL COLLEGE	16.2	D+	47.9%	31.7%	138	297	15	0			33	0		
NCAA Div. I-AA	UNIVERSITY OF PENNSYLVANIA	11.5	C+	50.7%	39.2%	411	638	-42	0	86	0	-32	0	29	0
NCAA Div. III	UNIVERSITY OF PITTSBURGH-BRADFORD	4.1	B+	54.4%	50.3%	90	-89	12	0	8	0	-6	0	18	0
NCAA Div. III	UNIVERSITY OF PITTSBURGH-GREENSBURG	7.6	B	51.6%	44.0%	77	98	3	1			5	1		
NCAA Div. II	UNIVERSITY OF PITTSBURGH-JOHNSTOWN	13.8	C	49.4%	35.6%	68	123	6	0	-9	-1	22	0	7	0
NCAA Div. I-A	UNIVERSITY OF PITTSBURGH-MAIN CAMPUS	7.5	B	51.4%	43.9%	249	318	-2	0	46	0	12	0	-25	0
NJCAA	UNIVERSITY OF PITTSBURGH-TITUSVILLE	3.6	A-	53.6%	50.0%	20	20	-10	0			3	0		
NCAA Div. III	UNIVERSITY OF SCRANTON	7.6	B	57.4%	49.9%	174	175	0	0			-30	0		
NCAA Div. II	UNIVERSITY OF THE SCIENCES IN PHILADELPHIA	13.7	C	61.1%	47.4%	73	81	-4	0			-5	0		
NCAA Div. III	URSINUS COLLEGE	16.5	D+	52.6%	36.1%	167	296	-32	0	47	0	94	0	-11	0
NCCAA	VALLEY FORGE CHRISTIAN COLLEGE	4.9	B+	52.9%	48.0%	24	26	9	0			-12	0		
NCAA Div. I-AA	VILLANOVA UNIVERSITY	4.2	B+	51.2%	47.0%	304	343	-37	0	113	0	-7	0	-49	0
NCAA Div. III	WASHINGTON & JEFFERSON COLLEGE	10.6	C+	48.7%	38.1%	188	306	44	1	32	0	34	1	9	0
NCAA Div. III	WAYNESBURG COLLEGE	26.1	F	54.8%	28.7%	100	249	4	1	-11	0	25	2	6	0
NCAA Div. II	WEST CHESTER UNIVERSITY OF PENNSYLVANIA	12.5	C	61.8%	49.4%	267	274	34	0	18	0	-25	0	-14	0
NCAA Div. III	WESTMINSTER COLLEGE	22.0	D-	61.8%	39.9%	181	273	12	0			12	0		
NJCAA	WESTMORELAND COUNTY COMMUNITY COLLEGE	5.9	B+	59.0%	53.1%	26	23	4	0			-2	0		

								Changes in Women's Participation				Changes in Men's Participation			
		Proportionality Gap		Figures Underlying the Proportionality Gap				2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
Org./Div.	Name	Amount	Grade	% Und, Fem	% Ath, Fem	# Ath, Fem	# Ath, Male	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
NCAA Div. III	WIDENER UNIVERSITY-MAIN CAMPUS	19.3	D	50.8%	31.5%	209	455	-18	0	16	0	61	0	-61	0
NCAA Div. III	WILKES UNIVERSITY	20.5	D-	51.5%	31.0%	111	247	1	0	16	0	51	0	-13	0
NCAA Div. III	YORK COLLEGE PENNSYLVANIA	17.6	D+	57.9%	40.3%	149	221	-15	0	42	0	9	0	54	0
Rhode Island															
NCAA Div. I-AA	BROWN UNIVERSITY	4.5	B+	53.8%	49.3%	494	508	11	0	44	0	9	0	-13	0
NCAA Div. II	BRYANT UNIVERSITY	2.9	A-	39.7%	36.8%	134	230	-24	0	65	0	-29	0	136	0
NJCAA	COMMUNITY COLLEGE OF RHODE ISLAND	11.1	C+	56.1%	45.0%	76	93	-13	0			-22	0		
NCAA Div. III	JOHNSON & WALES UNIVERSITY	18.4	D	52.1%	33.7%	93	183	-10	0	16	0	7	0	47	0
NCAA Div. I-AAA	PROVIDENCE COLLEGE	2.5	A-	56.3%	53.8%	224	192	8	0	1	0	1	0	-48	0
NCAA Div. III	RHODE ISLAND COLLEGE	21.7	D-	66.4%	44.7%	122	151	14	0	12	0	7	0	7	0
NCAA Div. III	ROGER WILLIAMS UNIVERSITY	1.4	A	51.1%	49.7%	147	149	8	0	-5	0	-44	0	-4	0
NCAA Div. III	SALVE REGINA UNIVERSITY	19.2	D	70.4%	51.3%	201	191	3	0	11	-1	-26	0	26	-3
NCAA Div. I-AA	UNIVERSITY OF RHODE ISLAND	5.6	B+	54.7%	49.0%	328	341	41	0	70	0	38	0	24	0
South Carolina															
NJCAA	AIKEN TECHNICAL COLLEGE	7.7	B	60.9%	53.1%	17	15	17	0			1	0		
NAIA	ALLEN UNIVERSITY	28.2	F	36.7%	8.5%	9	97	-3	0			17	0		
NCAA Div. II	ANDERSON COLLEGE	24.1	F	64.0%	39.9%	109	164	10	0	11	3	17	0	-11	3
NCAA Div. II	BENEDICT COLLEGE	23.0	F	51.0%	27.9%	74	191	-13	0			20	0		
NCAA Div. I-AA	CHARLESTON SOUTHERN UNIVERSITY	25.4	F	61.7%	36.3%	128	225	-2	0	-5	1	-10	0	21	0
NCAA Div. I-AA	CITADEL MILITARY COLLEGE OF SOUTH CAROLINA	-22.7	A	6.0%	28.7%	86	214	3	0			-120	0		
NCAA Div. II	CLAFIN UNIVERSITY	15.4	C-	66.7%	51.3%	59	56	6	0			4	0		
NCAA Div. I-A	CLEMSON UNIVERSITY	-0.9	A	45.4%	46.3%	277	321	3	0	70	0	-3	0	-6	0
NCAA Div. I-AA	COASTAL CAROLINA UNIVERSITY	14.4	C-	51.2%	36.8%	173	297	7	0	26	0	139	0	5	-1
NCAA Div. II	COKER COLLEGE	28.3	F	68.8%	40.4%	76	112	-3	0	7	1	15	0	-7	1
NCAA Div. I-AAA	COLLEGE OF CHARLESTON	5.4	B+	64.6%	59.2%	226	156	1	2	-2	0	-2	0	12	0
NCAA Div. II	ERSKINE COLLEGE AND SEMINARY	15.3	C-	57.4%	42.1%	69	95	5	0	-10	0	-1	0	24	0
NCAA Div. II	FRANCIS MARION UNIVERSITY	18.5	D	62.2%	43.7%	80	103	4	0	-7	0	-7	0	-1	0
NCAA Div. I-AA	FURMAN UNIVERSITY	20.8	D-	56.5%	35.6%	161	291	0	0	8	0	23	0	17	0
NCAA Div. II	LANDER UNIVERSITY	20.5	D-	66.4%	45.9%	68	80	-15	0	41	0	-19	0	47	-1
NCAA Div. II	LIMESTONE COLLEGE	26.1	F	61.8%	35.7%	120	216	19	0	47	1	86	0	1	1
NAIA	MORRIS COLLEGE	3.5	A-	62.4%	58.9%	53	37	-1	1			-2	1		
NCAA Div. II	NEWBERRY COLLEGE	13.1	C	42.9%	29.8%	106	250	33	0	-7	1	68	0	23	1
NCAA Div. II	NORTH GREENVILLE COLLEGE	18.1	D	52.2%	34.1%	98	189	-5	0			16	0		
NCAA Div. II	PRESBYTERIAN COLLEGE	19.3	D	52.2%	33.0%	92	187	9	0	13	1	-9	0	-17	1
NCAA Div. I-AA	SOUTH CAROLINA STATE UNIVERSITY	18.0	D+	57.3%	39.3%	103	159	0	0	31	0	-1	0	22	0
NAIA	SOUTHERN WESLEYAN UNIVERSITY	21.0	D-	63.5%	42.6%	60	81	2	0			5	0		
NJCAA	SPARTANBURG METHODIST COLLEGE	11.4	C+	46.8%	35.4%	85	155	5	0			60	0		
NCAA Div. II	UNIVERSITY OF SOUTH CAROLINA UPSTATE	19.2	D	66.3%	47.1%	72	81	6	-1	18	0	10	-1	3	0
NCAA Div. II	UNIVERSITY OF SOUTH CAROLINA-AIKEN	21.9	D-	66.9%	44.9%	84	103	0	0	23	0	-9	0	15	-1
NCAA Div. I-A	UNIVERSITY OF SOUTH CAROLINA-COLUMBIA	12.6	C	54.7%	42.1%	199	274	13	0	41	0	5	0	13	-1
NAIA	VOORHEES COLLEGE	4.5	B+	62.6%	58.1%	54	39	0	0			-3	0		
NCAA Div. I-AAA	WINTHROP UNIVERSITY	20.0	D	69.1%	49.1%	112	116	20	0	6	1	7	0	-8	1
NCAA Div. I-AA	WOFFORD COLLEGE	14.3	C-	49.2%	34.9%	127	237	2	0	1	1	-9	0	25	2
South Dakota															
NCAA Div. II	AUGUSTANA COLLEGE	25.9	F	61.9%	36.0%	156	277	-1	0	23	0	21	0	37	0
NAIA	DAKOTA STATE UNIVERSITY	3.1	A-	43.8%	40.7%	94	137	12	0			-39	0		
NAIA	DAKOTA WESLEYAN UNIVERSITY	24.0	F	55.9%	31.9%	87	186	-6	0			6	0		
NAIA	MOUNT MARTY COLLEGE	24.6	F	75.5%	50.9%	108	104	3	1			-6	1		
NAIA	NATIONAL AMERICAN UNIVERSITY-RAPID CITY/DL	9.7	B-	64.8%	55.1%	27	22	-20	0			-97	0		
NCAA Div. II	NORTHERN STATE UNIVERSITY	22.1	F	58.3%	36.3%	131	230	-11	0	17	0	-19	0	11	0
NAIA	PRESENTATION COLLEGE	36.7	F	83.9%	47.2%	51	57	17	0			36	0		
NAIA	SOUTH DAKOTA SCHOOL OF MINES AND TECH	-2.3	A	25.7%	28.0%	37	95	1	0			-9	0		
NCAA Div. II	SOUTH DAKOTA STATE UNIVERSITY	12.0	C	49.7%	37.7%	168	278	-10	0	29	0	-53	0	5	0
NAIA	UNIVERSITY OF SIOUX FALLS	19.3	D	54.2%	34.9%	128	239	4	0			2	0		
NCAA Div. II	UNIVERSITY OF SOUTH DAKOTA	12.8	C	56.9%	44.1%	190	241	3	0			-61	0		
Tennessee															
NCAA Div. I-AA	AUSTIN PEAY STATE UNIVERSITY	19.9	D	62.7%	42.7%	112	150	33	0	1	0	15	0	-42	0
NCAA Div. I-AAA	BELMONT UNIVERSITY	14.4	C-	60.9%	46.5%	113	130	7	0			17	0		
NAIA	BETHEL COLLEGE	19.2	D	52.6%	33.3%	133	266	21	2			72	2		
NAIA	BRYAN COLLEGE	17.5	D+	54.1%	36.5%	42	73	-7	0			29	0		
NCAA Div. II	CARSON-NEWMAN COLLEGE	32.6	F	53.6%	21.0%	96	361	2	0			18	0		
NJCAA	CHATTANOOGA STATE TECHNICAL COMMUNITY COLL	20.3	D-	59.1%	38.8%	26	41	-6	0			-9	0		
NCAA Div. II	CHRISTIAN BROTHERS UNIVERSITY	6.6	B	52.3%	45.7%	69	82	-1	0	-2	0	-5	0	0	0
NJCAA	CLEVELAND STATE COMMUNITY COLLEGE	22.5	F	56.2%	33.8%	27	53	1	0			11	0		
NJCAA	COLUMBIA STATE COMMUNITY COLLEGE	17.4	D+	61.1%	43.7%	31	40	1	0			0	0		
NAIA	CRICHTON COLLEGE	11.0	C+	65.3%	54.3%	38	32	38	0			9	0		
NAIA	CUMBERLAND UNIVERSITY	23.9	F	56.1%	32.2%	76	160	-33	0			-82	0		
NJCAA	DYERSBURG STATE COMMUNITY COLLEGE	36.5	F	69.9%	33.3%	23	46	-5	0			9	0		
NCAA Div. I-AAA	EAST TENNESSEE STATE UNIVERSITY	5.0	B+	57.8%	52.8%	95	85	-9	0	39	0	-110	0	-2	0
NCAA Div. III	FISK UNIVERSITY	16.8	D+	66.4%	49.6%	61	62	-14	1			2	1		
NCCAA	FREE WILL BAPTIST BIBLE COLLEGE	10.5	C+	52.2%	41.7%	20	28	10	0			17	0		
NAIA	FREED-HARDEMAN UNIVERSITY	12.3	C	54.2%	41.9%	67	93	3	0			10	0		
NJCAA	HIWASSEE COLLEGE	9.9	B-	52.3%	42.4%	42	57	-3	0			4	0		
NJCAA	JACKSON STATE COMMUNITY COLLEGE	27.7	F	64.0%	36.4%	20	35	-7	0			-4	0		


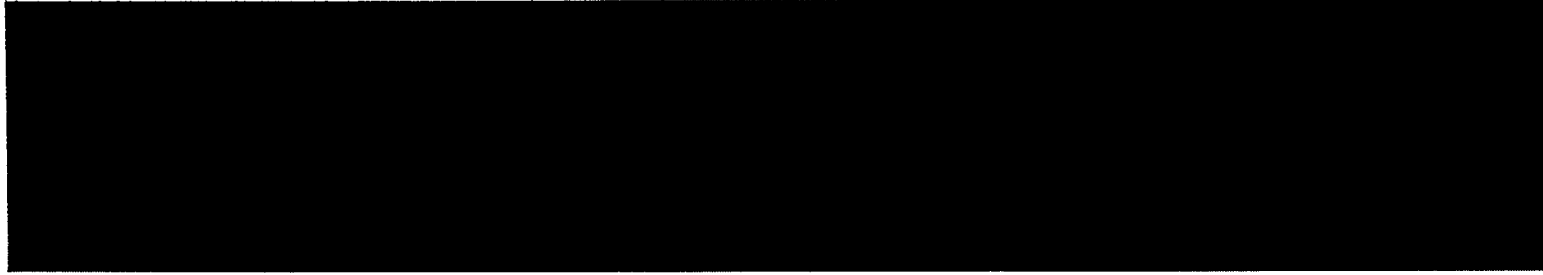
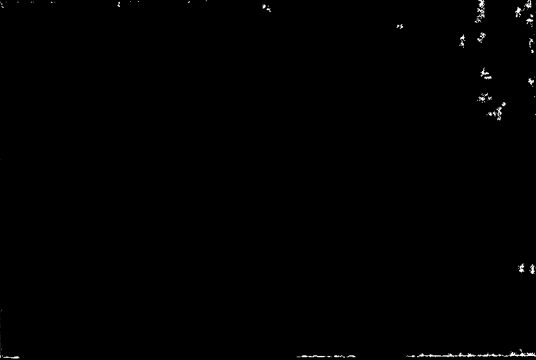
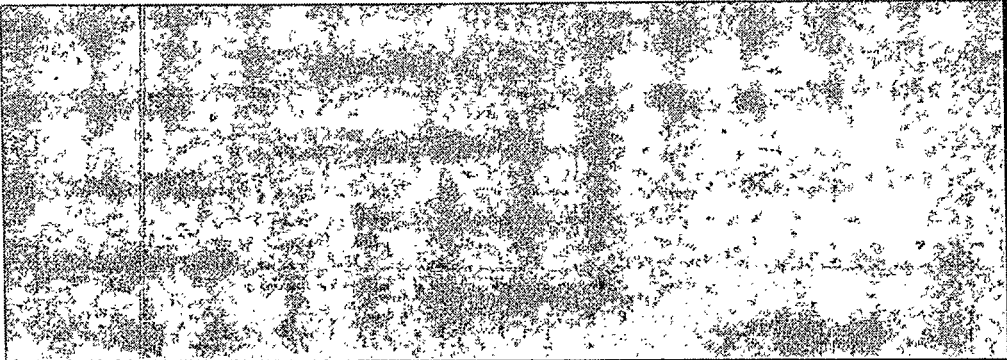
		Changes in Women's Participation								Changes in Men's Participation					
		Proportionality Gap		Figures Underlying the Proportionality Gap				2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
Org./Div.	Name	Amount	Grade	% Und, Fem	% Ath, Fem	# Ath, Fem	# Ath, Male	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
NCAA	JOHNSON BIBLE COLLEGE	21.5	D-	49.3%	27.8%	20	52	1	0			6	0		
NAIA	KING COLLEGE	13.1	C	63.4%	50.3%	95	94	22	2			-5	2		
NAIA	LAMBUTH UNIVERSITY	22.6	F	50.5%	27.8%	79	205	-47	1			-29	1		
NCAA Div. II	LANE COLLEGE	9.3	B-	47.4%	38.1%	77	125	27	0	-19	-1	-14	0	-23	0
NCAA Div. II	LE MOYNE-OWEN COLLEGE	25.2	F	72.9%	47.7%	51	56	5	0	15	-1	18	0	-1	-1
NAIA	LEE UNIVERSITY	12.2	C	58.3%	46.0%	75	88	-3	0			-2	0		
NCAA Div. II	LINCOLN MEMORIAL UNIVERSITY	19.0	D	73.0%	54.0%	87	74	2	0			-14	0		
NCAA Div. I-AAA	LIPSCOMB UNIVERSITY	1.9	A	55.5%	53.6%	126	109	18	1			4	0		
NAIA	MARTIN METHODIST COLLEGE	17.6	D+	59.7%	42.1%	59	81	-13	0			-8	0		
NCAA Div. III	MARYVILLE COLLEGE	24.8	F	56.8%	31.9%	84	179	10	0	6	1	-11	0	-24	1
NCAA Div. I-A	MIDDLE TENNESSEE STATE UNIVERSITY	16.5	D+	52.5%	36.0%	166	295	2	0	32	0	13	0	28	0
NAIA	MILLIGAN COLLEGE	13.5	C	60.6%	47.1%	89	100	-12	0			4	0		
NJCAA	MOTLOW STATE COMMUNITY COLLEGE	26.7	F	61.5%	34.8%	31	58	1	0			12	0		
NCAA Div. III	RHODES COLLEGE	16.4	D+	58.3%	42.0%	167	231	6	0			-26	0		
NJCAA	ROANE STATE COMMUNITY COLLEGE	22.4	F	66.1%	43.6%	24	31	-5	0			-6	0		
NCAA Div. III	SEWANEE: THE UNIVERSITY OF THE SOUTH	9.3	B-	52.2%	42.9%	172	229	-15	1	45	0	14	1	-9	0
NJCAA	SOUTHWEST TENNESSEE COMMUNITY COLLEGE	27.9	F	65.5%	37.6%	35	58	7	0			5	0		
NCAA Div. I-AA	TENNESSEE STATE UNIVERSITY	28.7	F	63.4%	34.7%	69	130	-4	0	7	0	-36	0	47	0
NCAA Div. I-AA	TENNESSEE TECHNOLOGICAL UNIVERSITY	-1.1	A	45.3%	46.3%	164	190	8	0	15	0	11	0	9	0
NCAA	TENNESSEE TEMPLE UNIVERSITY	-7.2	A	52.0%	59.2%	45	31	22	0			-18	0		
NAIA	TENNESSEE WESLEYAN COLLEGE	19.0	D	66.7%	47.7%	93	102	13	1			20	1		
NCAA Div. I-A	THE UNIVERSITY OF TENNESSEE	4.1	B+	50.9%	46.7%	221	252	-16	0	68	0	-32	0	-32	0
NCAA Div. I-AA	THE UNIVERSITY OF TENNESSEE-CHATTANOOGA	19.8	D	58.2%	38.4%	137	220	15	0	5	0	-9	0	-7	0
NCAA Div. I-AA	THE UNIVERSITY OF TENNESSEE-MARTIN	20.3	D-	55.1%	34.9%	98	183	-3	-2	32	0	21	-1	-27	1
NAIA	TREVECCA NAZARENE UNIVERSITY	10.9	C+	56.5%	45.6%	62	74	-7	0			-3	0		
NCAA Div. II	TUSCULUM COLLEGE	27.4	F	53.0%	25.6%	102	296	3	0	33	0	55	0	72	0
NAIA	UNION UNIVERSITY	25.8	F	61.0%	35.2%	45	83	-10	0			-9	0		
NCAA Div. I-A	UNIVERSITY OF MEMPHIS	31.6	F	60.4%	28.8%	96	237	1	0	5	0	-20	0	26	0
NCAA Div. I-A	VANDERBILT UNIVERSITY	4.6	B+	51.5%	47.0%	172	194	5	0	5	0	3	0	3	0
NJCAA	VOLUNTEER STATE COMMUNITY COLLEGE	29.5	F	59.7%	30.3%	23	53	-4	0			9	0		
NJCAA	WALTERS STATE COMMUNITY COLLEGE	19.2	D	60.7%	41.4%	29	41	2	0			-7	0		
Texas															
NCAA Div. II	ABILENE CHRISTIAN UNIVERSITY	13.9	C	54.9%	41.0%	127	183	3	0	-4	0	-68	0	-25	0
NJCAA	ALVIN COMMUNITY COLLEGE	14.8	C-	56.9%	42.1%	32	44	7	0			2	0		
NJCAA	ANGELINA COLLEGE	34.6	F	62.2%	27.6%	16	42	0	0			2	0		
NCAA Div. II	ANGELO STATE UNIVERSITY	18.7	D	54.8%	36.1%	109	193	11	0	20	0	16	0	8	0
NCAA Div. III	AUSTIN COLLEGE	20.5	D-	55.2%	34.7%	87	164	2	-1	43	0	-11	-1	43	-1
NCAA Div. I-A	BAYLOR UNIVERSITY	21.3	D-	58.8%	37.5%	194	324	4	0	31	0	0	0	20	0
NJCAA	BLINN COLLEGE	24.5	F	48.8%	24.3%	41	128	-4	0			16	0		
NJCAA	BROOKHAVEN COLLEGE	26.5	F	53.1%	26.7%	28	77	20	0			8	0		
NJCAA	CISCO JUNIOR COLLEGE	26.5	F	55.0%	28.5%	78	196	-22	0			28	0		
NJCAA	CLARENDON COLLEGE	-5.4	A	44.2%	49.6%	61	62	27	0			-7	0		
NJCAA	COLLIN COUNTY COMMUNITY COLLEGE DISTRICT	5.2	B+	51.9%	46.7%	21	24	-29	0			-21	0		
NCAA Div. III	CONCORDIA UNIVERSITY AT AUSTIN	13.9	C	56.6%	42.7%	67	90	-3	0			8	0		
NCAA Div. II	DALLAS BAPTIST UNIVERSITY	14.3	C-	57.2%	42.9%	93	124	15	0			20	0		
NCAA	DALLAS CHRISTIAN COLLEGE	5.2	B+	40.9%	35.7%	20	36	-1	0			3	0		
NCAA Div. III	EAST TEXAS BAPTIST UNIVERSITY	20.4	D-	49.9%	29.5%	92	220	1	0	48	0	7	0	115	1
NJCAA	EASTFIELD COLLEGE	21.8	D-	54.7%	32.9%	25	51	16	0			-2	0		
NJCAA	EL PASO COMMUNITY COLLEGE	24.4	F	63.7%	39.3%	24	37	-1	0			-1	0		
NJCAA	FRANK PHILLIPS COLLEGE	20.2	D-	60.2%	40.0%	40	60	4	0			-19	0		
NJCAA	GALVESTON COLLEGE	13.5	C	61.9%	48.4%	30	32	0	0			-4	0		
NCAA Div. III	HARDIN-SIMMONS UNIVERSITY	29.1	F	54.5%	25.4%	85	250	23	0	8	0	69	0	-55	0
NJCAA	HILL COLLEGE	12.8	C	60.6%	47.7%	74	81	13	0			44	0		
NAIA	HOUSTON BAPTIST UNIVERSITY	11.8	C+	66.9%	55.1%	38	31	-1	0			-11	0		
NJCAA	HOWARD COUNTY JUNIOR COLLEGE DISTRICT	30.8	F	61.4%	30.6%	33	75	0	0			12	0		
NCAA Div. III	HOWARD PAYNE UNIVERSITY	27.6	F	51.0%	23.4%	56	183	-11	0	3	0	-6	0	-12	-1
NAIA	HUSTON-TILLOTSON COLLEGE	7.1	B	54.6%	47.4%	65	72	-1	0			-5	-1		
NJCAA	JACKSONVILLE COLLEGE-MAIN CAMPUS	11.7	C+	63.7%	52.0%	13	12	-3	0			-8	0		
NAIA	JARVIS CHRISTIAN COLLEGE	16.3	D+	58.9%	42.6%	23	31	-9	0			-1	-1		
NJCAA	KILGORE COLLEGE	48.9	F	60.2%	11.3%	12	94	0	0			-4	0		
NCAA Div. I-AAA	LAMAR UNIVERSITY	5.3	B+	57.8%	52.6%	143	129	1	0	3	0	4	0	-6	0
NJCAA	LAREDO COMMUNITY COLLEGE	21.5	D-	55.5%	34.0%	17	33	-6	0			-6	0		
NJCAA	LEE COLLEGE	3.1	A-	63.1%	60.0%	18	12	1	0			0	0		
NCAA Div. III	LETOURNEAU UNIVERSITY	-19.5	A	30.8%	50.3%	86	85	9	0			-15	0		
NJCAA	LON MORRIS COLLEGE	0.9	A	46.2%	45.3%	67	81	22	0			25	0		
NAIA	LUBBOCK CHRISTIAN UNIVERSITY	20.5	D-	56.0%	35.4%	34	62	12	-1			20	-1		
NJCAA	MCLENNAN COMMUNITY COLLEGE	7.7	B	62.8%	55.1%	70	57	11	0			2	0		
NCAA Div. III	MCMURRY UNIVERSITY	21.1	D-	49.8%	28.8%	128	317	-2	0	32	2	15	0	34	2
NJCAA	MIDLAND COLLEGE	12.8	C	56.8%	44.0%	40	51	8	0			-3	0		
NCAA Div. II	MIDWESTERN STATE UNIVERSITY	23.5	F	56.6%	33.1%	79	160	11	0	12	0	22	0	-13	0
NJCAA	MOUNTAIN VIEW COLLEGE	21.4	D-	57.8%	36.4%	39	68	-21	0			5	0		
NJCAA	NAVARRO COLLEGE	26.5	F	57.5%	31.0%	57	127	21	0			-9	0		
NJCAA	NORTH CENTRAL TEXAS COLLEGE	2.3	A-	55.9%	53.5%	38	33	0	0			9	0		
NJCAA	NORTH LAKE COLLEGE	8.2	B-	49.1%	40.9%	27	39	-18	0			-3	0		
NJCAA	NORTHEAST TEXAS COMMUNITY COLLEGE	36.1	F	64.3%	28.1%	27	69	7	0			11	0		

										Changes in Women's Participation				Changes in Men's Participation			
		Proportionality Gap		Figures Underlying the Proportionality Gap				2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02			
Org./Div.	Name	Amount	Grade	% Und, Fem	% Ath, Fem	# Ath, Fem	# Ath, Male	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms		
NAIA	NORTHWOOD UNIVERSITY	16.4	D+	56.8%	40.4%	46	68	-3	0			-10	0				
NJCAA	ODESSA COLLEGE	23.3	F	60.3%	37.0%	44	75	5	-3			-50	0				
NJCAA	PALO ALTO COLLEGE	27.0	F	64.5%	37.5%	3	5	-5	0			-8	0				
NJCAA	PANOLA COLLEGE	30.4	F	64.1%	33.7%	32	63	8	0			25	0				
NJCAA	PARIS JUNIOR COLLEGE	29.6	F	62.5%	32.9%	28	57	-2	0			6	0				
NAIA	PAUL QUINN COLLEGE	36.1	F	48.8%	12.6%	22	152	-2	-1			37	2				
NCAA Div. I-AA	PRAIRIE VIEW A & M UNIVERSITY	15.9	C-	54.3%	38.4%	118	189	16	0	22	0	19	0	-6	0		
NJCAA	RANGER COLLEGE	18.6	D	40.7%	22.1%	30	106	-1	-3			-17	0				
NCAA Div. I-A	RICE UNIVERSITY	5.8	B+	48.8%	43.0%	198	262	7	0	25	0	6	0	-9	0		
NJCAA	RICHLAND COLLEGE	18.6	D	49.7%	31.1%	32	71	-3	0			-4	0				
NCAA Div. II	SAINT EDWARD'S UNIVERSITY	11.0	C+	57.4%	46.4%	89	103	3	1	8	0	9	1	-5	0		
NCAA Div. I-AA	SAM HOUSTON STATE UNIVERSITY	19.1	D	57.8%	38.7%	134	212	16	0	25	0	4	0	9	0		
NJCAA	SAN JACINTO COLLEGE-CENTRAL CAMPUS	3.1	A-	55.0%	51.9%	14	13	1	0			0	0				
NJCAA	SAN JACINTO COLLEGE-NORTH CAMPUS	35.0	F	57.6%	22.6%	12	41	-2	0			5	0				
NJCAA	SAN JACINTO COLLEGE-SOUTH CAMPUS	11.4	C+	52.9%	41.5%	17	24	-4	0			0	0				
NCAA Div. III	SCHREINER UNIVERSITY	16.3	D+	58.9%	42.5%	54	73	-10	0	12	0	-5	0	9	0		
NJCAA	SOUTH PLAINS COLLEGE	11.5	C+	48.8%	37.3%	41	69	-2	0			-21	0				
NCAA Div. I-A	SOUTHERN METHODIST UNIVERSITY	8.4	B-	54.3%	45.9%	196	231	21	0	49	0	37	-3	-11	0		
Other	SOUTHWEST TEXAS JUNIOR COLLEGE	25.3	F	58.6%	33.3%	9	18	5	0			0	0				
NAIA	SOUTHWESTERN ASSEMBLIES OF GOD UNIVERSITY	34.0	F	50.1%	16.1%	20	104	-6	0			11	-1				
NJCAA	SOUTHWESTERN CHRISTIAN COLLEGE	0.7	A	48.1%	47.4%	45	50	0	0			0	0				
NCAA Div. III	SOUTHWESTERN UNIVERSITY	14.1	C-	59.2%	45.1%	110	134	-1	0	23	1	-4	0	24	1		
NCAA Div. II	ST MARYS UNIVERSITY	8.4	B-	58.7%	50.3%	90	89	7	1	12	0	0	0	1	0		
NCAA Div. I-AA	STEPHEN F AUSTIN STATE UNIVERSITY	21.0	D-	59.4%	38.5%	115	184	-9	0	14	0	2	0	-22	0		
NCAA Div. III	SUL ROSS STATE UNIVERSITY	22.9	F	53.3%	30.4%	66	151	5	0	10	1	-39	1	55	0		
NCAA Div. II	TARLETON STATE UNIVERSITY	26.0	F	56.0%	30.0%	104	243	-10	0	24	0	-5	0	77	0		
NJCAA	TEMPLE COLLEGE	16.0	C-	61.3%	45.3%	48	58	0	0			-1	0				
NJCAA	TEXARKANA COLLEGE	17.5	D+	60.9%	43.5%	20	26	0	0			-4	0				
NCAA Div. I-A	TEXAS A & M UNIVERSITY	4.8	B+	49.6%	44.8%	331	408	-8	0	126	0	57	0	-29	0		
NCAA Div. II	TEXAS A & M UNIVERSITY-COMMERCE	28.7	F	62.5%	33.8%	80	157	-3	1	2	0	-9	1	18	0		
NCAA Div. I-AAA	TEXAS A & M UNIVERSITY-CORPUS CHRISTI	10.8	C+	61.2%	50.4%	140	138	-2	0			3	0				
NCAA Div. II	TEXAS A & M UNIVERSITY-KINGSVILLE	18.7	D	47.5%	28.8%	60	148	-2	0			-14	0				
NCAA Div. I-A	TEXAS CHRISTIAN UNIVERSITY	17.9	D+	60.0%	42.1%	188	259	45	0			-28	0				
NCAA Div. III	TEXAS LUTHERAN UNIVERSITY	14.1	C-	54.7%	40.6%	155	227	17	1	21	2	32	0	97	0		
NCAA Div. I-AA	TEXAS SOUTHERN UNIVERSITY	21.1	D-	57.5%	36.4%	90	157	9	0			-16	2				
NJCAA	TEXAS SOUTHWEST COLLEGE	23.5	F	57.5%	34.0%	18	35	-3	0			-4	0				
NCAA Div. I-AA	TEXAS STATE UNIVERSITY-SAN MARCOS	16.6	D+	55.5%	38.8%	148	233	1	0	54	0	16	0	-6	0		
NCAA Div. I-A	TEXAS TECH UNIVERSITY	4.1	B+	45.8%	41.7%	205	287	-2	0	-6	0	-12	0	-15	0		
NAIA	TEXAS WESLEYAN UNIVERSITY	21.1	D-	64.0%	42.9%	60	80	1	0			8	0				
NCAA Div. II	TEXAS WOMAN'S UNIVERSITY	-5.7	A	94.3%	100.0%	88	0	32	0			0	0				
NCAA Div. I-AAA	THE UNIVERSITY OF TEXAS AT ARLINGTON	9.9	B-	53.2%	43.3%	87	114	3	0	-6	0	-6	0	19	0		
NCAA Div. I-A	THE UNIVERSITY OF TEXAS AT AUSTIN	4.4	B+	52.3%	47.9%	299	325	-3	0	103	0	-6	0	-2	0		
NCAA Div. III	THE UNIVERSITY OF TEXAS AT DALLAS	-2.7	A	45.9%	48.6%	90	95	11	0			-19	0				
NCAA Div. I-A	THE UNIVERSITY OF TEXAS AT EL PASO	12.9	C	53.9%	41.1%	156	224	29	0	9	0	-6	0	29	0		
NCAA Div. I-AAA	THE UNIVERSITY OF TEXAS AT SAN ANTONIO	2.4	A-	52.7%	50.4%	135	133	17	0	-16	0	-29	0	15	0		
NCAA Div. III	THE UNIVERSITY OF TEXAS AT TYLER	14.3	C-	58.4%	44.1%	86	109	76	1			91	1				
NAIA	THE UNIVERSITY OF TEXAS OF THE PERMIAN BASIN	17.6	D+	61.9%	44.4%	79	99	30	2			65	2				
NCAA Div. I-AAA	THE UNIVERSITY OF TEXAS-PAN AMERICAN	4.9	B+	57.3%	52.5%	96	87	17	-1	-6	0	-18	0	-4	0		
NCAA Div. III	TRINITY UNIVERSITY	18.8	D	53.5%	34.7%	165	311	3	0	26	0	21	0	29	0		
NJCAA	TRINITY VALLEY COMMUNITY COLLEGE	46.8	F	60.7%	13.9%	14	87	0	0			5	0				
NJCAA	TYLER JUNIOR COLLEGE	35.8	F	56.7%	20.9%	44	167	0	0			-3	0				
NCAA Div. III	UNIVERSITY OF DALLAS	0.4	A	54.4%	54.0%	107	91	25	0	19	2	-7	0	23	2		
NCAA Div. I-A	UNIVERSITY OF HOUSTON-UNIVERSITY PARK	14.0	C-	52.2%	38.2%	188	304	-25	0	63	0	-4	0	39	0		
NCAA Div. III	UNIVERSITY OF MARY HARDIN-BAYLOR	39.2	F	63.3%	24.1%	77	242	-2	-1	14	0	-28	0	181	0		
NCAA Div. I-A	UNIVERSITY OF NORTH TEXAS	2.7	A-	55.9%	53.2%	238	209	26	0	10	0	4	0	.4	0		
NCAA Div. II	UNIVERSITY OF THE INCARNATE WORD	19.2	D	67.6%	48.4%	108	115	0	0			6	0				
NJCAA	VERNON COLLEGE	18.5	D	66.2%	47.7%	41	45	8	0			7	0				
NAIA	WAYLAND BAPTIST UNIVERSITY	20.7	D-	54.2%	33.6%	47	93	-6	0			10	0				
NJCAA	WEATHERFORD COLLEGE	26.4	F	57.5%	31.1%	32	71	13	0			58	0				
NCAA Div. II	WEST TEXAS A & M UNIVERSITY	25.0	F	58.0%	33.0%	103	209	8	0	54	0	12	0	53	0		
NJCAA	WESTERN TEXAS COLLEGE	10.4	C+	44.5%	34.1%	45	87	31	1			63	1				
NJCAA	WHARTON COUNTY JUNIOR COLLEGE	26.9	F	52.3%	25.4%	17	50	-8	0			-4	0				
NAIA	WILEY COLLEGE	24.1	F	61.3%	37.2%	35	59	-7	0			1	1				
Utah																	
NCAA Div. I-A	BRIGHAM YOUNG UNIVERSITY	2.7	A-	50.2%	47.4%	360	399	34	0	37	0	10	0	13	0		
NJCAA	COLLEGE OF EASTERN UTAH	12.4	C	55.2%	42.9%	30	40	2	0			-5	0				
NJCAA	DIXIE STATE COLLEGE OF UTAH	17.8	D+	51.3%	33.5%	68	135	0	0			3	0				
NJCAA	SALT LAKE COMMUNITY COLLEGE	0.7	A	46.6%	45.9%	39	46	-2	0			0	0				
NJCAA	SNOW COLLEGE	27.0	F	56.1%	29.1%	46	112	2	0			13	0				
NCAA Div. I-AA	SOUTHERN UTAH UNIVERSITY	19.5	D	53.5%	34.0%	103	200	1	0	24	0	5	0	52	0		
NCAA Div. I-A	UNIVERSITY OF UTAH	9.9	B-	44.2%	34.4%	133	254	-11	0	8	0	12	0	4	0		
NCAA Div. I-A	UTAH STATE UNIVERSITY	6.4	B	49.2%	42.8%	181	242	11	0	31	0	7	0	-18	0		
NCAA Div. I-AAA	UTAH VALLEY STATE COLLEGE	-11.7	A	38.6%	50.3%	146	144	39	0			20	0				
NCAA Div. I-AA	WEBER STATE UNIVERSITY	4.0	A-	48.0%	44.1%	171	217	13	0	13	0	-7	0	17	0		
NAIA	WESTMINSTER COLLEGE	24.9	F	60.7%	35.8%	34	61	-9	1			9	1				

		Proportionality Gap						Figures Underlying the Proportionality Gap				Changes in Women's Participation				Changes in Men's Participation			
Org./Div.	Name	Amount	Grade	% Und, Fem	% Ath, Fem	# Ath, Fem	# Ath, Male	2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02					
								Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms				
Vermont																			
NCAA Div. III	CASTLETON STATE COLLEGE	11.8	C+	57.4%	45.6%	104	124	24	0	-4	0	27	0	7	0				
NAIA	COLLEGE OF ST JOSEPH	6.7	B	58.7%	51.9%	40	37	19	0			6	0						
NCAA Div. III	GREEN MOUNTAIN COLLEGE	-1.0	A	45.7%	46.7%	64	73	-8	0			-14	0						
NCAA Div. III	JOHNSON STATE COLLEGE	9.8	B-	51.7%	41.9%	49	68	9	0			0	0						
NAIA	LYNDON STATE COLLEGE	0.4	A	49.6%	49.2%	63	65	6	0			-6	0						
NCAA Div. III	MIDDLEBURY COLLEGE	3.1	A-	52.0%	48.9%	404	422	31	0	-21	0	-7	0	-31	0				
NCAA Div. III	NORWICH UNIVERSITY	4.5	B+	25.9%	21.4%	83	305	8	0	-15	-2	-15	0	22	-2				
NCAA Div. II	SAINT MICHAELS COLLEGE	-1.4	A	54.6%	56.0%	210	165	19	0			-5	0						
NCAA Div. III	SOUTHERN VERMONT COLLEGE	8.6	B-	66.3%	57.7%	71	52	8	0			-14	0						
NCAA Div. I-AAA	UNIVERSITY OF VERMONT AND STATE AGRI COLL	2.4	A-	55.3%	52.9%	256	228	-58	0	21	0	-32	0	-21	0				
Other	VERMONT TECHNICAL COLLEGE	6.7	B	36.3%	29.6%	24	57	10	0			-7	0						
Virginia																			
NCAA Div. III	AVERETT UNIVERSITY	22.5	F	52.5%	30.0%	87	203	11	0	4	0	59	0	59	0				
NAIA	BLUEFIELD COLLEGE	5.0	B+	56.1%	51.1%	68	65	7	0			-3	0						
NCAA Div. III	BRIDGEWATER COLLEGE	14.5	C-	57.5%	43.0%	227	301	75	0	31	1	57	0	46	0				
NCAA Div. III	CHRISTOPHER NEWPORT UNIVERSITY	15.2	C-	54.4%	39.3%	181	280	-4	0	78	0	9	0	108	0				
NCAA Div. I-AA	COLLEGE OF WILLIAM AND MARY	6.0	B+	55.0%	49.0%	322	335	-8	0	-4	0	0	0	11	0				
NCAA Div. III	EASTERN MENNONITE UNIVERSITY	16.1	D+	60.4%	44.2%	111	140	6	0	19	0	-4	0	0	0				
NCAA Div. III	EMORY AND HENRY COLLEGE	20.8	D-	52.1%	31.3%	84	184	-7	0			-75	0						
NCAA Div. III	FERRUM COLLEGE	14.4	C-	44.1%	29.7%	87	206	1	0	3	1	0	0	-14	1				
NCAA Div. I-AAA	GEORGE MASON UNIVERSITY	4.0	B+	54.2%	50.1%	218	217	-8	0	66	0	12	0	-20	0				
NCAA Div. I-AA	HAMPTON UNIVERSITY	17.9	D+	65.0%	47.1%	144	162	7	0			-19	0						
NCAA Div. I-AA	JAMES MADISON UNIVERSITY	14.0	C	60.8%	46.9%	337	382	-10	0	36	0	-12	0	-5	0				
NCAA Div. I-AA	LIBERTY UNIVERSITY	18.9	D	53.6%	34.7%	178	335	-2	0	12	0	22	0	11	0				
NCAA Div. II	LONGWOOD UNIVERSITY	8.9	B-	66.5%	57.6%	125	92	3	0	5	1	3	0	-37	1				
NCAA Div. III	LYNCHBURG COLLEGE	11.0	C+	58.9%	47.9%	221	240	2	0	13	0	16	0	10	0				
NCAA Div. III	MARYMOUNT UNIVERSITY	20.1	D-	73.5%	53.4%	102	89	19	1	11	0	-1	1	13	0				
NCAA Div. I-AAA	OLD DOMINION UNIVERSITY	9.6	B-	57.3%	47.7%	125	137	-10	-1	4	1	1	0	-16	0				
NCAA Div. I-AAA	RADFORD UNIVERSITY	4.4	B+	58.8%	54.3%	169	142	-10	0	12	2	-11	0	-36	2				
NCAA Div. III	RANDOLPH-MACON COLLEGE	12.5	C	52.9%	40.4%	130	192	19	0	0	0	-26	0	2	0				
NCAA Div. III	ROANOKE COLLEGE	7.4	B	57.7%	50.4%	195	192	-5	0	42	0	26	0	20	0				
NCAA Div. II	SAINT PAULS COLLEGE	-4.2	A	50.7%	54.9%	73	60	-13	0	24	0	-14	0	0	0				
NCAA Div. III	SHENANDOAH UNIVERSITY	25.7	F	57.9%	32.2%	105	221	28	0	3	0	40	0	66	0				
NAIA	SOUTHERN VIRGINIA UNIVERSITY	11.0	C+	53.3%	42.3%	113	154	-2	1			48	1						
NAIA	THE UNIVERSITY OF VIRGINIA'S COLLEGE AT WISE	22.5	F	49.9%	27.4%	59	156	-5	0			7	-1						
NCAA Div. III	UNIVERSITY OF MARY WASHINGTON	11.6	C+	65.9%	54.4%	281	236	-31	0			3	0						
NCAA Div. I-AA	UNIVERSITY OF RICHMOND	4.5	B+	51.7%	47.2%	197	220	-6	0	28	0	-3	0	-61	0				
NCAA Div. I-A	UNIVERSITY OF VIRGINIA-MAIN CAMPUS	9.4	B-	53.2%	43.8%	345	443	18	0	22	0	12	0	-8	0				
NCAA Div. I-AAA	VIRGINIA COMMONWEALTH UNIVERSITY	8.0	B	59.6%	51.6%	142	133	6	0	10	0	-4	0	-2	0				
NAIA	VIRGINIA INTERMONT COLLEGE	7.9	B	71.0%	63.2%	175	102	43	2			-2	3						
NCAA Div. I-AA	VIRGINIA MILITARY INSTITUTE	-1.8	A	6.0%	7.8%	30	353	14	0	3	3	28	0	-3	0				
NCAA Div. I-A	VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIV	3.4	A-	40.8%	37.4%	182	304	-11	0	23	0	-11	0	18	0				
NCAA Div. II	VIRGINIA STATE UNIVERSITY	28.8	F	59.0%	30.3%	72	165	-4	0	-3	0	38	0	-14	0				
NCAA Div. II	VIRGINIA UNION UNIVERSITY	22.1	F	59.6%	37.5%	60	100	0	0	1	0	-13	0	7	0				
NCAA Div. III	VIRGINIA WESLEYAN COLLEGE	12.6	C	62.9%	50.3%	168	166	19	2	29	1	11	1	0	1				
NCAA Div. III	WASHINGTON AND LEE UNIVERSITY	7.6	B	49.1%	41.5%	212	299	14	0	47	0	16	0	-20	0				
Washington																			
NWAAC	BELLEVUE COMMUNITY COLLEGE	6.5	B	51.9%	45.5%	50	60	-14	0			-11	0						
NWAAC	BIG BEND COMMUNITY COLLEGE	9.2	B-	51.4%	42.2%	35	48	3	0			12	0						
NCAA Div. II	CENTRAL WASHINGTON UNIVERSITY	2.6	A-	52.0%	49.3%	222	228	-46	0	-13	1	-17	1	-26	0				
NWAAC	CENTRALIA COLLEGE	2.4	A-	56.3%	53.9%	41	35	3	0			5	0						
NWAAC	CLARK COLLEGE	-0.9	A	56.1%	57.0%	61	46	-4	0			-5	0						
NWAAC	COLUMBIA BASIN COLLEGE	13.7	C	55.6%	41.9%	57	79	2	0			8	0						
NCAA Div. I-AA	EASTERN WASHINGTON UNIVERSITY	-0.4	A	57.2%	57.6%	242	178	3	0	35	0	-19	0	-2	0				
NWAAC	EDMONDS COMMUNITY COLLEGE	-1.2	A	51.3%	52.5%	62	56	2	0			0	0						
NWAAC	EVERETT COMMUNITY COLLEGE	13.9	C	60.6%	46.8%	65	74	5	0			5	0						
NAIA	EVERGREEN STATE COLLEGE	-0.1	A	54.1%	54.2%	45	38	-11	0			-8	1						
NCAA Div. I-AAA	GONZAGA UNIVERSITY	-2.9	A	54.3%	57.2%	179	134	4	0			-42	0						
NWAAC	GRAYS HARBOR COLLEGE	6.8	B	50.8%	44.0%	33	42	7	0			-23	0						
NWAAC	GREEN RIVER COMMUNITY COLLEGE	4.8	B+	51.2%	46.4%	65	75	19	0			17	0						
NWAAC	HIGHLINE COMMUNITY COLLEGE	16.9	D+	60.1%	43.2%	70	92	1	0			4	0						
NWAAC	LOWER COLUMBIA COLLEGE	0.5	A	57.5%	57.0%	53	40	1	0			-3	0						
NAIA	NORTHWEST COLLEGE OF THE ASSEMBLIES OF GOD	20.5	D-	63.0%	42.5%	31	42	-4	0			8	0						
NWAAC	OLYMPIC COLLEGE	4.3	B+	51.7%	47.4%	54	60	16	0			22	0						
NCAA Div. III	PACIFIC LUTHERAN UNIVERSITY	23.0	F	64.6%	41.6%	203	285	24	-1	-21	1	-7	-1	-27	1				
NWAAC	PENINSULA COLLEGE	5.4	B+	49.0%	43.6%	24	31	2	0			5	0						
NWAAC	PIERCE COLLEGE AT PUYALLUP	18.3	D	56.9%	38.6%	34	54	12	0			0	0						
NCAA Div. II	SAINT MARTINS COLLEGE	7.3	B	56.0%	48.8%	59	62	0	1	7	1	-8	1	34	2				
NWAAC	SEATTLE COMMUNITY COLLEGE-NORTH CAMPUS	9.8	B-	50.5%	40.7%	11	16	-2	0			1	0						
NCAA Div. II	SEATTLE PACIFIC UNIVERSITY	3.4	A-	65.6%	62.2%	176	107	-14	0	14	0	-11	0	-6	0				
NCAA Div. II	SEATTLE UNIVERSITY	5.6	B+	61.4%	55.7%	127	101	-22	2			-17	2						
NWAAC	SHORELINE COMMUNITY COLLEGE	10.1	C+	55.0%	44.9%	48	59	-12	0			-8	0						
NWAAC	SKAGIT VALLEY COLLEGE	14.0	C	55.3%	41.3%	57	81	-16	0			17	0						
NWAAC	SOUTH PUGET SOUND COMMUNITY COLLEGE	15.4	C-	56.2%	40.7%	22	32	1	0			2	0						

Org./Div.	Name	Proportionality Gap		Figures Underlying the Proportionality Gap				Changes in Women's Participation				Changes in Men's Participation			
		Amount	Grade	% Und, Fem	% Ath, Fem	# Ath, Fem	# Ath, Male	2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
								Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
NWAAC	SPOKANE FALLS COMMUNITY COLLEGE	10.0	B-	56.2%	46.3%	105	122	-8	0			5	0		
NWAAC	TACOMA COMMUNITY COLLEGE	18.7	D	63.4%	44.7%	55	68	9	1			4	0		
NCAA Div. III	UNIVERSITY OF PUGET SOUND	8.6	B-	58.3%	49.7%	297	300	25	1	10	0	12	1	-21	0
NCAA Div. I-A	UNIVERSITY OF WASHINGTON-SEATTLE CAMPUS	3.9	A-	51.4%	47.5%	316	349	-17	0	13	0	-1	0	-12	0
NCAA	WALLA WALLA COLLEGE	5.5	B+	48.9%	43.4%	43	56	6	0			5	0		
NWAAC	WALLA WALLA COMMUNITY COLLEGE	5.2	B+	49.6%	44.4%	87	109	-16	0			12	0		
NCAA Div. I-A	WASHINGTON STATE UNIVERSITY	1.7	A	51.2%	49.5%	285	291	33	0	-46	0	0	0	-52	0
NWAAC	WENATCHEE VALLEY COLLEGE	24.6	F	59.1%	34.6%	37	70	-3	0			25	0		
NCAA Div. II	WESTERN WASHINGTON UNIVERSITY	3.3	A-	56.0%	52.7%	305	274	38	1	-31	0	45	1	-82	0
NWAAC	WHATCOM COMMUNITY COLLEGE	-11.8	A	52.1%	63.9%	23	13	5	0			0	0		
NCAA Div. III	WHITMAN COLLEGE	5.6	B+	54.7%	49.2%	116	120	-3	-1			-14	-1		
NCAA Div. III	WHITWORTH COLLEGE	18.1	D	58.0%	39.9%	164	247	20	0	15	1	6	0	0	1
NWAAC	YAKIMA VALLEY COMMUNITY COLLEGE	22.0	F	66.1%	44.0%	37	47	1	0			-6	0		
West Virginia															
NCAA Div. II	ALDERSON BROADDUS COLLEGE	22.4	F	69.0%	46.7%	49	56	-2	1	6	1	0	0	3	1
NCAA Div. III	BETHANY COLLEGE	18.5	D	54.9%	36.4%	121	211	-7	0	-12	0	-9	0	-28	0
NCAA Div. II	BLUEFIELD STATE COLLEGE	15.5	C-	61.8%	46.3%	50	58	3	0	0	0	-15	0	18	0
NCAA Div. II	CONCORD UNIVERSITY	21.3	D-	56.1%	34.7%	83	156	-4	1			-19	1		
NCAA Div. II	DAVIS AND ELKINS COLLEGE	16.7	D+	61.9%	45.2%	75	91	6	0	1	0	14	0	6	0
NCAA Div. II	FAIRMONT STATE UNIVERSITY	25.6	F	54.0%	28.4%	85	214	4	0	-3	0	27	0	26	0
NCAA Div. II	GLENVILLE STATE COLLEGE	21.0	D-	51.5%	30.5%	65	148	17	0	-4	-1	8	0	-15	-1
NCAA Div. I-A	MARSHALL UNIVERSITY	9.4	B-	55.8%	46.4%	194	224	36	0	40	0	6	-2	9	0
NAIA	MOUNTAIN STATE UNIVERSITY	-4.2	A	62.5%	66.7%	26	13	2	0			0	0		
NCAA Div. II	OHIO VALLEY COLLEGE	8.7	B-	52.5%	43.8%	64	82	12	0			6	0		
NJCAA	POTOMAC STATE COLLEGE OF WEST VIRGINIA UNIV	7.6	B	48.4%	40.8%	53	77	-1	0			3	0		
NCAA Div. II	SALEM INTERNATIONAL UNIVERSITY	5.5	B+	42.5%	36.9%	62	106	-13	0	14	0	12	0	-5	0
NCAA Div. II	SHEPHERD UNIVERSITY	28.7	F	56.0%	27.3%	70	186	8	-1	16	0	15	-1	29	0
NCAA Div. II	UNIVERSITY OF CHARLESTON	21.0	D-	61.0%	39.9%	159	239	16	0	18	2	100	0	23	2
NCAA Div. II	WEST LIBERTY STATE COLLEGE	27.1	F	54.3%	27.2%	96	257	8	0	14	0	15	0	36	0
NCAA Div. II	WEST VIRGINIA STATE UNIVERSITY	30.1	F	57.7%	27.7%	73	191	13	1	0	0	31	1	32	0
NCAA Div. I-A	WEST VIRGINIA UNIVERSITY	0.0	A	46.2%	46.1%	262	306	-12	0	91	0	25	-3	1	0
NCAA Div. II	WEST VIRGINIA UNIVERSITY INSTITUTE OF TECH	6.9	B	36.6%	29.7%	60	142	-10	0	29	0	10	0	13	0
NCAA Div. II	WEST VIRGINIA WESLEYAN COLLEGE	18.2	D	53.2%	35.0%	141	262	3	0	-23	1	18	0	-23	1
NCAA Div. II	WHEELING JESUIT UNIVERSITY	14.7	C-	60.3%	45.6%	88	105	-14	0	37	1	-1	0	30	1
Wisconsin															
NCAA Div. III	BELOIT COLLEGE	12.3	C	59.8%	47.5%	171	189	20	0	9	0	-3	0	-8	0
NAIA	CARDINAL STRITCH UNIVERSITY	18.5	D	68.1%	49.6%	70	71	15	0			4	0		
NCAA Div. III	CARROLL COLLEGE	25.9	F	66.8%	41.0%	168	242	-5	0	0	0	46	0	-78	0
NCAA Div. III	CARTHAGE COLLEGE	16.0	D+	56.0%	40.0%	274	411	-8	0			-39	0		
NCAA Div. III	CONCORDIA UNIVERSITY-WISCONSIN	30.9	F	62.0%	31.1%	123	272	-2	1	32	-1	-28	0	41	0
NCAA Div. III	EDGEWOOD COLLEGE	19.8	D	73.4%	53.6%	105	91	16	0	-6	1	12	0	-4	1
NCAA Div. III	LAKELAND COLLEGE	26.4	F	54.0%	27.6%	93	244	3	1	4	0	53	1	20	0
NCAA Div. III	LAWRENCE UNIVERSITY	16.9	D+	54.8%	38.0%	161	263	13	0	-12	0	23	0	-1	0
NJCAA	MADISON AREA TECHNICAL COLLEGE	17.5	D+	50.5%	33.1%	39	79	-6	-1			6	-1		
NCAA Div. III	MARANATHA BAPTIST BIBLE COLLEGE INC	17.6	D+	53.4%	35.7%	74	133	1	0	24	0	-6	0	17	1
NCAA Div. III	MARIAN COLLEGE OF FOND DU LAC	31.4	F	72.3%	40.9%	74	107	-1	0			0	0		
NCAA Div. I-AAA	MARQUETTE UNIVERSITY	0.6	A	54.9%	54.2%	115	97	10	0	-2	0	9	0	-44	0
NJCAA	MID-STATE TECHNICAL COLLEGE	5.3	B+	51.9%	46.7%	14	16	-3	0			-4	0		
NCAA Div. III	MILWAUKEE SCHOOL OF ENGINEERING	-7.7	A	18.8%	26.4%	79	220	-2	1	4	1	-15	1	38	1
NCAA Div. III	NORTHLAND COLLEGE	14.7	C-	56.7%	42.0%	63	87	-2	0			-4	0		
NCAA Div. III	RIPON COLLEGE	9.5	B-	52.6%	43.1%	154	203	-4	0	-1	0	-16	0	15	0
NCAA Div. III	SAINT NORBERT COLLEGE	23.0	F	57.1%	34.1%	163	315	10	0	23	0	19	0	15	0
Other	SILVER LAKE COLLEGE	-18.5	A	81.5%	100.0%	9	0	0	0			0	0		
Other	UNIVERSITY OF WISCONSIN COLLEGES	14.7	C-	52.2%	37.5%	245	408	-36	0			35	0		
NCAA Div. III	UNIVERSITY OF WISCONSIN-EAU CLAIRE	13.5	C	59.1%	45.5%	266	318	-3	0	32	0	-10	0	-15	0
NCAA Div. I-AAA	UNIVERSITY OF WISCONSIN-GREEN BAY	13.0	C	65.2%	52.2%	117	107	-5	0	-12	0	2	0	-5	0
NCAA Div. III	UNIVERSITY OF WISCONSIN-LA CROSSE	13.0	C	60.3%	47.3%	310	345	2	0	-10	0	-3	0	-4	0
NCAA Div. I-A	UNIVERSITY OF WISCONSIN-MADISON	2.5	A-	53.0%	50.6%	449	439	-8	0	115	0	-3	0	1	0
NCAA Div. I-AAA	UNIVERSITY OF WISCONSIN-MILWAUKEE	3.6	A-	53.8%	50.2%	154	153	18	0	10	0	3	0	-2	0
NCAA Div. III	UNIVERSITY OF WISCONSIN-OSHKOSH	15.9	C-	59.2%	43.3%	215	282	5	0	12	0	-28	0	23	0
NCAA Div. II	UNIVERSITY OF WISCONSIN-PARKSIDE	16.4	D+	57.1%	40.7%	105	153	7	0			22	0		
NCAA Div. III	UNIVERSITY OF WISCONSIN-PLATTEVILLE	2.7	A-	37.1%	34.4%	175	334	6	0	5	0	-2	0	11	0
NCAA Div. III	UNIVERSITY OF WISCONSIN-RIVER FALLS	17.4	D+	60.7%	43.3%	202	265	-23	0			-30	2		
NCAA Div. III	UNIVERSITY OF WISCONSIN-STEVENS POINT	9.4	B-	54.6%	45.2%	277	336	-10	0			-23	0		
NCAA Div. III	UNIVERSITY OF WISCONSIN-STOUT	6.5	B	50.4%	44.0%	218	278	-7	0	12	0	-16	0	-12	0
NCAA Div. III	UNIVERSITY OF WISCONSIN-SUPERIOR	1.2	A	57.1%	55.9%	143	113	26	0	24	0	5	0	22	0
NCAA Div. III	UNIVERSITY OF WISCONSIN-WHITEWATER	7.9	B	51.6%	43.7%	262	338	-16	0	16	0	-11	0	17	0
NAIA	VITERBO UNIVERSITY	25.7	F	72.4%	46.7%	57	65	-3	0			2	0		
NJCAA	WAUKESHA COUNTY TECHNICAL COLLEGE	6.9	B	41.7%	34.8%	23	43	-1	0			-6	0		
NJCAA	WESTERN WISCONSIN TECHNICAL COLLEGE	13.5	C	51.8%	38.3%	18	29	4	0			5	0		
NCAA Div. III	WISCONSIN LUTHERAN COLLEGE	27.6	F	62.5%	34.9%	89	166	-15	0	31	0	31	0	46	0
Wyoming															
NJCAA	CASPER COLLEGE	10.6	C+	59.1%	48.5%	33	35	7	0			4	0		
Other	CENTRAL WYOMING COLLEGE	17.9	D+	63.0%	45.2%	14	17	9	0			9	0		

								Changes in Women's Participation				Changes in Men's Participation			
		Proportionality Gap		Figures Underlying the Proportionality Gap				2001-02 to 2004-05		1995-96 to 2001-02		2001-02 to 2004-05		1995-96 to 2001-02	
Org./Div.	Name	Amount	Grade	% Und, Fem	% Ath, Fem	# Ath, Fem	# Ath, Male	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms	Part Chg	CC/T&F Tms
NJCAA	EASTERN WYOMING COLLEGE	23.7	F	60.6%	36.8%	28	48	15	0			-28	0		
NJCAA	LARAMIE COUNTY COMMUNITY COLLEGE	15.5	C-	59.5%	44.0%	33	42	33	0			-13	0		
NJCAA	NORTHWEST COMMUNITY COLLEGE	19.6	D	59.0%	39.4%	28	43	1	0			-12	0		
NJCAA	SHERIDAN COLLEGE	9.5	B-	61.3%	51.8%	29	27	-4	0			2	0		
NCAA Div. I-A	UNIVERSITY OF WYOMING	4.6	B+	49.5%	44.9%	193	237	-8	0	17	0	13	0	-86	0
NJCAA	WESTERN WYOMING COMMUNITY COLLEGE	16.7	D+	59.5%	42.9%	27	36	1	0			0	0		



women's sports
foundation
founded by Billie Jean King

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MacDougall, Sock-Foon

From: Samuels, Jocelyn [jsamuels@nwlc.org]
Sent: Monday, June 04, 2007 3:36 PM
To: MacDougall, Sock-Foon
Subject: RE: Report by the National Coalition for Women and Girls

Here's a link. Thanks.

<http://www.ncwge.org/PDF/TitleXReport-5-10-07.pdf>

From: MacDougall, Sock-Foon [mailto:smacdougall@usccr.gov]
Sent: Monday, June 04, 2007 11:02 AM
To: Samuels, Jocelyn
Subject: Report by the National Coalition for Women and Girls

Dear Jocelyn,

During the Title IX briefing last month, you mentioned that you would submit for the record a report prepared by the National Coalition for Women and Girls. You noted that this report includes a statistical analysis and a methodological analysis of the Model Survey. If you could e-mail it at your earliest convenience I would be most appreciative as I am reviewing materials in conjunction with drafting the briefing report.

Thank you.

Best wishes,

Sock-Foon

NCWGE NATIONAL COALITION FOR WOMEN AND GIRLS IN EDUCATION

TITLE IX ATHLETICS POLICIES

Issues and Data for Education Decision Makers

**A Report
from the
National Coalition for Women and Girls in Education**

Updated May 10, 2007

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.

NCWGE thanks the following individuals for their commitment and contributions to *Title IX Athletics Policies: Issues and Data for Education Decision Makers*:

Melanie Bennett, Women's Sports Foundation
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EXECUTIVE SUMMARY

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 a weakening of 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 reduce the size of men's sports programs in order to put increased emphasis on one or two selected men's sports or in other ways 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 35 years after passage of Title IX.** Although male and female participation in athletics has grown steadily, female students lag in every measurable category, including participation opportunities, receipt of scholarships and allocation of operating and recruitment budgets. Furthermore, female high school athletes receive 1.3 million fewer athletic participation opportunities than their male counterparts and female athletes receive 86,305 fewer opportunities at the college level. (Cheslock, 2007, NFHS, 2006) Thus, we have not yet reached the Title IX goal of gender equity.
- **The three-part test is flexible and 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 for men or women.

- **As is demonstrated 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 – the failure of schools and colleges to add more athletic teams for females. It is neither logical nor permissible to posit a lack of interest in college sports participation on the part of female athletes when there are 2.9 million high school female athletes vying for only 209,666 college participation slots. The female athletes are there, the female college teams are not. Furthermore, female athletes receive 1.3 million fewer athletic participation opportunities than their male counterparts at the high school level and 86,305 fewer opportunities at the college level. (Cheslock, 2007, NFHS, 2006)
- **Over the last five years the gap between male and female athletic participation in high school grew from 1.13 to 1.25 million opportunities.** In other words, more athletics participation opportunities at the high school level were added for males at the high school level than for females despite the under-representation of females. Females comprise 49% of the high school population but only receive 41% of athletic participation opportunities: 2,953,355 girls participating versus 4,206,549 boys. (NFHS, 2006)
- **Loss of male collegiate athletic participation opportunities is a myth. Male athletic participation continues to grow, and more male teams are added than are dropped.** For every 1 collegiate athletic participation opportunity added for women between 2001-02 and 2004-05 around 1 participation opportunity has been added for men. Any losses of participation opportunities in men’s sports like gymnastics, tennis or wrestling or losses of men’s teams in these sports have been more than offset by increases in men’s athletic participation opportunities in other sports like football, baseball, soccer and lacrosse through either roster size increases or the addition of new teams. Females comprise 57% of the college population, however they only receive 42% of athletic participation opportunities: 205,492 women participating versus 291,797 men in 1,895 community college and four-year institutions. Title IX requires equal “participation opportunities” for males and females (i.e., numbers of participants), not equal number of teams. The popularity of various sports, the size of teams and the adding and dropping of teams over time in both men’s and women’s sports varies widely and cannot be used to assess gender equity. (Cheslock, 2007, DeHass, 2006, U.S. GAO, 2001, Vincente, 2006)

The National Coalition for Women and Girls in Education (NCWGE) makes the following recommendations:

1. Mandate Collection of Title IX Data for High Schools

Congress should pass the High School Athletics Accountability Act/High School Sports Information Collection Act, which would require high schools to report key data, including participation numbers and budgets and expenditures, which can be used to gauge schools’ compliance with Title IX.

2. Rescind the March 2005 “Clarification”

The Department of Education should issue a policy statement rescinding the March 2005 Clarification and affirming the 1996 policy standards, which allow surveys to be only one of a multitude of factors schools can use to determine if they are satisfying the interests of the female students.

3. Improve Education

The OCR recognized the wide-spread misinformation about Title IX's application to athletics in 2003. Despite its commitment in 2003 to launching a national education campaign on Title IX, the OCR has failed to do so. Yet in order to see progress in sports equity, parents, athletes and schools must be educated about Title IX and be able to knowledgably raise complaints and spur enforcement. The OCR must take affirmative steps to educate school administrators of their obligations under Title IX, and inform coaches, parents and students of their rights to equality.

4. Control College Athletics Expenditures

While overall, schools have added more male teams than they have dropped, in the only competitive division showing a net loss of men's teams, NCAA Division I-A, the budgets for football and men's basketball consume nearly three quarters (73%) of the total men's athletics operating budget. While these 117 Division I-A schools may argue that this lopsided resource allocation is an investment in increasing revenues, the numbers show otherwise. In these athletic programs, supposedly the "most profitable," 60% currently operate at an overall deficit averaging \$4.4 million per year. Of all NCAA Division I and II schools, 85% currently operate at a deficit. (Fulks, 2005) Putting huge sums of money into one or two men's sports reduces the likelihood that schools will be financially capable of adding women's participation opportunities or reducing inequalities in treatment (scholarships, operating budgets, etc.) to comply with Title IX and increases the likelihood that other men's sports will be eliminated. Unless educational institutions and athletic governance organizations do more to control costs, this financial squeeze will affect all competitive divisions. Only by capping these spiraling costs will institutions be able to grow women's sports programs to comply with Title IX while maintaining existing participation opportunities for men.

5. Vigilant Enforcement

The OCR must strengthen its enforcement of Title IX. The OCR has never denied a school federal funding for failing to comply with Title IX, yet women and girls continue to be denied equal opportunities to participate in athletics and are not given equitable resources when they do compete. The OCR must initiate compliance reviews of educational institutions and not simply conduct investigations on a compliant-basis. In addition, when issuing findings in response to complaints, the OCR must be more vigilant in following through to ensure that schools actually implement their compliance improvement plans.

TABLE OF CONTENTS

	<u>PAGE</u>
EXECUTIVE SUMMARY	
Position of the Coalition for Women and Girls in Education	ii
Report Summary	ii
Recommendations	iii
TABLE OF CONTENTS	v
PREFACE: PRIMARY SOURCES OF DATA	1
PART I. THE LAW AND ITS IMPACT	
1. What is Title IX of the Education Amendments of 1972?	3
2. How does Title IX apply to athletics?	3
3. How does an institution show that it is offering equal participation opportunities?	4
4. Does Congress support Title IX's application to athletics?	4
5. What is the federal government's role in enforcing Title IX?	4
6. Has Title IX helped to increase athletics opportunities for women and girls?	5
7. Has men's participation in athletics decreased since enactment of Title IX?	5
8. Have women achieved equity in participation rates compared to men's sports?	5
9. What is the current status of expenditures on men's and women's athletic programs?	7
PART II. THE THREE-PART TEST AND THE "CLARIFICATION"	
10. Why is the three-part test an appropriate and necessary means to implement Title IX's command of equality?	12
11. Does the three-part test establish quotas?	13
12. Is it true that schools have been forced to use Prong One, the "proportionality" prong?	
13. Have courts upheld the three-part test?	13
14. Do courts consider a school's unequal athletic allocation decisions in violation of the three-part test to be "intentional discrimination"?	13
15. Did the three-part test and the 1996 Additional Clarification unlawfully amend the 1975 Title IX Regulations?	14
16. Are women less interested in athletics than men?	15
17. Do interest surveys really measure women's interest in sports?	15
18. Should sports participation opportunities be divided by comparing the relative interests of males and females?	16
19. What is the March, 2005 "Clarification" and why would it undermine the purpose of Title IX?	16
20. May a survey alone permissibly be used to demonstrate compliance with the law?	17
21. Should female students have the burden of showing that they are entitled to additional sports opportunities?	17
22. Does the new "Clarification" apply to high schools?	18

	<u>PAGE</u>
23. Should schools be permitted to restrict their surveys to enrolled and admitted students?	18
24. Should schools be permitted to treat a failure to respond to the survey as evidence of a lack of interest in participating in sports?	18
25. Is it valid to presume that young women's self-assessment of lack of ability to compete at the varsity level reflects an actual lack of ability?	19
26. Should schools be permitted to create club teams to "further assess the depth and breadth" of interest that is expressed through the on-line survey?	19
27. Are schools at risk if they use the survey approved in the Clarification?	19

PART III TRENDS IN THE DISCONTINUATION OF MEN'S AND WOMEN'S SPORTS

28. What was the net outcome with regard to total number of <u>teams</u> added and discontinued over what time period?	20
29. How did the experience of adding and discontinuing teams vary overall?	21
30. What types of schools dropped teams versus added teams?	21
31. Did any women's sports lose participants?	21
32. If wrestling lost participants while men's participation numbers increased on the whole, which male sports gained athletes?	22
33. Was the large increase in football participation a function of schools adding more football teams?	22
34. What was the impact of adding and discontinuing sports on athletic program expenditures?	22
35. How do we know that Title IX was not the cause of the elimination of men's sports?	23
36. Why are some higher education institutions blaming equal opportunity laws for budgetary decisions?	24
37. A recent report by the College Sports Council.(CSC) ¹ based on data from the 1981-82 NCAA Sports Sponsorship and Participation Rates Report presents estimates showing declines in men's sports and claims that these declines are related to Title IX. Is this report accurate?	24

PART IV ISSUES FACING SCHOOLS AND POSSIBLE SOLUTIONS

38. Why is it important to address financial solutions?	25
39. Are collegiate athletic programs self-supporting?	25
40. Are football and men's basketball programs self-supporting?	26
41. What is the extent to which institutions are "subsidizing" their athletic programs?	27
42. Are there financial data to support the existence of a Division I "arms race" that may influence the ability of educational institutions to comply with Title IX and maintain men's and women's participation rates?	28
43. Even though football and basketball receive large portions of athletics budgets, do these programs support other sports? If so, should they receive special consideration?	34
44. Does Title IX enforcement hurt football programs?	34

¹ College Sports Council (CSC) Longitudinal Study of NCAA Participation Data (College Sports Council), 2007.

	<u>PAGE</u>
45. Is it true that winning football programs aid in institutional development (i.e., increased fundraising for non-athletic program purposes)?	34
46. Do financial pressures show signs of abating?	34
47. Is it likely that financial pressures will continue to erode the ability of institutions to support broad-based athletic programs?	35
48. What are some of the budget choices available to institutions that face budget constraints?	35
49. How have institutions that have added women's sports programs without cutting men's sports programs achieved that goal?	36
50. Are there new financial solutions that should be considered to address the current budget crisis in intercollegiate athletics?	36
PART V: POLICY RECOMMENDATIONS	39
APPENDICES	
A Analysis of CSC Longitudinal Study of NCAA Participation Data by John J. Cheslock	41
B. Limitations of the Department of Education's Online Survey Method for Measuring Athletic Interest and Ability on U.S.A. Campuses by Christine Grant and Don Sabo	45

PREFACE: PRIMARY SOURCES OF DATA

The data used throughout this report are based on the following most recent sources of athletic participation and financial information. A shortened citation system (i.e., Fulks, 2005) replaces footnotes or endnotes for that purpose. Footnotes are used for explanatory comments and citations for references other than those listed below. When reports cover different time periods or groupings of institutions, multiple tables are used to provide more comprehensive views of trends and numbers.

2005-2006 High School Athletics Participation Survey. National Federation of State High School Associations, 2006.

Citation = NFHS, 2006

High school participation data have been available from 1971-72, the year Title IX was passed to the present and may be obtained from the National Federation of State High School Athletic Associations, P.O. Box 690, Indianapolis, IN 46202, Phone: (317) 972-6900, Fax: (317) 822-5700, www.nfha.org

Cheslock, J. (forthcoming). Title IX Reality Check - Who's Playing College Sports? East Meadow, NY: Women's Sports Foundation, June, 2007. .

Citation = Cheslock, 2007

Due to be released on June 5, 2007, this report represents the most comprehensive analysis of collegiate athletic participation. The report examines participation changes over the 1995-96 through 2004-05 period for the same 738 NCAA institutions, which enables an analysis of participation changes controlling for growth in the size of this athletic governance organization. The report also examines participation rates for 1,895 community and four-year colleges over the 2001-02 through 2004-05 period. After June 7, contact: Women's Sports Foundation, Eisenhower Park, East Meadow, NY 11554, Phone: (516) 542-4700, Fax: (516) 542-4716, www.WomensSportsFoundation.org

DeHass, Denise. 2003-04 NCAA Gender-Equity Report. Indianapolis, IN: NCAA, 2006.

Citation = DeHass, 2006

http://www.ncaa.org/library/research/gender_equity_study/2003-04/2003-04_gender_equity_report.pdf, The National Collegiate Athletic Association 700 W. Washington Street, P.O. Box 6222, Indianapolis, IN 46206-6222, Phone: (317) 917-6222, Fax: (317) 917-6888, www.NCAA.org

Fulks, Daniel L. 2002-03 NCAA Revenues and Divisions I and II Intercollegiate Athletics Programs Report. Indianapolis, IN: NCAA, 2005.

Citation = Fulks, 2005

http://www.ncaa.org/library/research/i_ii_rev_exp/2003/2003D1aConfReport.pdf, The National Collegiate Athletic Association, 700 W. Washington Street, P.O. Box 6222, Indianapolis, IN 46206-6222, Phone: (317) 917-6222, Fax: (317) 917-6888, www.NCAA.org

United States General Accounting Office ("GAO"), (GA 01-128) Gender Equity: Men's and Women's Participation in Higher Education, December 2000.

Citation = GAO, 2000

A full copy of this report can be obtained at www.gao.gov. Search GAO Reports by date: December, 2000, and select *Gender Equity: Men's and Women's Participation in Higher Education*. This report examined the use of Prongs 1, 2 and 3 by institutions to meet Title IX athletics participation standards.

U.S. General Accounting Office Report (GAO-01-297). Intercollegiate Athletics: Four-Year Colleges' Experiences Adding and Discontinuing Teams, March 8, 2001.

Citation = GAO, 2001

A full copy of this report can be obtained at www.gao.gov. Search GAO Reports by date: March 8, 2001, and select *Intercollegiate Athletics: Four-Year Colleges' Experiences Adding and Discontinuing Teams*. The report made participation comparisons based on NAIA and NCAA data from 1981-82 to 1998-99. Athletic director survey data also compared the experience of adding and discontinuing teams from 1992-93 to 1999-00. This report examines the phenomena of adding and discontinuing sports teams. This report is being updated and the update is expected to be released late spring of 2007.

Vincente, Roberto. 1981-82 – 2004-05 Sports Sponsorship and Participation Report. Indianapolis, IN: NCAA, 2006.

Citation = Vincente, 2006

http://www.ncaa.org/library/research/participation_rates/1982-2005/1982_2005_participation_rates.pdf, National Collegiate Athletic Association, 700 W. Washington Street, P.O. Box 6222, Indianapolis, IN 46206-6222 , Phone: (317) 917-6222, Fax: (317) 917-6888, www.NCAA.org

PART I. THE LAW AND ITS IMPACT

Since enactment of Title IX of the Education Amendments of 1972, opportunities for women and girls in sports have increased dramatically. However, contrary to critiques of the impact of this law, these gains have not come at the cost of men's athletic opportunities. In fact, the number of athletic opportunities for men has also increased. Women still have far fewer athletic opportunities than men and spending on men's sports still dwarfs spending on women's athletics.

1. What is Title IX of the Education of Amendments of 1972?

A: Title IX of the Education Amendments of 1972 is the federal law barring sex discrimination in all facets of education, including sports programs. Title IX prohibits any federally funded education program or activity from engaging in sex discrimination. The statute 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. Section 1681.

2. How does Title IX apply to athletics?

A: Title IX requires that members of both sexes have equal opportunities to participate in sports and receive the benefits of competitive athletics. The law is exceedingly flexible, applying in a way to give schools a wide range of possible types of athletic programs. As a general matter, institutions do not have to offer any particular sport; neither men nor women have a right to play on particular teams. As long as a school provides equal participation opportunities to men and women overall, schools can decide for themselves how those opportunities should be allocated among sports or teams.

With respect to the benefits of competitive athletics, schools must ensure that male and female athletes are treated equally throughout the athletic program; including with regard to equipment and supplies; scheduling games and practices; financial support for travel and expenses; coaching; opportunities to get tutoring, where necessary; and locker rooms, fields and arenas, for example. Colleges and universities also must ensure that the overall share of athletic financial aid going to female athletes is the same as the percentage of female athletes participating in the athletic program. Specifically, athletic aid for female athletes must be within 1%, or one scholarship, (whichever is greater) of females' athletic participation rate, unless there are legitimate nondiscriminatory reasons to justify a larger disparity.

3. How does an institution show that it is offering equal participation opportunities?

A: There are three wholly independent ways to comply with Title IX's mandate that female students be provided equal participation opportunities. Schools may show that:

- the percentage of male and female athletes is the same as the percentage of male and female students enrolled at the school ("Prong One" or the "proportionality" prong), **OR**;
- they have a history and a continuing practice of expanding opportunities for the underrepresented sex, which is usually women ("Prong Two"), **OR**;
- they are completely and effectively accommodating the interests and abilities of female athletes ("Prong Three").

If a school can meet any *one* of these tests, it will be found to be in compliance with Title IX's participation requirements. This three-part test has been in effect for almost three decades and has been upheld by every one of the eight federal appeals courts that has considered it.

4. Does Congress support Title IX's application to athletics?

A: Yes. Congress has consistently taken steps to ensure that Title IX's mandate of equal education opportunities applies to athletics. In 1974, Congress rejected an amendment that would have exempted revenue-producing sports from Title IX coverage. Instead, Congress adopted the Javits Amendment, which affirmed the coverage of all sports and required Title IX regulations to take into account the nature of particular sports. Thus, for example, the regulations recognize that football uniforms cost more than swimsuits and do not require the same amount of money to be spent on each. In 1975, Congress held extensive hearings regarding the Title IX regulations, with particular attention focused on the need to address the pervasive sex discrimination in intercollegiate athletics. Congress accepted the Title IX regulations as consistent with the Javits Amendment. And, in 1987, Congress again examined the application of Title IX to athletic programs during consideration and passage of the Civil Rights Restoration Act. During this debate, many members of Congress cited Title IX's coverage of athletics with approval.

5. What is the federal government's role in enforcing Title IX?

A: Like any other statute, the federal government is to vigorously enforce the law and Title IX's implementing regulations and policies. It is not the federal government's role to protect or promote specific male or female sports or specific teams, particularly when the participants of those teams are already over-represented in the athletic department. Just as the federal government does not meddle in the specifics of the academic curriculum, schools are free to create their athletic programs in any non-discriminatory manner of their choosing.

The Department of Education's Office for Civil Rights (OCR) is the primary agency charged with making Title IX's mandate a reality. OCR has the power to withhold federal funding from a school that refuses to comply with the law, although OCR has never used this powerful tool. It is the federal government's role to vigorously ensure boys and girls,

men and women have equal opportunities in athletics. This important principle must be acknowledged.

6. Has Title IX helped to increase overall athletics opportunities for women and girls?

A. Yes. Opportunities for girls and women to play sports have increased by 904% at the high school level and 456% at the college level since 1972. See tables 1, 2, 3, 4 and 5.

7. Has men's overall participation in athletics decreased since the enactment of Title IX?

A. No. Opportunities for boys and men to play sports at the high school level have increased by 12.7% and by 30.8% at the college level since 1972. See tables 1, 2, 3, 4 and 5.

8. Have women achieved equity in participation rates compared to men's sports?

A. No. Females comprise 49% of the high school student population and receive only 41% of athletic participation opportunities. Females comprise 57% of the college student population and receive only 42% of athletic participation opportunities. Various studies consistently show that women are far from achieving equal opportunity in athletic participation. See tables 1, 2, 3, 4 and 5.

TABLE 1²
CHANGES IN INTERCOLLEGIATE PARTICIPATION BY GENDER - 1981-1999

Gender	1981-82	1998-99	Change in Number of Participants	Percentage Change
Female	90,100	162,783	+72,683	81%
Male	220,178	231,866	+11,688	5%

- GAO, 2001

TABLE 2
CHANGES IN INTERCOLLEGIATE PARTICIPATION BY GENDER – 2001-2004

Gender	2001-2002	2004-2005	Change	Percentage Change
Female	198,623	209,666	+11,043	5.6 percent
Male	285,215	295,180	+9,965	3.5 percent

- Cheslock, 2007³

² Table 1 data include participation figures obtained from both NCAA and NAIA institutions, rather than association participation data, thereby eliminating the factors of participation growth as a function of membership transfers between these organizations and duplicate counting due to dual association memberships. Only National Federation of State High School Associations (NFSHSA) high school participation and National Collegiate Athletic Association (NCAA) college participation data is available from 1971-72. National Association for Intercollegiate Athletics (NAIA) data is only available from 1981-82.

NCAA participation data was available for 1971-72. Table 3 shows that 2000-01 NCAA female participation still remains below men's pre-Title IX 1971-72 participation levels.

TABLE 3
CHANGES IN NCAA PARTICIPATION SINCE TITLE IX

Gender	1971-1972	2004-2005	Change	Percent Increase
Female	29,977	166,728	136,751	456 percent
Male	170,384	222,838	52,454	30.8 percent

- *Vincente, 2006*

At the high school level, the growth of female participation has also been significant. However, female participation in high school is 1.3 million opportunities below male participation levels and girls still have not reached the level of participation opportunities that boys had in 1972. See Tables 4 and 5. Disturbingly, over the last five years, the girls' high school participation gap has increased. See Chart 1.

TABLE 4
CHANGES IN HIGH SCHOOL PARTICIPATION SINCE TITLE IX

Gender	1971-1972	2005-2006	Change	Percent Increase
Female	294,015	2,953,355	+2,659,340	904 percent
Male	3,666,917	4,206,549	+539,632	14.7 percent

- *NFHS, 2006*

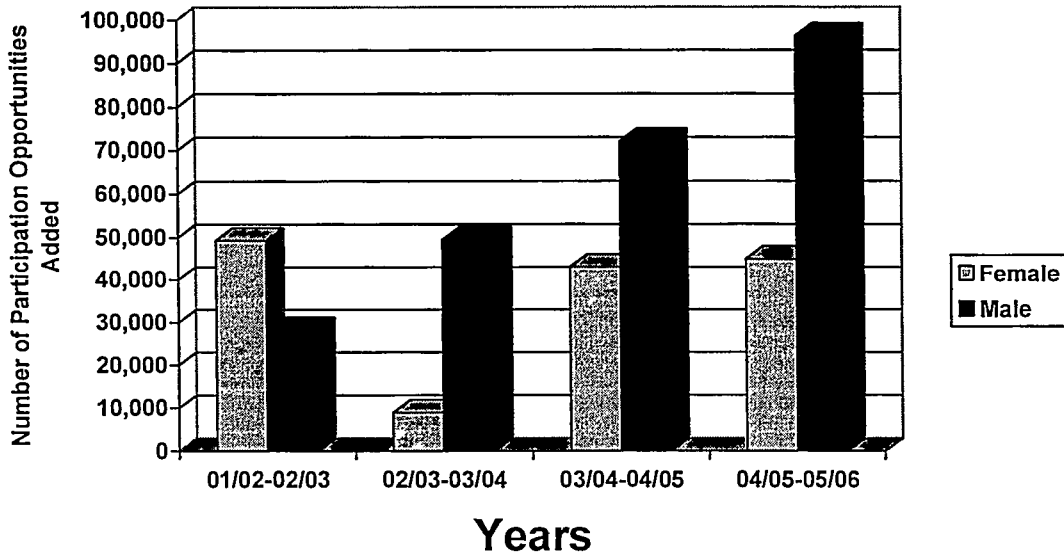
TABLE 5
HIGH SCHOOL PARTICIPATION GENDER GAP

	1971-72	1980-81	1990-91	2000-01	2005-06
Female	294,015	1,853,789	1,892,316	2,784,154	2,953,355
Male	3,666,917	3,503,124	3,406,355	3,921,069	4,206,549
Gender Gap	3,372,902	1,649,335	1,514,039	1,136,915	1,253,194

- *NFHS, 2006*

³ Table 2 examines participation data of 1895 community and four-year colleges over the 2001-02 through 2004-05 period.

Chart 1
High School Participation Opportunities Added Per Year



9. What is the current status of expenditures on men’s and women’s athletic programs?

A: While expenditures vary by competitive division, data show significant financial disparities in the support of men’s and women’s athletics in both competitive divisions for which financial data is available.⁴

In general, there appears to have been little discipline in exercising control over the growth of men’s program budgets while schools worked to achieve Title IX compliance. Further, the results of the 2006 NCAA Gender Equity Study show that the allocation of participation slots and dollars for women in Division I and II is still far from equitable (see Table 6 through 11).

⁴ Only the NCAA produces regular reports on athletic program revenues and expenses, and only for Divisions I and II.

MacDougall, Sock-Foon

From: Byrnes, Christopher
Sent: Thursday, March 05, 2009 5:40 PM
To: MacDougall, Sock-Foon
Subject: FW: Public Comments for May 11 briefing on Title IX
Attachments: AAUW public comment 407.pdf

From: Sherman, Tracy [mailto:shermant@aauw.org]
Sent: Tuesday, June 05, 2007 10:21 AM
To: Byrnes, Christopher
Subject: RE: Public Comments for May 11 briefing on Title IX

Mr. Byrnes,

I have attached public comments for the May 11th hearing on Title IX. Please let me know if I should email these to anyone else too.

Thanks again,
Tracy

From: Byrnes, Christopher [mailto:cbyrnes@usccr.gov]
Sent: Tuesday, May 08, 2007 1:08 PM
To: Sherman, Tracy
Subject: Public Comments for May 11 briefing on Title IX
Importance: High

Tracy:

The Staff Director has advised me to contact you regarding the email address for public comments on Friday's Title IX briefing. The public can submit comments to my email address at cbyrnes@usccr.gov.

Regards,

Chris Byrnes
Attorney-Advisor to the Office of the Staff Director
U.S. Commission on Civil Rights



**Public Comment of Lisa Maatz
Director of Public Policy and Government Relations
American Association of University Women**

**U.S. Commission on Civil Rights
“Title IX Athletics: Accommodating Interests and Abilities”
May 11, 2007**

Members of the Commission on Civil Rights, on behalf of the over 100,000 bipartisan members of the American Association of University Women, I thank you for the opportunity to submit public comments on the “Title IX Athletics: Accommodating Interests and Abilities” briefing.

AAUW has grave concerns regarding the U.S. Department of Education’s March 17, 2005 Title IX policy guidance, “Additional Clarification of Intercollegiate Athletics Policy: Three-Part Test — Part Three.” We believe this guidance undermines the law and the 35 years of progress made by women and girls as a result of this landmark legislation.

Since Title IX’s enactment, women’s participation in sports has increased. In 1971, 7 percent of high school varsity athletes were young women.¹ But by the 2005-2006 academic year, 41.2 percent of high school varsity athletes were young women.² This law has opened up not only opportunities to play sports but the chance to receive college scholarships and the significant health, emotional, and academic benefits that flow from sports participation.³ Meanwhile, Title IX’s goal of equal opportunity has yet to be fully realized. Female athletes continue to be shortchanged. Women’s teams receive 33 percent of recruiting dollars (or \$43 million less than men’s teams), 38 percent of athletic operating dollars (or \$1.17 billion less), and 45 percent of college athletic scholarship dollars (or \$148 million less).⁴ To reach the full potential of the law, the Department of Education should vigorously enforce Title IX rather than weakening any measure of compliance.

In particular, AAUW is deeply concerned that the clarification is a dramatic departure from the previous standards under which schools could demonstrate compliance with Title IX. We believe the March 2005 clarification lowers the bar for schools, making it easier for schools to prove compliance by using a less rigorous e-mail-based model survey.

AAUW firmly believes that the model survey does not accurately measure students’ interests. If students do not respond to the email it is assumed they are not interested. It does not make sense to assume that if students do not respond to an email they are not interested. People often ignore emails, and AAUW does not believe that SPAM is an effective or appropriate civil rights enforcement tool. Prong three of Title IX states that

schools must “demonstrate that interests and abilities of the members of that [underrepresented] sex have been fully and effectively accommodated by the present program.”⁵ AAUW firmly believes that there is no way that email, such as the model survey, can accurately demonstrate that students’ interests and abilities have been fully and effectively accommodated.

The March 2005 clarification could seriously jeopardize the number of athletic opportunities that are available to women on campus and it threatens to turn back the clock on much of the progress that has been made in increasing women’s athletic participation.

Research experts maintain that the results of interest surveys should not be used to limit athletic opportunities. In addition, the use of interest surveys to justify offering fewer opportunities to females has been rejected by the courts. Despite this, suggestions regarding the use of such surveys have consistently been used to advance the argument that institutions should be able to provide fewer athletics opportunities for women at the college level because they are “less interested in sports.” However, this argument cannot stand against the evidence: 2.9 million high school girls compete for less than 200,000 college female athletic participation opportunities.⁶ In addition, while women comprise 57 percent of the college student population,⁷ they receive just 43 percent of the opportunities to play intercollegiate sports.⁸ But more importantly, it is simply logical to assume that inherent athletic ability, like intelligence, is equally distributed by gender. As a result, fair distribution of athletic participation opportunities followed by rigorous enforcement of compliance must be determined by a broad set of indicators rather than a reliance on one flawed measure of interest and ability.

Before the March 2005 clarification, schools had to take other factors into consideration, such as the opinions of coaches and administrators and participation rates in sports in surrounding high schools or recreational leagues. These methods are more accurate measures of the demand for athletic opportunities among girls and women. The NCAA also supports considering additional factors. In June 2005, the NCAA Executive Committee urged the Department of Education to rescind the March 17, 2005 clarification and instead honor the Department’s 2003 commitment to enforce long-standing Title IX athletics policies.⁹ In addition, the NCAA Executive Committee urged colleges and universities to not use the procedures set forth in the March 17, 2005 clarification.¹⁰ This is a telling action from the main governing body for collegiate athletics, and should inform policy makers as to the wrongheaded-ness of the 2005 clarification.

The public overwhelmingly supports strong Title IX standards. A USA Today/CNN poll done in January 2003 found that seven of ten adults familiar with Title IX think the law should be strengthened or left alone.¹¹ Indeed, prior to the 2005 clarification, the policies have been in place through Republican and Democratic administrations and have been uniformly upheld by all eight of the federal appeals courts that have considered them.

Despite the public support Title IX enjoys, the issuance of the March 2005 guidance appears to be the latest in a series of attempts to weaken Title IX.

AAUW was encouraged by the Department of Education's July 2003 clarification letter that clearly reaffirmed Title IX and its enforcement mechanisms, as well as Secretary Spellings' supportive comments about Title IX during her confirmation hearings. However, the March 2005 action appears to signal the willingness of the U.S. Department of Education to undermine Title IX's effectiveness. AAUW has strongly urged the Department of Education to reconsider the guidance issued on March 17, 2005 and urges the U.S. Commission on Civil Rights to do the same.

Thank you for your consideration. If you have any questions, please contact Lisa Maatz, director of public policy and government relations, at 202/785-7793, or Tracy Sherman, government relations manager, at 202/785-7730.

¹ Women's Sports Foundation. "Playing Fair: A Guide to Title IX in High School & College Sports." October 2001.

<http://www.womenssportsfoundation.org/cgi-bin/iowa/issues/geena/record.html?record=829>

Accessed January 18, 2007.

² National Federation of State High School Associations. 2005-2006.

http://www.nfhs.org/web/2006/09/participation_in_high_school_sports_increases_again_confirms_nf.aspx. Accessed January 18, 2007.

³ Women's Sports Foundation. "Benefits—Why Sports Participation for Girls and Women: The Foundation Position, 2000." Research Report: Health Risks and the Teen Athlete, 2001.

<http://www.womenssportsfoundation.org/cgi-bin/iowa/issues/body/index.html> Accessed December 19, 2006.

⁴ National Collegiate Athletic Association. *NCAA Gender Equity Report, 2003-2004*. Statistics available from Women's Sports Foundation. <http://www.womenssportsfoundation.org/cgi-bin/iowa/issues/article.html?record=1017>. Accessed December 18, 2006.

⁵ 44 Fed. Reg. 71,481. December 11, 1979.

⁶ National Federation of State High School Associations. 2005-2006.

http://www.nfhs.org/web/2006/09/participation_in_high_school_sports_increases_again_confirms_nf.aspx. Accessed January 18, 2007.

⁷ National Center for Education Statistics. 2005 Digest of Education Statistics, Table 185. (Data is from 2004.)

http://nces.ed.gov/programs/digest/d05/tables/dt05_185.asp Accessed January 16, 2007.

⁸ National Collegiate Athletic Association. *Sports Sponsorship Report, 2004-2005*. Statistics available from Women's Sports Foundation. <http://www.womenssportsfoundation.org/cgi-bin/iowa/issues/article.html?record=1017> Accessed December 18, 2006.

⁹ NCAA News Release. "NCAA Leadership Groups Urge Department of Education to Rescind Additional Clarification for Title IX and Maintain 1996 Clarification." June 28, 2005.

¹⁰ NCAA News Release. "NCAA Leadership Groups Urge Department of Education to Rescind Additional Clarification for Title IX and Maintain 1996 Clarification." June 28, 2005.

¹¹ Brady, Erik. "Poll: Most Adults Want Title IX Law Left Alone." *USA Today*. January 7, 2003. http://www.usatoday.com/sports/college/other/2003-01-07-title-ix_x.htm Accessed December 19, 2006.

MacDougall, Sock-Foon

From: Byrnes, Christopher
Sent: Thursday, March 05, 2009 3:43 PM
To: MacDougall, Sock-Foon
Subject: FW: Comment on OCR online survey.
Attachments: 1200867975-Comment on Online survey.doc

From: Don Sabo [mailto:gradres@yahoo.com]
Sent: Tuesday, May 29, 2007 9:03 AM
To: Byrnes, Christopher
Subject: Comment on OCR online survey.

Dr. Dr. Byrnes,

I'm resending the attached comment on the Department of Education's online survey. Please confirm receipt. I appreciate the opportunity to provide some comment on this policy.

Thank you.

Don Sabo

**LIMITATIONS OF THE DEPARTMENT OF
EDUCATION'S
ONLINE SURVEY METHOD FOR MEASURING
ATHLETIC INTEREST AND ABILITY ON U.S.A. CAMPUSES**

Don Sabo, Ph.D. and Christine H.B. Grant, Ph.D.

June 2005

LIMITATIONS OF THE DEPARTMENT OF EDUCATION'S ONLINE SURVEY METHOD FOR MEASURING ATHLETIC INTEREST AND ABILITY ON U.S.A. CAMPUSES¹

Don Sabo, Ph.D. and Christine H.B. Grant, Ph. D.²

The Department of Education has endorsed using an online survey method as the sole means of assessing student interest in additional athletic participation opportunities. The March 17, 2005 *Additional Clarification on Intercollegiate Athletics Policy: Three-Part Test—Part Three* would allow colleges and universities to use a “Model Survey” alone to claim compliance with Title IX’s mandate that schools provide equal participation opportunities to male and female students. In particular, the results of the Department’s survey could be used to determine institutional compliance with the third prong of Title IX’s three-part participation test.³ Under this prong, an institution may comply if it can show that its athletics program fully and effectively accommodates the interests and abilities of the underrepresented sex.

Until it issued its new Clarification, the Department had interpreted the third prong of the test to require a systematic evaluation of a host of factors, beyond surveys, to assess whether institutions had fully met the interests and abilities of their female students. *See Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* (January 1996). The Department’s new “Additional” Clarification would eviscerate that interpretation and allow educational institutions to rely exclusively on a survey to measure unmet interest. But it would be methodologically misguided for institutions to utilize the Department’s on-line survey method as the sole measure of compliance with Prong 3. Instead, sound methodological guidelines dictate that multiple approaches to assessing the athletic interests and abilities of students be deployed. Moreover, the online survey authorized by the new Clarification suffers from serious methodological flaws.

¹ Preferred citation: Sabo, D. & Grant, C.H.B. (June, 2005). *Limitations of the Department of Education's Online Survey Method for Measuring Athletic Interest and Ability on U.S.A. Campuses*. Buffalo, NY: Center for Research on Physical Activity, Sport & Health, D'Youville College.

² Don Sabo is the Director of the Center for Research on Physical Activity, Sport & Health at D'Youville College. Christine H.B. Grant is an Associate Professor of Health and Sports Studies and the Women's Athletics Director Emerita at the University of Iowa.

³ Under Prong 1 of the three-part test, a school will be in compliance if its representation of male and female athletes is substantially proportionate to its male and female enrollment. For example, if females comprise 54% of the student body, the school will comply with Prong 1 if about 54% of its athletes are female. Under Prong 2, a school will be in compliance if it demonstrates a history and continuing practice of expanding opportunities for the underrepresented gender. Adding teams for women in order to balance team offerings for men, for example, would support compliance. Prong 3 requires a demonstration that the interests and abilities of the underrepresented sex have been fully and effectively accommodated by the school's existing program.

Sound Methodology Requires the Use of Multiple Measures to Evaluate Interest and Ability and Shows the Limitations of a Survey

Basic methodological principles, as well as substantial research, demonstrate that exclusive reliance on a survey to evaluate women's interests and ability to participate in sports is not likely to fairly reveal the true extent of those interests and abilities. This is so for several reasons:

1. Research shows that an individual's disposition and willingness to express personal interest in athletics is influenced by social norms, culture, gender, race, and ethnicity. For example:
 - a. Boys and men are apt to express interest in sports and identify as athletes because these interests are traditionally associated with appropriately "masculine" behavior and identity.⁴
 - b. Girls and women often have a higher set of behavioral standards for what it means to be an "athlete." Researcher and author Catherine McKinnon, for example, practiced the martial arts for five years, two hours per night, and five nights a week before she began to consider herself an "athlete."⁵ For many young women, increased involvement with sports entails rethinking traditional cultural notions about femininity.⁶
 - c. The pervasiveness of "Marianisma" in some Latina/Hispanic cultures (which emphasizes conformity to housewife-motherhood and discourages nontraditional roles for girls and women) can lead some Latinas to downplay interest and involvement in athletics.⁷

⁴ See Connell, R. W. (2000), *The Men and the Boys*, Berkeley, CA: University of California Press; Messner, M. A. (2002), *Taking the Field: Women, Men, and Sports*, Minneapolis, MN: University of Minnesota Press; Pollack, W. (1998), *Real Boys: Rescuing Our Sons from the Myths of Boyhood*, New York: Henry Holt and Company; Senay, E. & Waters, R. (2004), *From Boys to Men: A Woman's Guide to the Health of Husbands, Partners, Sons, Fathers, and Brothers*, New York: Scribner.

⁵ Stimpson, C. R. (2004), *The Atalanta syndrome: Women, sports, and cultural values*, Inaugural Helen Pond McIntyre Lecture, *Scholar & Feminist Online*, October 20.

⁶ See The President's Council on Physical Fitness and Sports Report (1997), *Physical Activity & Sport in the Lives of Girls: Physical and Mental Health Dimensions from an Interdisciplinary Approach*, Washington, D.C.: Department of Health and Human Services; Sabo, D., Miller, K.E., Melnick, M.J. & Heywood, L. (2004), *Her Life Depends On It: Sport, Physical Activity, and the Health and Well-Being of American Girls*, East Meadow, N.Y.: Women's Sports Foundation.

⁷ Melnick, M., Sabo, D. & Vanfossen, B. (1992), *Educational effects of interscholastic athletic participation on African-American and Hispanic youth*, *Journal of Adolescence*, 27(106):295-308; Melnick, M., Sabo, D. & Vanfossen, B. (1992), *Effects of interscholastic athletic participation on the social, educational, and career mobility of Hispanic boys and girls*, *International Review of Sport Sociology*, 17(1):57-75; Sabo, D., Melnick M. & Vanfossen, B. (1993), *The influence of high school*

2. Any failure to express interest likely reflects a lack of prior exposure, which in turn is the result of discriminatory limitations on women's opportunities. Interest cannot be measured apart from opportunity, particularly in the context of sports, where women's interest in athletics has been limited by the discrimination to which they have been – and continue to be – subjected. As a result, surveys cannot measure the extent to which women would show interest and ability if non-discriminatory opportunities were made available to them.
3. As a related matter, any survey of athletic interests is based on the problematic theoretical assumption that surveys of interest can be used to predict athletic behavior. Behavioral scientists have long observed the discrepancy between attitude and behavior. For example, millions of Americans who profess a keen interest in quitting smoking or losing weight continue to smoke and overeat. Particularly in the context of athletics, where women's opportunities have historically been limited, the converse is also true: individuals who fail to express interest in participating in sports will often embrace the chance to play if offered the opportunity. Many girls who would have expressed no interest in sports, for example, become enthusiastic participants after joining a team because a friend did so, because they were actively recruited by an enthusiastic coach, or because they were taken to tryouts by a pro-sport parent.

For all of these reasons, the Department's long-standing prior policies, including its 1996 Clarification, make clear that a survey of students is only one of many factors that schools must consider in evaluating whether they are fully meeting the interests and abilities of their female students. The 1996 Clarification also requires schools to consider requests by students to add a sport; participation rates in club or intramural sports; participation rates in sports in high schools, amateur athletic associations and community sports leagues in areas from which the school draws its students; and interviews with students, coaches, teachers and administrators.

The use of multiple measures, as set forth in the Department's 1996 Clarification, is methodologically sound and enhances the likelihood that schools will accurately assess the extent of their students' interest in additional sports opportunities. Moreover, this approach has worked as a practical matter. According to the Additional Clarification, between 1992 and 2002, approximately two-thirds of schools complied with Title IX's athletic participation requirements under the third prong of the three-part test.⁸ The evidence thus supports the overall efficacy of the Department's long-standing policies, and their reliance on a multiple-measure approach, for promoting athletic opportunity and assessing compliance with Title IX for both sexes.

athletic participation on post-secondary educational and occupational mobility: A focus on race and gender, *Sociology of Sport Journal* (Winter, 1993).

⁸ Additional Clarification at 2.

The Department's Survey Suffers from Methodological Flaws

Although the Department's Additional Clarification was issued with 177 pages of policy and text, the methodological procedures it authorizes and the rationales for those procedures need systematic review and assessment. Even a preliminary review of the Clarification, however, reveals serious concerns about the methodological efficacy of the Department's proposed survey.

1. *The Department's Survey is Likely to Generate Low Response Rates.* Online surveys often result in low response rates, thereby creating the risk of drawing conclusions based on inadequate sample sizes. Many campuses experience difficulty generating full responses to online surveys, which makes it likely that relatively few students would participate in the Department's online survey.

The problem of low response rates is exacerbated because the Department's survey does not take into account variation in student access to or use of e-mail. The Department's design deploys erroneous sampling logic by assuming that use of campus-based e-mail services is either supplied or utilized uniformly across student populations. But student access to and use of university and college e-mail services is varied and uneven. Some students frequently use college-based online services for e-mail; others do not use it at all. At institutions where frequent disruptions or periodic shutdowns of e-mail services occur, students may seek and secure commercial e-mail suppliers. Students who work full-time or part-time jobs may spend less time online and/or check e-mail less frequently. Poor students may not own a computer or be able to pay for convenient e-mail services. And numerous students may ignore campus e-mail systems in order to avoid real or perceived encounters with what they regard as bureaucratic or commercially invasive spam.

Some (but not all) campuses maintain policies requiring students to check email at certain intervals--for example, once a week or once a day. But even on campuses that do have policies that require students to check email regularly, one cannot guarantee that students actually conform to such policies, or that the institution maintains current (and reliably accurate) directories of e-mail.

Moreover, the Department's survey methodology does not take into account the accelerating diversity in telecommunication preferences among college students. The campus-based online survey design ignores both national and international trends among young and tech-savvy consumers to increasingly rely on text messaging through cell phones as a vehicle for interpersonal communication. Those students who are opting for these regional, "off-campus" communication vehicles would likely not be included in campus-based online surveys.

For all of these reasons, the Department's survey is likely to yield a low response rate. Additionally, nothing in the new Clarification makes clear how policymakers will determine when a large enough sample has been generated by a particular administration of the Department's survey.

2. *The Department's Methodological Procedure to Count Nonrespondents is Misguided.* The User's Guide for the Department's survey recommends that institutions conduct a "census" of the student population. Under a census methodology, there is no attempt to draw a sample from the student population. Rather, a census involves polling *all* students. But unless completing the online survey is somehow made mandatory (e.g., student registration is blocked until the survey is completed),⁹ it is highly unlikely that all students will complete it, based on the reasons set forth above, among others.

Recognizing this reality, the Department's survey guidelines treat the survey methodology as a "census" if all students are simply contacted and asked to go to a website and complete the questionnaire. If a student does not respond to the request, the Clarification specifically states that schools may interpret the nonresponse as evidence of lack of interest—in other words, that student is still "counted" as a respondent and, furthermore, operationally defined as someone with no interest in athletics. By equating nonresponses to a lack of athletic interest (past, present, and future), the Office for Civil Rights' methodological procedures do not meet basic scientific criteria for establishing reliable and valid survey results and interpretations.

Furthermore, even if students are screened at the point of registration using a campus ID, one cannot be certain that the person completing the registration is the student who is being targeted; e.g., it is not uncommon for students to have other people register for them. On many campuses, some students, faculty, and staff share their campus IDs and passwords, even though doing so is against University policy.

3. *The Department's Survey is Properly Understood to Embody a Sampling Methodology, but is Unlikely to Generate a Representative Sample.* Based on the foregoing analysis, what the Department's survey really relies on is a sampling methodology. But unfortunately, there is nothing in the new Clarification that ensures that the sample that responds to the on-line survey will be representative of the student population. One major problem is referred to as the "coverage error," which occurs, for example, when a researcher assumes that those who did not respond to the survey are similar in all other respects to those who did respond. In many instances, however, the respondents may be very different from the nonrespondents in ways that remain hidden or are not measured. When this occurs, the sample is compromised and the empirical results become suspect.

In addition, the Department's survey suffers from blind recruitment of respondents. A methodological bias often inherent in an online survey method is that participants are blind-recruited online, and thus, respondents self-select for participation rather than being randomly or strategically pre-selected from an existing population roster and individually

⁹ Even if the online survey is made mandatory, students who do not want to participate (irrespective of their interest or participation in athletics) may "protest" the requirement by providing inaccurate information (e.g., indicating "no interest/experience" at the beginning). This may be particularly likely since the survey will probably take many students more time to complete than is stated in the Clarification. The difficulty is that analysts would not know the extent of the inaccuracy.

targeted for recruitment by researchers. Much on-line survey research is done by posting a link to a survey on web pages visited by the target demographic--e.g., a link to the National Basketball Association website, a website for cat or dog lovers, or CNN.com. Analysis and inferences based on resulting data are limited in value because the respondents are entirely self-selected, compared to research designs in which respondents are contacted directly by phone, e-mail, or face-to-face and then enlisted in a study.

4. *Some Students May Misinterpret the Purpose of the Department's Survey.* The Department of Education survey is called "Assessment of Students' Athletic Interests & Abilities." Because those terms are undefined, some students may misinterpret the goal of the survey as an assessment of their interest in participating in intercollegiate sports rather than the broad spectrum of real and potential recreational, intramural, club, or junior varsity activities that might be part of campus life. But schools have an obligation to ensure gender equity in all athletic offerings, not just intercollegiate teams. Moreover, to the extent that these latter athletic activities are historically marginalized or comparatively under-funded within a specific campus community, students could fail to see them as viable or realistic choices in comparison with the notoriety and institutional centrality of the major intercollegiate sports. Personal interest in participating in a wide array of athletic activities could be skewed or dampened by a realistic assessment of the institutional inequalities that actually exist on campus. As a result, surveys are unlikely to capture the full range of athletic interests that institutions should consider in structuring each level of their sports programs.

Conclusion

The above deficits of the Department's online survey method call into question its empirical efficacy. As a result, it would be methodologically misguided for institutions to utilize the Department's online survey method as a sole measure of compliance with Prong 3. Moreover, the Clarification states that the Department "is not requiring that individual schools conduct elaborate scientific validation" of the procedures and results of the online survey.¹⁰ But the procedures and results are suspect unless they are validated based on established scientific and methodological criteria.

We encourage policymakers, government officials, educators, and researchers to fully evaluate the Department's proposed use of the online survey method to further elucidate these and other methodological concerns.

¹⁰ See <http://www.ed.gov/about/offices/list/ocr/docs/title0guidanceadditional.pdf>

MacDougall, Sock-Foon

From: Nancy Mion [myown220@aol.com]
Sent: Monday, May 28, 2007 5:57 PM
To: Byrnes, Christopher
Subject: Title IX Athletics: Error in using e-mail only to survey women's interest in athletics

Nancy Mion
220 Paulanna Avenue
Bayport, NY 11705-2131

May 28, 2007

Chris Byrnes
Attorney-Advisor to the Office of the Staff Director, U.S. Commission on Civil Rights

Dear Chris Byrnes:

In response to the USCCR's recent briefing on "Title IX Athletics: Accommodating Interests and Abilities," I join with the American Association of University Women in urging you to reconsider the Department of Education's March 2005 Prong three clarification.

I believe the March 2005 clarification undermines the law

Since it is assumed that students who do not reply to the email are not interested in participating in athletics, the survey results will likely understate the extent of women's interest in playing sports and freeze women's participation at its current level-- a level that reflects continuing discrimination against female athletes.

Here in NYS we feel very strongly about Title IX. The following is from our 2007-2009 AAUW NYS Public Policy Action Priorities. "To support a strong system of public education in New York State that promotes gender fairness, equity and diversity, AAUW New York State advocates: Vigorous enforcement of Title IX"

The implementation of Title IX has made a significant difference to girls and the women they become. My daughter who was in school just as Title IX was being enforced was deprived of athletic experiences. For example--She wanted to run track and was told she could run with the men but not compete. With the use of varied methods of collecting data the true demand was realized. More and more women are participating. To use only one source for a survey is absolutely inadequate. So often people do not respond to all their e-mails. Also women are apprehensive about opening an e-mail they are not sure about. The subject line could be misleading.

To determine the course of an athletic program by responses to e-mails only defeats the purpose of Title IX which has been proven to dramatically effect the future of thousands of women

Again, I urge the U.S. Commission on Civil Rights to publicly dismiss the March 2005 clarification and affirm the 1996 policy standards. Thank you for your attention to this matter.

Sincerely,

Nancy Mion
631.472.9377

MacDougall, Sock-Foon

From: Anne-Marie Mallon [amallon@keene.edu]
Sent: Monday, May 28, 2007 12:35 PM
To: Byrnes, Christopher
Subject: Title IX and equal opportunity

Anne-Marie Mallon
360 Huckle Hill Road
Bernardston, MA 01337-9413

May 28, 2007

Chris Byrnes
Attorney-Advisor to the Office of the Staff Director, U.S. Commission on Civil Rights

Dear Chris Byrnes:

In response to the USCCR's recent briefing on "Title IX Athletics: Accommodating Interests and Abilities," I join with the American Association of University Women in urging you to reconsider the Department of Education's March 2005 Prong three clarification.

I believe the March 2005 clarification undermines the law and the 35 years of progress made by women and girls as a result of this landmark legislation. This guidance lowers the bar for schools and could seriously jeopardize athletic opportunities for women on campus.

I do not believe that email surveys can accurately measure students' interest in participating in athletics, and neither do the experts—researchers, the courts, even the NCAA. The fact that the governing body for collegiate athletics urged colleges and universities to not use the procedures set forth in the March 2005 clarification should be a sign to policymakers that it should be rescinded.

I strongly believe that girls and women deserve a fair chance on the playing field of all sports so that they can be better players and leaders on the playing fields of the future for them: in the professions, in government, in the family, in the world.

Again, I urge the U.S. Commission on Civil Rights to publicly dismiss the March 2005 clarification and affirm the 1996 policy standards. Thank you for your attention to this matter.

Sincerely,

Anne-Marie Mallon

MacDougall, Sock-Foon

From: Marjorie Mead [margemead@cox.net]
Sent: Monday, May 28, 2007 12:13 AM
To: Byrnes, Christopher
Subject: Title IX - "Let's Play Fair!"

Marjorie Mead
11082 W. Timberline Dr.
Sun City, AZ 85351-1534

May 28, 2007

Chris Byrnes
Attorney-Advisor to the Office of the Staff Director, U.S. Commission on Civil Rights

Dear Chris Byrnes:

In response to the USCCR's recent briefing on "Title IX Athletics: Accommodating Interests and Abilities," I join with the American Association of University Women in urging you to reconsider the Department of Education's March 2005 Prong three clarification.

I believe the March 2005 clarification undermines the law and the 35 years of progress made by women and girls as a result of this landmark legislation. This guidance lowers the bar for schools and could seriously jeopardize athletic opportunities for women on campus.

I do not believe that email surveys can accurately measure students' interest in participating in athletics, and neither do the experts—researchers, the courts, even the NCAA. The fact that the governing body for collegiate athletics urged colleges and universities to not use the procedures set forth in the March 2005 clarification should be a sign to policymakers that it should be rescinded.

Since it is assumed that students who do not reply to the email are not interested in participating in athletics, the survey results will likely understate the extent of women's interest in playing sports and freeze women's participation at its current level—a level that reflects continuing discrimination against female athletes.

Even after 35 successful years of Title IX, female athletes continue to be shortchanged in recruiting dollars, operating dollars, scholarship dollars, and playing spots. Now is the time for the Department of Education to be vigorously enforcing Title IX rather than weakening the rules for compliance with it.

Let's play fair!

Again, I urge the U.S. Commission on Civil Rights to publicly dismiss the March 2005 clarification and affirm the 1996 policy standards. Thank you for your attention to this matter.

Sincerely,

Marjorie Mead
(623) 815-8522

MacDougall, Sock-Foon

From: Byrnes, Christopher
Sent: Thursday, May 24, 2007 10:21 AM
To: MacDougall, Sock-Foon; Marcus, Kenneth L.
Subject: FW: Dept. of Ed. needs to enforce not weaken Title IX

-----Original Message-----

From: Valerie McNay [mailto:vjm50@earthlink.net]
Sent: Thursday, May 24, 2007 10:07 AM
To: Byrnes, Christopher
Subject: Dept. of Ed. needs to enforce not weaken Title IX

Valerie McNay
PO Box 61666
Boulder City, NV 89006-1666

May 24, 2007

Chris Byrnes
Attorney-Advisor to the Office of the Staff Director, U.S. Commission on Civil Rights

Dear Chris Byrnes:

In response to the USCCR's recent briefing on "Title IX Athletics: Accommodating Interests and Abilities," I join with the American Association of University Women in urging you to reconsider the Department of Education's March 2005 Prong three clarification.

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Again, I urge the U.S. Commission on Civil Rights to publicly dismiss the March 2005 clarification and affirm the 1996 policy standards. Thank you for your attention to this matter.

Sincerely,

Valerie McNay

MacDougall, Sock-Foon

From: Byrnes, Christopher
Sent: Wednesday, May 23, 2007 2:01 PM
To: Marcus, Kenneth L.; MacDougall, Sock-Foon
Subject: FW: Changes to Title IX Regulations

-----Original Message-----

From: Dolores Halls [mailto:dhalls@nmsu.edu]
Sent: Wednesday, May 23, 2007 1:30 PM
To: Byrnes, Christopher
Subject: Changes to Title IX Regulations

Dolores Halls
2961 Valle Vista
Las Cruces, NM 88011-4824

May 23, 2007

Chris Byrnes
Attorney-Advisor to the Office of the Staff Director, U.S. Commission on Civil Rights

Dear Chris Byrnes:

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{

Again, I urge the U.S. Commission on Civil Rights to publicly dismiss the March 2005 clarification and affirm the 1996 policy standards. Thank you for your attention to this matter.

Sincerely,

Dolores Halls
(505) 522-4095

MacDougall, Sock-Foon

From: Byrnes, Christopher
Sent: Wednesday, May 23, 2007 1:00 PM
To: Marcus, Kenneth L.; MacDougall, Sock-Foon
Subject: FW: Do NOT weaken Title IX

-----Original Message-----

From: Virginia Ralston [mailto:vralston@comcast.net]
Sent: Wednesday, May 23, 2007 12:24 PM
To: Byrnes, Christopher
Subject: Do NOT weaken Title IX

Virginia Ralston
8348 Colton Cv
Germantown, TN 38139-3249

May 23, 2007

Chris Byrnes
Attorney-Advisor to the Office of the Staff Director, U.S. Commission on Civil Rights

Dear Chris Byrnes:

In response to the USCCR's recent briefing on "Title IX Athletics: Accommodating Interests and Abilities," I join with the American Association of University Women in urging you to reconsider the Department of Education's March 2005 Prong three clarification.

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Even after 35 successful years of Title IX, female athletes continue to be shortchanged in recruiting dollars, operating dollars, scholarship dollars, and playing spots. Now is the time for the Department of Education to be vigorously enforcing Title IX rather than weakening the rules for compliance with it.

Again, I urge the U.S. Commission on Civil Rights to publicly dismiss the March 2005 clarification and affirm the 1996 policy standards. Thank you for your attention to this matter.

Sincerely,

Virginia Ralston
(901) 758-2658

MacDougall, Sock-Foon

From: Jessica Echard [jessica@eagleforum.org]
Sent: Monday, June 04, 2007 11:42 AM
To: Byrnes, Christopher
Cc: MacDougall, Sock-Foon
Subject: Title IX Public Comment
Attachments: Echard Title IX comments.doc

Mr. Byrnes,

Attached please find my public comments submitted to the U.S. Commission on Civil Rights regarding Title IX.

Please confirm receipt of this email.

Thank you,
Jessica

Jessica Echard
Eagle Forum
Executive Director
202-544-0353
jessica@eagleforum.org

"Let us with caution indulge the supposition that morality can be maintained without religion. Reason and experience both forbid us to expect that our national morality can prevail in exclusion of religious principle."
~President George Washington

Public Comment on Title IX

Submitted June 4, 2007

Submitted via email to Chris Byrnes

Eagle Forum is a nonprofit organization founded in 1972. Eagle Forum has long been an advocate for enhancing opportunities for men and women without ignoring important differences between the genders.

I respectfully submit the following comments about Title IX for the consideration by the U.S. Commission on Civil Rights, in connection with its recent hearing on the student survey.

As a basketball and softball varsity letter-winner in high school and a member of my college Academic All American Cross Country team, I know the benefits of participating in women's sports. Without question, the physical training habits and mental discipline I developed through participating in women's sports have helped me achieve great things very early in my professional life, as I currently serve as the Executive Director of Eagle Forum at the age of 25.

One of the issues I work on at Eagle Forum is Title IX. Before I examined the policy side of equality in sports I never quite made the connection between what I experienced and observed in college athletics and how this policy affects the long term societal stability of relationships between men and women.

The use of the "proportionality test" in measuring Title IX leads directly to gender quotas on college campuses. Many schools are fulfilling this test by eliminating men's teams. Requiring the same proportion of women in sports to women enrolled in the school does not help women, but is, in fact, hurtful to us in the long run.

As a female athlete, I learned much from my male counterparts—often how to train harder and better, as well as how to dig deeper and go beyond what I thought I could accomplish. When we practiced against the boys' basketball team in high school, we were faster and stronger the next time we took the court against another female team. In college, when I wanted to quit on a hot summer day training for the opening race of the cross country season, the men's team cheered me on and a couple of them came back to run with me despite their own exhaustion. These experiences could easily have been wiped away had the Title IX proportionality test wrecked its havoc on my campus and forced the elimination of these men's teams.

As a life-long female athlete, I am naturally strong in every sense of the word—physically, intellectually, and mentally. Most of my fellow female athletes share this characteristic. We want equally strong men in our lives—brothers, friends, boyfriends, and husbands. Men who challenge us and support us. These strong men can be shaped and molded to achieve greatness the same way as female athletes—through the opportunity to train, compete, and succeed on the athletic field.

Taking away these opportunities and forcing schools to eliminate men's sports teams leaves many men less interested in college and women less able to find male counterparts that adequately challenge her to be the best she can be.

Instead of eliminating men's teams, I suggest eliminating the proportionality test and instead instituting a survey given to the student body to gauge actual interest in athletic programs. This will allow all students a voice in what programs and teams are offered, ensuring a level and full playing field.

Thank you for considering these comments.

Jessica Echard
Executive Director
Eagle Forum
316 Pennsylvania Ave. SE
Suite 203
Washington, D.C. 20003 \\
jessica@eagleforum.org
202-544-0353

Briefing:

Title IX Athletics: Accommodating Interests and Abilities

U. S. Commission on Civil Rights

Friday, May 11, 2007

Washington, DC

CONTENTS

1. Concept Paper
-

2. Panelists' Biographies and Testimonies
-

3. Department of Education, Office for Civil Rights'
Documents and Related Materials
-

4. The Discussion
-

5. Appendix
-

Title IX Athletics: Accommodating Interests and Abilities

Title IX of the Higher Education Act prohibits discrimination on the basis of sex in any education program or activity receiving federal financial assistance, including athletics. Since 1979, one way in which eligible educational institutions can show compliance with Title IX is by demonstrating that the institution's present program "fully and effectively" accommodates the "interests and abilities" of the sex that is underrepresented among intercollegiate athletes. The Office for Civil Rights (OCR) of the U.S. Department of Education (Department), responsible with enforcing Title IX, issued further guidance on this compliance option in March 2005. Under this guidance, an institution will be found in compliance with this option unless there exists a sport (s) for the underrepresented sex for which all three of the following conditions are met: (1) unmet interest sufficient to sustain a varsity team in the sport(s); (2) sufficient ability to sustain an intercollegiate team in the sport(s); and (3) reasonable expectation of intercollegiate competition for a team in the sport(s) within the school's normal competitive region. Thus, schools are not required to accommodate the interests and abilities of all their students or fulfill every request for the addition or elevation of particular sports, unless all three conditions are present. This guidance also included a model survey instrument to measure student interest in participating in intercollegiate varsity athletics. When this model survey indicates insufficient interest to field a varsity team, OCR will not exercise its discretion to conduct a compliance review of that institution's implementation of the three-part test. This guidance was issued at a time when critics of Title IX claimed that rigid compliance forced the cancellation of many educational programs or teams for men. This briefing will evaluate and identify ways of improving the effectiveness and efficiency of the Department of Education's enforcement of Title IX.

Scope: The Commission will seek information to address the following issues:

- Extent to which schools under OCR jurisdiction have used new guidance to demonstrate this option for compliance with Title IX
- Extent to which the new guidance has increased the degree or reduced the cost of compliance
- Data on interest and ability in intercollegiate athletics indicated by use of the model survey

Methodology: The Commission will host a briefing to address the above issues.

Speakers may include, but are not limited, to the following:

- Speaker from the Office for Civil Rights
- Speaker from National Collegiate Athletic Association
- Speaker from the National Women's Law Center
- Critic of Title IX regulations
- Athletic director of Division I school

The Commission may also issue interrogatories and document requests to the Office for Civil Rights. This briefing would last approximately two to three hours, with four to five speakers allotted 10 to 15 minutes each, and the remaining time allotted for questions and answers. Projected out-of-pocket costs would range from \$1,300 to \$2,200.

Panelists' Written Statements and Biographies

Daniel Cohen

Senior Associate
ROGERS & HARDIN LLP



ROGERS & HARDIN

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Daniel A. Cohen, Esq.

Daniel A. Cohen is a Senior Associate with the law firm of Rogers & Hardin LLP in Atlanta.

Since 2005, Mr. Cohen has studied the legal implications of the OCR's 2005 Additional Clarification and its Model Survey. The article he co-authored regarding compliance with Prong Three of Title IX was published in The Vanderbilt Journal of Entertainment and Technology Law: Navigating into the New "Safe Harbor" - Model Interest Surveys as a New Tool for Title IX Compliance Programs, 8 Vand. J. Ent. & Tech. L. 1 (2005). His work in the area of Title IX has been cited in the USA Today, the NCAA News, the Chronicle of Higher Education and elsewhere.

Mr. Cohen received his undergraduate degree from Duke University and his law degree from the Vanderbilt University School of Law.

In addition to Title IX, Mr. Cohen's practice focuses on litigation and trial practice, including the areas of products liability, professional malpractice, and commercial litigation.

For more information, please visit www.rh-law.com/TitleIX.

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May 8, 2007

Mr. Kenneth L. Marcus
Staff Director
U.S. Commission on Civil Rights
624 Ninth Street, NW
Washington, DC 20425

Re: "Title IX Athletics: Accommodating Interests and Abilities"
U.S. Commission on Civil Rights

Dear Mr. Marcus:

This letter is written in response to your May 4, 2007 letter regarding the upcoming U.S. Commission on Civil Rights briefing on "Title IX Athletics: Accommodating Interests and Abilities." In your letter, you asked me to comment in writing on five specific issues. Furthermore, you requested my comments by May 8, so that they may be reviewed by the Commissioners prior to the May 11 briefing.

Due to the short timeframe for comment, my statements herein will be brief. Further information responsive to your letter may be found in the article that John J. Almond and I coauthored in The Vanderbilt Journal of Entertainment and Technology Law: Navigating into the New "Safe Harbor" - Model Interest Surveys as a New Tool for Title IX Compliance Programs, 8 Vand. J. Ent. & Tech. L. 1 (2005).

I look forward to expanding upon these comments during the May 11 briefing.

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Mr. Kenneth L. Marcus

May 8, 2007

Page 2

Question No. 1: According to the Department of Education's (DOE's) March 17, 2005 guidance, if a college or university chooses prong three of the three-part test, it will be found to be in compliance with Title IX "unless there exists a sport(s) for the underrepresented sex for which all three of these conditions are met: (1) unmet interest sufficient to sustain a varsity team in the sport(s); (2) sufficient ability to sustain an intercollegiate team in the sport(s); and (3) reasonable expectation of intercollegiate competition for a team in the sport(s) within the school's normal competitive region." The DOE guidance includes a Model Survey to measure student interests and abilities in intercollegiate varsity athletics. Please comment on strengths and weaknesses of DOE's new guidance, including those of the Model Survey.

The Additional Clarification provides a better-defined and more objective road map to compliance under Prong Three, as compared to prior guidance.

Its primary feature is a "Model Survey" that is designed to help schools measure the interest component of Prong Three's test. Historically, schools used a wide variety of surveys to attempt to measure the interests of their students. In 2003, pursuant to the OCR's Further Clarification and following the nationwide study of Title IX by the Secretary of Education's Commission on Opportunities in Athletics, the OCR commissioned expert statisticians at the NCES and the NISS to study the various survey mechanisms that schools had submitted to the OCR between 1992 and 2002 in support of their efforts at Prong Three compliance. As a result of this analysis, the statisticians designed a streamlined "Model Survey" based on the best practices and collective learning of the various schools over a decade of Title IX enforcement. At a minimum, the Model Survey is a helpful addition to the Title IX landscape as it is a better tool than the patchwork of surveys that schools had been using.

Furthermore, with the Model Survey as its centerpiece, the Additional Clarification reorganizes and focuses the OCR's pre-existing and vague Prong Three guidance to create a

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Mr. Kenneth L. Marcus
May 8, 2007
Page 3

concise and practical road map to compliance with each element of Prong Three. Most notably, the OCR provides specific guidance for how schools should administer the Model Survey and states that, if a school properly follows the OCR's guidance in administering the Model Survey, then the OCR will defer to the Survey's results. Thus, the Model Survey carries a presumption of accuracy if it is properly administered according to the OCR's dictates.

The Additional Clarification also provides a straightforward, mathematical method for measuring Model Survey results – a new objective component for measuring compliance under Prong Three.

Of course, the Additional Clarification provides that schools retain flexibility in the ways that they can comply with Title IX. Thus, schools are free to continue to monitor other indications of interest for purposes of demonstrating Prong Three compliance. The Additional Clarification also provides guidance in this regard, outlining requirements for alternative survey mechanisms.

Conducting the Model Survey is the first, and potentially dispositive, step under the OCR's recommended approach to Prong Three compliance. If the Model Survey, or another interest-measuring mechanism, demonstrates that requisite interest exists, the Additional Clarification then provides further guidance on the assessment process that must take place to gauge whether there is sufficient ability to sustain an intercollegiate team in that sport.

Finally, the Additional Clarification clarifies a few issues of Title IX enforcement. For example, although the burden of proof in an OCR investigation has always been on the OCR, the

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Mr. Kenneth L. Marcus
May 8, 2007
Page 4

OCR's prior guidance led to some confusion. See 8 Vand. J. Ent. & Tech. L. at 33 ns.134-135.

That issue has now properly been put to rest.

For further information about the strengths of the Additional Clarification, I refer you to our article.

The Additional Clarification, however, is not without its weaknesses.

Much of the public criticism of the Additional Clarification relates to the fact that it permits the Model Survey to be distributed via email. Much of this criticism is unfounded when viewed in light of the OCR's requirements for Survey administration, but it nonetheless reflects an area of the Additional Clarification that could be improved upon.

The Additional Clarification requires that the Model Survey be administered "in a manner that is designed to generate high response rates." Additional Clarification at 7. The Additional Clarification then provides two examples of Model Survey distribution methods that are designed to generate high response rates. First, the OCR suggests that the Model Survey be administered in a way that requires all students to respond to it, such as by incorporating it into the mandatory class registration process. Second, the Additional Clarification also acknowledges that a school may administer the Model Survey to its students by "send[ing] an email to the entire target population that includes a link to the Model Survey." Id. If this email method is used, however, the OCR requires that "the school [have] accurate email addresses, [that] students have access to email, and [that] the school [take] reasonable steps to follow-up with students who do not respond." Id. If a school fails to take reasonable follow-up steps, its Model Survey results will not be deemed reliable by the OCR. Furthermore, the OCR will

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Mr. Kenneth L. Marcus

May 8, 2007

Page 5

assume that nonresponses to the Model Survey are indicative of a lack of interest only "if all students have been given an easy opportunity to respond to the census, the purpose of the census has been made clear, and students have been informed that the school will take nonresponse as an indication of lack of interest." Id. at 6.

Although the follow-up requirements associated with an email distribution of the Model Survey must be read in the context of the other Additional Clarification safeguards that attempt to ensure reliability in the Model Survey results, the vagueness of the follow-up requirement has contributed to the criticism of the Additional Clarification. Although the OCR strives to allow schools flexibility in the administration of their Title IX programs, this is an area where more specific guidance might have been appropriate. Alternatively, it may be advisable for a school to employ a mandatory-response method of administration, rather than employing the email distribution method, so as to avoid this criticism.

Another criticism of the Additional Clarification is that it allows for Model Survey results to be dispositive with respect to the measurement of unmet interest. Although the Additional Clarification does not call for ignoring other indications of interest, that is how some have construed the Additional Clarification. The OCR's premise, however, seems to be that a properly-administered Survey that generates a high response rate will necessarily pick up most other potential indications of interest on campus. This seems to be a reasonable premise if the Survey indeed is properly administered and generates a high response rate. Nonetheless, the OCR may have been able to avoid much of this criticism if it had encouraged the consideration of other indications of interest in the Additional Clarification along with the Model Survey.

ROGERS & HARDIN

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Mr. Kenneth L. Marcus

May 8, 2007

Page 6

Additionally, just as with prior guidance issued by the OCR and others, the Additional Clarification is vague in some areas. The OCR's continuing goal is to maintain institutions' flexibility and control over their athletic programs, but that continues to lead to some ambiguity under Prong Three with regards to the sufficiency of certain compliance efforts. See, e.g., 8 Vand. J. Ent. & Tech. L. at 25 n.105 & 26 n.110.

There may be other areas in which the Additional Clarification could be improved, and some of these are included in our article.

Question No. 2: Some key findings from the Model Survey and the ways in which (a) OCR and (b) colleges and universities have made use of the survey data.

Schools have not been publicly disclosing their use of the Model Survey. It appears that few schools to date have taken advantage of the Model Survey.

That is unfortunate because the OCR's new guidance may help a number of schools with their compliance efforts. As of the 2004-2005 school year, less than 15% of the Division I-A schools could objectively demonstrate their compliance with Title IX, according to Chronicle of Higher Education research.¹ Furthermore, approximately two-thirds of the schools investigated by the OCR between 1992 and 2002 attempted to rely on Prong Three for their compliance

¹ This statistic is measured by strict proportionality. Only 17 of 120 schools investigated by the Chronicle for the 2004-2005 school year could show that their ratio of female athletes met or exceeded their ratio of women within the student body. Once schools strive to achieve substantial proportionality – which is permitted under the law – they move into a more subjective area of compliance. Furthermore, compliance with Prong Two and Prong Three is entirely subjective under pre-2005 guidance. The foregoing is not meant to suggest that any schools are not in compliance with Title IX, but is merely intended to highlight the absence of demonstrable evidence available to schools under most methods for compliance with Title IX. Without the legal protection of a measurable Prong One safe harbor, such schools are exposed to the possibility of OCR investigations and litigation as to their subjective compliance efforts – with no guarantee that even their good faith attempts at compliance would be considered sufficient by OCR investigators or courts. The Additional Clarification provides additional guidance for obtaining compliance with the law and provides at least one objective measure for demonstrating compliance that the OCR will presume to be accurate.

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Mr. Kenneth L. Marcus
May 8, 2007
Page 7

efforts. For schools that are not demonstrably in compliance with Prong One, and especially for those schools attempting to rely on Prong Three, the Additional Clarification provides guidance that could help them achieve and demonstrate compliance with Title IX and obtain assurance from the OCR as to when compliance has been achieved.

Question No. 3: The extent to which each of the three prongs are used by colleges and universities to demonstrate compliance with Title IX since 1979 till the Department of Education's new guidance of March 17, 2005, and the degree to which colleges and universities have shifted, if any, to the new guidance since that date.

According to the data supplied by the OCR to the National Center for Education Statistics, between 1992 and 2002, the OCR investigated 130 schools for Title IX compliance, of which only thirty-six schools were able to demonstrate compliance with Prong One and a mere eight with Prong Two. User's Guide at 3. Thus, approximately two-thirds of the schools investigated (86 out of 130) sought to demonstrate their compliance with Title IX under Prong Three. Id. Of these, approximately three-fourths of the institutions (67 out of 86) did so by means of a student interest survey. Id.

Further, according to the Chronicle of Higher Education, for the 2004-2005 school year, less than 15% of the Division I-A schools it investigated (17 out of 120) could demonstrate compliance with Title IX when measured by strict proportionality.

To my knowledge, colleges and universities have not shifted to any significant degree to the guidance offered in the OCR's 2005 Additional Clarification. For many of the schools currently relying on Prong Three, this may not be a wise decision. Such schools must measure and fully accommodate the athletic interests of the underrepresented gender in any event to

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Mr. Kenneth L. Marcus

May 8, 2007

Page 8

comply with Prong Three. Through the Additional Clarification, such schools were given a better-defined and more objective method for measuring compliance and reaching a Prong Three safe harbor – and gaining the OCR’s deference that it had, indeed, been reached. Further, for those schools employing some survey mechanism to measure interest, there seem to be few reasons not to substitute the Model Survey, which was designed by expert statisticians based on the best practices and collective learning of the various schools over a decade of Title IX enforcement. Finally, such schools retain the flexibility to implement the Additional Clarification along side other compliance efforts, such as monitoring the other indicia of student interest outlined in the 1996 Clarification.

Question No. 4: If the new guidance has made it easier for colleges and universities to demonstrate compliance with Title IX compared to prong one and to prong two and if compliance with Title IX has generally improved over time, particularly since the new guidance’s introduction.

I believe that the Additional Clarification has made it easier for colleges and universities to demonstrate compliance with Title IX as compared to Prong Two, which remains entirely subjective. Although demonstrating compliance with Prong One is more objective and straightforward, achieving Prong One compliance can be onerous because it often requires the addition or elimination of teams.

As compared to the pre-2005 guidance on Prong Three, the Additional Clarification has provided a more demonstrable and objective path to compliance, as discussed above and in our article. Under the Additional Clarification, schools now have an objective way to demonstrate their compliance with Prong Three and a roadmap for proving compliance with the other

ROGERS & HARDIN

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Mr. Kenneth L. Marcus
May 8, 2007
Page 9

components of Prong Three. Although Prong Three remains subjective in many ways, it may be more feasible for many schools to comply with Prong Three under the Additional Clarification.

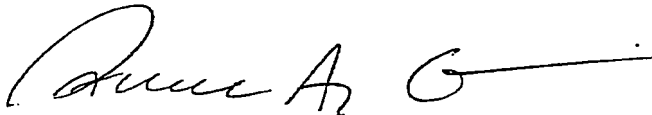
Question No. 5: If the cost of using the new guidance (such as staffing) to show compliance is the same, higher, or lower than that of using prong one or prong two for (a) OCR and (b) the institutions.

It is difficult to assess the costs of following the Additional Clarification as compared to compliance under Prong One or Prong Two, because each prong provides various ways of complying with the law. For example, a school could choose to add a new team to comply with any of the prongs, such as: (1) to improve its proportionality ratio under Prong One; (2) to expand opportunities for its female students to compete in varsity athletics under Prong Two; or (3) in response to a showing of unmet interest under Prong Three.

As discussed in our article, the costs to a Prong Three school of implementing a Model Survey should not be materially greater than other efforts they are required to take under any non-Model Survey effort to comply with the law. See, e.g., 8 Vand. J. Ent. & Tech. L. at 36-37.

I hope that these responses are helpful to the Commissioners as they prepare for the May 11 briefing. Please let me know if you have any questions about the matters contained herein or any other matters before May 11. Otherwise, I look forward to seeing you then.

Very truly yours,



Daniel A. Cohen

DAC/cm

○ ROGERS & HARDIN

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June 1, 2007

Mr. Kenneth L. Marcus
Staff Director
U.S. Commission on Civil Rights
624 Ninth Street, NW
Washington, DC 20425

Re: "Title IX Athletics: Accommodating Interests and Abilities"
U.S. Commission on Civil Rights

Dear Mr. Marcus:

○ Thank you for the recent opportunity to address the U.S. Commission on Civil Rights at its May 11 briefing on "Title IX Athletics: Accommodating Interests and Abilities."

This letter is intended to supplement my pre-briefing statement in light of the discussion at the briefing regarding comparisons between the Additional Clarification and the 1996 Clarification.

The Additional Clarification and the 1996 Clarification are not inconsistent. Like the 1996 Clarification, the Additional Clarification provides guidance for how schools can measure the athletic interests of their students.

○ The 1996 Clarification assumes that schools will only use non-robust survey mechanisms to gauge the interests of their students. In that scenario, schools would have to monitor several other measures of interest in order to ensure that evidence of interest will not be overlooked. The Additional Clarification provides schools with an option of using a survey mechanism that, if properly administered, should prevent the interests of current or admitted students from being

ROGERS & HARDIN

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Mr. Kenneth L. Marcus

June 1, 2007

Page 2

overlooked. Thus, most other ways of monitoring student interest, including those delineated in the 1996 Clarification, are unnecessary under the Additional Clarification – but they need not be ignored by schools or be considered to be inconsistent with the Model Survey approach.¹

With respect to Prong Three, the 1996 Clarification emphasizes that “institutions have flexibility in choosing a nondiscriminatory method of determining athletic interests and abilities provided they meet certain requirements.” Those requirements include “that an institution’s assessment [of interest] should reach a wide audience of students and should be open-ended regarding the sports students can express interest in, [but] OCR does not require elaborate scientific validation of assessments.” Moreover, “[t]hese assessments may use straightforward and inexpensive techniques, such as a student questionnaire or an open forum.”

In other words, the 1996 scheme for compliance assumes that a wide array of anecdotal evidence will need to be collected because only non-scientific questionnaires and the like will be used to gather direct evidence of interest. In this regard, the 1996 Clarification lists a number of factors that schools can monitor for evidence of unmet interest:

- [1.] requests by students and admitted students that a particular sport be added;
- [2.] requests that an existing club sport be elevated to intercollegiate team status;
- [3.] participation in particular club or intramural sports;

¹ Arthur L. Coleman, who served as deputy assistant secretary for civil rights in the department under President Clinton and helped write the 1996 Clarification, said “Broadly speaking, this [the 2005 Additional Clarification] tracks precisely with what OCR put out in 96 in terms of its clarification. The material shift here is less one about substantive legal standards than issues of evidence.” Welch Suggs, *New Policy Clarifies Title IX Rules for Colleges; Women’s Group Objects*, CHRON. HIGHER EDUC., April 1, 2005, <http://chronicle.com/weekly/v51/i30/30a04701.htm>.

ROGERS & HARDIN

A LIMITED LIABILITY PARTNERSHIP

Mr. Kenneth L. Marcus

June 1, 2007

Page 3

- [4.] interviews with students, admitted students, coaches, administrators and others regarding interest in particular sports;
- [5.] results of questionnaires of students and admitted students regarding interests in particular sports; and
- [6.] participation in particular interscholastic sports by admitted students.

The 1996 Clarification also calls for the monitoring of participation rates in local high schools and other indirect indicia of interest, but the Clarification itself minimizes the importance of such factors: "While these indications of interest may be helpful to OCR in ascertaining likely interest on campus, particularly in the absence of more direct indicia, an institution is expected to meet the actual interests and abilities of its students and admitted students."²

With respect to the six main factors outlined in the 1996 Clarification, the monitoring of at least three of them should be unnecessary if the school administers a robust interest survey that generates a 100% response rate. The fifth factor – questionnaires – essentially duplicates the function of a survey. And the first factor and part of the fourth factor³ relate to students expressing their interests, which is exactly what a well-administered survey is designed to gather.

The second factor from the 1996 Clarification is fully preserved in the Additional Clarification. The Additional Clarification states that the OCR will not presume Model Survey results to be controlling in the face of "other direct and very persuasive evidence of unmet

² The Additional Clarification does not speak to the inclusion or exclusion of such factors because they are outside of the requirements of the law – they do not pertain to the interests and abilities of current or admitted students.

³ The remaining parts of the fourth factor – "interviews with ... coaches, administrators and others" – provide only indirect evidence of the interests of current or admitted students. Such indirect evidence may be helpful in a school's analysis, but it may be considered unnecessary if the school has collected direct evidence of the interests of 100% of its students via the Model Survey.

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Mr. Kenneth L. Marcus

June 1, 2007

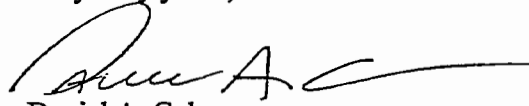
Page 4

interest," which expressly includes "a petition from an existing club team for elevation to varsity status."

Accordingly, the only material differences between the 1996 and 2005 guidance relate to the monitoring of participation in club or intramural sports by current students and participation in interscholastic sports by admitted students. These are important factors that schools may continue to monitor regardless of whether they follow the Additional Clarification. But these factors, which were not dispositive under the 1996 Clarification, should be secondary to a well-administered survey.⁴ For example, one would assume that, if students participating on an intramural team wished to participate at the varsity level, they would say so when they register for classes and are required to take the Model Survey.

I hope that this additional information is helpful to the Commissioners, and thank you again for the opportunity to address them. Please let me know if you have any questions about the matters contained herein or any other matters in connection with the briefing.

Very truly yours,



Daniel A. Cohen

⁴ See, e.g., OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., RESPONSE TO THE SENATE COMMITTEE ON APPROPRIATIONS INTERCOLLEGIATE ATHLETICS: ADDITIONAL FACTORS CONSIDERED BY POST-SECONDARY INSTITUTIONS 8 (March 17, 2006):

"Although both surveys and additional factors may be used to measure interest and ability, we found almost no actual conflicts between the data from each of these assessment tools [in connection with the OCR's analysis of its case files for the use of surveys by schools between 1992 and 2002]. ... Specifically, we did note three cases in which the survey found unmet interest, but the additional factors did not, and a single case in which the survey did not find interest, but the additional factors did indicate interest. ... In the single instance in which the survey did not indicate sufficient interest, the survey was based on a very low response rate of less than 1%."



Jessica Gavora

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Jessica Gavora is a Washington, DC writer with clients including the former Speaker of the House Newt Gingrich and the College Sports Council. Previously, she was the senior speechwriter to Attorney General Alberto Gonzales. Under Attorney General John Ashcroft, Ms. Gavora was chief speechwriter and a senior policy advisor at the Department of Justice. She is also the author of *Tilting the Playing Field: Schools, Sports, Sex and Title IX*, published in May, 2002 by Encounter Books.

Prior to joining the Justice Department, Ms. Gavora was a Washington-based freelance political speechwriter and writer. Candidates and elected officials for whom Ms. Gavora has penned speeches are Senator and former presidential candidate Lamar Alexander, former Senator Spencer Abraham and presidential candidate Senator John McCain.

In addition to writing for a variety of governmental and nongovernmental clients, Ms. Gavora has written extensively on politics, culture and public policy under her own byline. Her articles have appeared in the *Wall Street Journal*, *The Los Angeles Times*, *The Washington Post*, *The Weekly Standard*, *USA Today*, *National Review*, *Policy Review* and *The Women's Quarterly*.

Prior to becoming a full-time writer, Ms. Gavora was the Director of the Play Fair Project of the Independent Women's Forum. She was also the editor of *Philanthropy* magazine, a quarterly publication devoted to the politics and policy of giving. From 1995-1996 she was the director of programs at the New Citizenship Project, a Washington, DC public policy group. From 1993-1995 she was an associate editor at *The Hotline*, a daily online political news report. She began her career as legislative assistant and later deputy press secretary to her home state senator, Frank Murkowski of Alaska.

Ms. Gavora received her masters degree in American foreign policy and international economics from the Johns Hopkins School of Advanced International Studies (SAIS) in 1993. She is a graduate of Marquette University with degrees in political science and journalism.

She was born in Fairbanks, Alaska and has eight brothers and sisters and fifteen nieces and nephews. She lives in Washington with her husband, daughter, and dog, Cosmo.

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**Statement Before the United States Civil Rights Commission
May 11, 2007
Jessica Gavora**

Thank you for the opportunity to be here. My name is Jessica Gavora. I am Vice President of the College Sports Council and the author of Tilting the Playing Field, a 2003 book on Title IX. I appreciate this opportunity to have my views heard.

It is gratifying to me, after more than ten years of studying, writing about and commenting on Title IX, that we are here today talking about the issue that is at the heart of Title IX in athletics, and that is interest.

In 35 years of the existence of this law, little serious attention has been paid to the subject of interest.

For over a decade now, Title IX compliance has been based on a very different standard: statistical proportionality. The triumph of statistical proportionality – the argument that, absent discrimination, men and women would play athletics at the same rate – has been achieved not by proving that men and women have identical interests – the data on participation and interest fall far short of that. It has been achieved by making the whole question of interest irrelevant to Title IX compliance.

As you know, statistical proportionality demands that schools manipulate their athletic programs so that their gender ratio matches that of their full-time, undergraduate student population. In this way, proportionality ignores student interest in sports in favor of an arbitrary numerical formula. No other opportunity in education – be it in the education or engineering departments, or in drama or dance programs – is apportioned this way. Even accommodations that are segregated by sex, like student housing, are apportioned in accordance with student interest.

And this brings me to the commission's first question, that of the strengths and weaknesses of the 2005 Model Survey. Its strength – perhaps its only strength – is that for the first time in a decade it reintroduces the notion that government should view women as thinking, discerning individuals capable of expressing and acting on their interests when judging an institution under Title IX.

The 2005 policy clarification was an attempt to respond to a long expressed desire on the part of well meaning college administrators for more specific guidance on how to comply with Prong Three – the interests test – of the so-call Three Part Test of Title IX compliance.

Prong Three asks that schools “demonstrate that the interests and abilities of the members of [the underrepresented] sex have been fully and effectively accommodated by the present [athletic] program.” For decades schools have complained that the government's guidance for demonstrating compliance under Prong Three has been vague and subjective. In 2006 the Clinton Department of Education promised to provide clarity but

never did. And in 2003 the President's Commission on Opportunity in Athletics unanimously adopted a resolution calling on the Office for Civil Rights to investigate ways for schools to show compliance under Prong Three through interest surveys.

And so in 2005 the Department of Education made good on these promises and provided guidance to allow schools to become more compliant with the law. But the reaction by the Model Test's critics has been curious to say the least.

Groups like the Women's Sports Foundation and the National Women's Law Center have long insisted that there are three equally valid ways to comply with Title IX, and that assessing the interests of women is in fact one of them. And yet their reaction to the Model Survey has been to refute interest as a measure of compliance on two fronts. They have argued, first, that women's interests cannot be discerned, and second, even when discerned, fulfilling the interests of women on campus is insufficient to comply with Title IX.

On the first objection, two prominent defenders of the Title IX status quo wrote that surveys can't gauge men's and women's relative interest in sports because "culturally, men are simply more likely than women to profess an interest in sport." Women, on the other hand, "are less likely to profess an interest in sports, even if they are interested!"

In other words, women are as interested in sports as men, they just can't bring themselves to admit it.

The critics' second objection to the Model Survey is that surveying current students' interest in athletics only serves to freeze a school's sports program in the status quo. The theory is that women who are interested in a particular sport will not attend an institution that does not already offer that sport.

There is some merit to this argument. But the remedies suggested by critics are so broad and ill-defined that they serve to return Prong Three to its previous, vague and unworkable status. The critics demand that in addition to the survey; schools also consult with local club sports, youth coaches, high schools, junior high schools and elementary schools as well as consider "national trends" in determining women's opportunities. The amorphousness and scope of this requirement serves to put Prong Three compliance once again out of reach of well-meaning administrators, and guarantees that their lawyers and Title IX consultants will continue to advise them to adhere to strict proportionality.

And here the role of the National Collegiate Athletic Administration deserves some scrutiny. Like many of the single issue critics of the Model Survey, the NCAA has long maintained that measuring and fulfilling interest is a valid method of compliance with Title IX. But the NCAA bears a burden that the National Women's Law Center does not: it exists to represent the interests of *all* collegiate athletes, not just female athletes. And yet it has objected to the government's attempt to provide the guidance its member institutions have long requested. And its objections have been expressed with the same vehemence and in identical language to the objections of the special interest groups. The

reason why, it turns out, is no mystery. On April 2, 2005 – just days after the Model Survey was announced – NCAA President Myles Brand made a remarkable admission to the Washington Post. Referring to the Model Survey, Brand said, “Whether that will be tested in court or some other way, we’re waiting to see what the Women’s Law Center and others might do. We’re supportive of their actions.”

Groups like the Women’s Sports Foundation and the NWLC have been clear in their expressions of support for the status quo in Title IX enforcement. Indeed, their only objection is that the statistical proportionality standard is not applied aggressively enough. This is their right as special interest groups. But what is the responsibility of the NCAA? In just the past year alone, hundreds of athletes – at Rutgers, James Madison, Ohio University, Butler, Clarion, and Slippery Rock – have lost their opportunity to compete in full or in part due to Title IX. Does the NCAA support this status quo?

Which brings me to the Commission’s second question: No school, to my knowledge, has used the Model Survey to demonstrate compliance with Title IX. They haven’t because the NCAA, which periodically examines its member institutions for their commitment to “gender equity” has told them expressly not to. And they haven’t because the interest groups which routinely sue colleges and universities under Title IX have publicly deemed the Model Survey an illegitimate and illegal tool, promising still more lawsuits for the brave administrator who dares use the survey.

But more important than the public relations and legal campaign that has been mounted against its use, the Model Survey is a very limited tool for schools seeking to demonstrate Title IX compliance for this reason: It depends on Prong Three and Prong Three is itself flawed.

Remember that Prong Three applies only in cases where schools have not reached statistical proportionality. For these schools, it requires that they only accommodate the interests of the “underrepresented sex” – in virtually all cases women. The unmet interest of men is not considered.

So if a school that has not reached statistical proportionality surveys its students and finds some unmet interest on the part of women and massive unmet interest on the part of men, it is obligated only to fulfill the women’s interest. Or if the same school feels that its current program doesn’t extinguish but equally accommodates the interests of both sexes, it is again obligated only to act on the unmet interest of women. What’s more, a school that is not proportional and has a women’s club team that requests varsity status – regardless of how many men’s teams request the same – must accommodate that interest and that interest only.

James Madison University is a case in point. Last fall, James Madison offered 28 athletic teams to its students – 13 for men and 15 for women. But it’s female student population was 61 percent and growing and its athletic rosters couldn’t keep pace. JMU was in no position to add women’s teams. But the Model Survey offered no protection for its existing teams. When two women’s club teams petitioned for varsity status, JMU was

forced to achieve statistical proportionality by cutting ten teams, seven for men, two for women and one co-ed team.

The College Sports Council has proposed a remedy for the absurd, senseless loss of opportunity that is occurring under Title IX today. It is a small change, not to the law but to the implementing regulations, that will return Title IX to its original, anti-discrimination purpose, protect the gains of women, and above all, reflect the interests of students in athletics when judging an institution on its adherence to the law.

A survey instrument, such as the Model Survey, could be modified in a clear, specific and achievable way to incorporate the interests of a school's prospective students. The College Board, for instance, collects data on athletic interests as part of the administration of the SAT. The survey could incorporate the data from all students who send their test results to a school.

Then, Prong Three should be modified from its current requirement that only the interests of the underrepresented sex be accommodated, to a requirement that schools *equally accommodate the interests of both sexes*. Under this change, the results of the survey become the "qualified pool" against which a new proportionality standard is measured. So if a school finds that 40 percent of its current and prospective students who are interested in athletics are women, it would apportion 40 percent of its opportunities to women. In this way, students who shouldn't be considered in a disparate impact determination of discrimination – such as older students, students with families, and students who simply lack the interest and ability to compete in sports – would rightly be excluded.

Members of the Commission, I could go on, but my time is expired. I will conclude by saying that speaking for both myself and the College Sports Council, we wholeheartedly support of the spirit and intention of Title IX. We believe that with the changes that I have just described, the law will be preserved and protected for new generations of American athletes, both men and women, girls and boys.

Thank you.

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Jocelyn Samuels

Vice President for Education and Employment
National Women's Law Center





Jocelyn Samuels

Jocelyn Samuels is Vice President for Education and Employment at the National Women=s Law Center, where she supervises an active litigation docket of Title IX cases.

She spearheads the Center=s efforts to preserve Title IX athletics policies and other regulations without change; to ensure that young women are treated fairly in career education programs; to challenge policies and practices that block women=s access to non-traditional courses such as math and science; and to pursue gender equity in all aspects of education.

Prior to joining the Center, Ms. Samuels was Labor Counsel to Senator Edward M. Kennedy, the Chair of the Senate Committee on Health, Education, Labor and Pensions. She also worked for a decade as a senior policy attorney at the Equal Employment Opportunity Commission, where she specialized in issues of sex and race discrimination. Ms. Samuels received her law degree from Columbia University, and her bachelor=s degree from Middlebury College.

**Statement of Jocelyn Samuels
Vice President for Education and Employment
National Women's Law Center**

**United States Commission on Civil Rights
Briefing on "Title IX Athletics: Accommodating Interest and Abilities"
May 11, 2007**

I am Jocelyn Samuels, the Vice President for Education and Employment at the National Women's Law Center in Washington, D.C. I appreciate the opportunity to appear before you today to discuss Title IX's requirement that the athletics interests and abilities of male and female students be equally accommodated.

Founded in the year that Title IX was passed, the National Women's Law Center has been at the forefront of virtually every major effort to secure and defend women's legal rights, particularly with regard to participation in athletics. The Center filed the first comprehensive Title IX challenge to discrimination in intercollegiate athletics; has participated in most of the subsequent federal appellate cases to consider the application of Title IX to athletics; and has filed amicus briefs or been counsel in every Supreme Court case involving Title IX. Of particular relevance here, the Center was a key participant in the efforts that led to issuance of the three-part test that has for close to 30 years governed assessments of school compliance with Title IX's participation requirements.

I would like to focus my remarks this morning on the significant and damaging flaws in the Department of Education's "Additional Clarification of Intercollegiate Athletics Policy: Three-Part Test – Part Three"¹ (hereinafter "2005 Clarification") issued without notice or opportunity for public comment on March 17, 2005. The 2005 Clarification conflicts with longstanding Department of Education policy, violates basic principles of equality under the law, and threatens to reverse the enormous progress women and girls have made in sports since the enactment of Title IX. The National Women's Law Center continues to call on the Department to rescind this harmful and unlawful Clarification.

As you know, Title IX of the Education Amendments of 1972² bars sex discrimination in federally funded education programs and activities and requires that schools provide equal sports participation opportunities to their male and female students. For almost three decades, the Department of Education's regulatory policies have provided three independent ways – the "three-part test" – for educational institutions to show that they are meeting this requirement. Specifically, a school can demonstrate compliance if it can:

- Demonstrate that intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollment; *or*

- Where the members of one sex have been and are underrepresented among intercollegiate athletes, show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; *or*
- Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, demonstrate that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.³

Frequent attacks on the three-part test have been resoundingly rejected; the test has been uniformly upheld by the nine federal appellate courts to have considered it⁴ and uniformly applied by prior Administrations. In fact, in July 2003, this Department of Education reaffirmed its commitment to applying the test and long-standing Department interpretations of it, rejecting – in the wake of a massive public outcry – recommendations made by a Department Commission on Opportunity in Athletics that would have dramatically undermined women’s rights to equal opportunity in sports.⁵

Despite this commitment, the Department’s 2005 Clarification violates long-standing and fundamental principles underlying the Department’s regulatory policies, as well as the law itself. The Clarification allows schools that are not meeting either the first or the second prong of the three-part test to show that they are nonetheless in compliance with Title IX by doing nothing more than sending a “model” e-mail survey to their female students asking about their interest in additional sports opportunities. The Department will presume that schools comply with Title IX if they administer this survey and find insufficient interest to support additional opportunities for women—even if schools get very low response rates—unless female students can provide “direct and very persuasive evidence” to the contrary. For the reasons I set forth below, this policy change effectively eviscerates the third prong’s requirement that schools show full and effective accommodation of their female students’ athletic interests.

The 2005 Clarification Violates Basic Principles of Equal Opportunity

The 2005 Clarification Impermissibly Allows Schools to Rely on Surveys Alone to Measure Compliance.

The 2005 Clarification permits schools to rely exclusively on the results of a survey to their female students to evaluate whether they have satisfied their obligation to provide equal athletics opportunities to these students. But as courts have consistently recognized, interest cannot be measured apart from opportunity. “Interest and ability rarely develop in a vacuum; they evolve as a function of opportunity and experience.”⁶ As a result, surveys are likely only to provide a measure of the discrimination that has limited, and continues to limit, sports opportunities for women and girls. As the First Circuit stated in its seminal decision in *Cohen v. Brown University*,

“[T]here exists the danger that, rather than providing a true measure of women’s interest in sports, statistical evidence purporting to reflect women’s interest instead provides only a measure of the very discrimination that is and has been the basis for women’s lack of opportunity to participate in sports.”⁷

Thus, basing women’s future opportunities on their responses to surveys that measure their prior lack of exposure will only perpetuate the cycle of discrimination in sports to which they have been, and continue to be, subjected. It is for these reasons that Department of Education policies that predate the 2005 Clarification require that schools seeking to show that they have satisfied the interests of their female students evaluate a host of additional factors, including:

- Requests by students and admitted students that a particular sport be added;
- Requests that an existing club sport be elevated to intercollegiate team status;
- Participation in particular club or intramural sports;
- Interviews with students, admitted students, coaches, administrators and others regarding interest in particular sports;
- Results of questionnaires of students and admitted students regarding interests in particular sports;
- Participation in particular interscholastic sports by admitted students; and
- Participation rates in sports in high schools, amateur athletic associations, and community sports leagues that operate in areas from which the school draws its students.⁸

The Department’s decision to eliminate schools’ obligation to consider these important criteria is a major disservice to female students and violates Title IX’s fundamental purpose of eradicating the discrimination to which women have consistently been subject in athletics and in other aspects of their education.

The 2005 Clarification Impermissibly Allows Schools to Restrict Their Surveys to Enrolled and Admitted Students.

The 2005 Clarification explicitly authorizes schools to survey only their enrolled and admitted students in evaluating whether they have met the requirements of the third prong of the three-part test. But this approach ignores the reality that students interested in a sport not offered by a school are unlikely to attend that school. By failing to require schools to look beyond their own campuses — to, for example, high school, community, and recreational programs in the areas from which a school typically draws its students — the Clarification allows schools to evade their legal obligation to look broadly at indicia of women’s interest in sports. Instead, the policy rewards schools with a presumption of compliance for wearing blinders — that is, for restricting their sports offerings and then claiming that they are satisfying the interests of those who are content with those restricted offerings.

The Clarification also ignores the ways in which schools typically recruit for men’s teams. Most colleges assess prospective players regionally or nationally and recruit them with scholarship offers or non-financial benefits to apply to and attend an institution. The 2005

Clarification effectively requires women to show that they can fill a new team by relying entirely on students within their schools' current student bodies – a requirement that is not imposed on men's teams.

Recognizing these realities, and as noted above, prior Department policies have long required schools seeking to comply with Prong Three to look beyond their campuses to identify the participation opportunities offered by other colleges and universities or by high schools and recreation leagues in areas from which the school draws its students. To do otherwise in assessing whether women's interests and abilities have been fully satisfied, as authorized by the 2005 Clarification, vitiates the third prong of the test and perpetuates the cycle of discrimination. Indeed, as the Fifth Circuit Court of Appeals has stated in rejecting an argument very like that embraced in the 2005 Clarification:

“The heart of this contention is that an institution with no coach, no facilities, no varsity team, no scholarships, and no recruiting in a given sport must have on campus enough national-caliber athletes to field a competitive varsity team in that sport before a court can find sufficient interest and abilities to exist. It should go without saying that adopting this criteria would eliminate an effective accommodation claim by any plaintiff, at any time.”⁹

The 2005 Clarification Authorizes a Deeply Flawed Survey Methodology.

My colleagues on the panel will address the methodological flaws in the survey authorized by the 2005 Clarification in more detail. I would like to focus on two particularly problematic aspects of the survey approach the Department has endorsed: the authorization to schools to (a) interpret a lack of response to the survey as evidence of lack of interest; and (b) presume that a young woman's self-assessment of a lack of ability to compete reflects an actual lack of ability.

Given the low rate of response to surveys in general, and the glitches often associated with e-mail communications, the authorization for schools to treat a failure to respond to the survey as a response affirmatively indicating lack of interest in additional sports opportunities is likely to lead schools to significantly underestimate the level of interest that exists on their campuses. There are numerous reasons – entirely unrelated to their interest in participating in sports – that students may fail to respond to a survey. Students may not have access to – or regularly use – university e-mail. Students may not receive an e-mailed survey if the e-mail gets caught in a spam filter, or they may delete an e-mail that looks like it might carry a virus. They may be too busy with other academic or extracurricular commitments to respond. Indeed, even if the e-mail accompanying the on-line survey states that failure to respond will be treated as evidence of lack of interest, students may delete the e-mail without reading this warning. To treat non-response as evidence of lack of interest is methodologically unsound and unfair to young women.

It also violates basic principles governing acceptable survey response rates. In one case,¹⁰ for example, a court rejected survey evidence used to argue compliance with Prong Three

of the three-part test on the grounds that the survey, which achieved only a 39 percent response rate, was not a reliable means of measuring the institution's compliance with Title IX. The court noted that NCAA guidelines warn that response rates below 60 percent "would almost always be cause for concern because almost half of those selected to represent your school did not participate in the study," and because the results "could always be called into question and challenged for their representativeness."¹¹ By authorizing schools to treat non-responses as if they were in fact responses, however, the Clarification allows the schools to create the fiction that 100% of surveyed students have responded. This fiction should not be allowed to obscure the reality that the Clarification permits schools to deny athletics opportunities to women based on *actual* response rates that would likely be rejected by any court examining the evidence.

Equally troubling is the Clarification's authorization for schools to "presume that a student's self-assessment of lack of ability to compete at the intercollegiate varsity level in a particular sport is evidence of actual lack of ability."¹² This authorization shortchanges the significant number of students who do not recognize their own potential until a coach, parent or friend encourages them to try. Moreover, as the Clarification itself recognizes, "a student may have athletic skills, gained from experience in other sports, which are fundamental to the particular sport in which the student has expressed an interest."¹³ A high school swimmer may, for example, have the skills to participate on a collegiate crew team; a former soccer player may be able to compete in track. Under longstanding Department policies that predate the Clarification, schools were expected to seek the opinions of coaches and other experts in evaluating women's abilities to compete at a varsity level. But the 2005 Clarification relieves schools of any obligation to conduct this independent assessment.

The 2005 Clarification Impermissibly Shifts the Burden to Female Students to Show Their Interest in Equal Treatment.

Under the Department policies predating the 2005 Clarification, schools had the burden of showing – and the Office for Civil Rights the burden of rigorously evaluating claims – that, despite their failure to provide equal opportunities to their female students, schools were nonetheless fully accommodating women's interests and abilities. OCR, for example, required that all educational institutions undertake evaluations of interest "periodically so that the institution [could] identify in a timely and responsive manner any developing interests and abilities of the underrepresented sex"¹⁴ – and required that an institution justify any assertion that students were not interested in playing sports offered in the region.¹⁵ Under the 2005 Clarification, however, schools that have implemented the model survey are presumed to have complied with Title IX, unless students produce "direct and very persuasive evidence of unmet interest sufficient to sustain a varsity team."¹⁶ And although prior policies called for schools to consider sports offered in the communities from which they drew their students, the 2005 Clarification explicitly rejects the argument that "evidence that feeder high schools for the institution offer a particular interscholastic sport" is sufficient to sustain a female athlete's burden.¹⁷

This shift in the burdens – forcing women to prove that they are interested in and entitled to equal treatment – is an inversion of basic civil rights principles. It also conflicts with a key

purpose of Title IX – to encourage women’s interest in sports and eliminate stereotypes that discourage them from participating.¹⁸ It is particularly damaging for students in high school, where female students are likely to have had few or no sports opportunities that would inform their responses to an interest survey, and where students should be encouraged to try many different sports, not have their future opportunities limited by what they might have experienced or be interested in at that time.

It is also contrary to the requirement of *full* accommodation of female athletes’ interests and abilities. Opponents of the three-part test have argued that Prong Three should be read to require accommodation of the interests and abilities of female students based only on the relative levels of those interests in comparison to those of men. But this “relative interests” argument ignores the fact that a school relying on Prong Three to comply with the three-part test is, by definition, failing to offer female students equal opportunity compared to their male peers. It relies on the inaccurate and impermissible stereotype that women are inherently less interested in participation in athletics than their male counterparts. And as the First Circuit has noted, the argument “contravenes the purpose of the statute and the regulation”

because it does not permit an institution or a district court to remedy a gender-based disparity in athletics participation opportunities. Instead, this approach freezes that disparity by law, thereby disadvantaging further the underrepresented gender. Had Congress intended to entrench, rather than change, the status quo—with its historical emphasis on men’s participation opportunities to the detriment of women’s opportunities—it need not have gone to all the trouble of enacting Title IX.¹⁹

The 2005 Clarification Provides for Inadequate Oversight by the Department of Education.

Adding insult to injury, the 2005 Clarification does not require that the Office for Civil Rights monitor compliance to ensure that schools meet even the policy’s minimal requirements for survey use or interpret the results accurately. In fact, the 2005 Clarification explicitly states that “[w]here the Model Survey shows insufficient interest to field a varsity team, OCR will not conduct a compliance review of that institution’s implementation of the three-part test.”²⁰ In addition to drastically weakening the standards for compliance with Prong Three of the three-part test, therefore, the Clarification provides no mechanism for the Department – or anyone else, for that matter — to evaluate the impact of schools’ use of the model survey; to investigate the extent to which that survey has stalled or reduced women’s participation opportunities; or to assess the ways in which it is being implemented on campuses.

The 2005 Clarification Threatens to Perpetuate Further Discrimination Against Female Athletes

For the reasons set forth above, the 2005 Clarification creates a major loophole through which schools can evade their legal obligation to provide equal opportunity in athletics. This is deeply troubling, particularly because – despite the advances in women’s participation in sports since the enactment of Title IX – women remain second-class citizens on the playing field.

Title IX has opened the door for millions of women and girls to participate in sports. While fewer than 32,000 women participated in college sports prior to the enactment of Title IX, that number has expanded to more than 160,000 women today – over five times the pre-Title IX rate. Female participation in high school athletics has increased ten fold, from fewer than 300,000 to close to 3 million students.

These increased sports opportunities have provided immense benefits to a new generation of female athletes. Playing sports promotes responsible social behavior, greater academic success, and increased personal skills. Compared to their non-athletic peers, athletes are less likely to smoke or use drugs; have lower rates of sexual activity and teen pregnancy; have higher grades; and learn important life skills, including the ability to work with a team, perform under pressure, set goals, and take criticism.²¹

Moreover, these benefits for women have not come at the expense of men. Data show unequivocally that men's opportunities to participate in sports have grown alongside those of women.²² Arguments to the contrary simply cannot withstand analysis.²³

What the data instead confirm is that women continue to be disadvantaged in every aspect of sports participation. Although women represent 53 percent of the students at Division I universities, for example, they continue to receive only 44 percent of intercollegiate athletics participation opportunities, 34 percent of athletics operating budgets, and 33 percent of the money spent on recruitment.²⁴ Indeed, in Division I, for every dollar being spent on women's sports, almost two dollars are spent on men's athletics.²⁵ At the high school level, girls represent only 42 percent of varsity athletes, and case law demonstrates the pervasive inequities that they face when they are allowed to play. Simply put, thirty-five years after the enactment of Title IX, the playing field is far from level for our nation's young female athletes.

* * *

In short, the Department's 2005 Clarification does a major disservice to the young women of this country. The harms it inflicts stand to stall or even reverse the progress that women have made under Title IX. Moreover, the Clarification also shortchanges schools, which will be vulnerable to legal liability if they implement methods of measuring women's interests – such as those authorized in the Clarification – that violate Title IX standards. The Department should rescind the Clarification and instead restate its commitment to enforcing the long-standing regulatory policies that truly reflect Title IX's goals and requirements. The nation's young women deserve no less.

¹ Available at <http://www.ed.gov/about/offices/list/ocr/docs/title9guidanceadditional.html>.

² 20 U.S.C. §§ 1681-87 (1988).

³ United States Department of Health, Education and Welfare, Office for Civil Rights, *Title IX of the Education Amendments of 1972: A Policy Interpretation: Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71,413 (December 11, 1979).

⁴ See *Cohen v. Brown Univ.*, 101 F.3d 155, 173 (1st Cir. 1996); *McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 288 (2d Cir. 2004); *Williams v. Sch. Dist. of Bethlehem*, 998 F.2d 168, 171 (3d Cir. 1993); *Pederson v. La. State Univ.*, 213 F.3d 858, 880 (5th Cir. 2000); *Horner v. Ky. High Sch. Athletic Ass'n*, 43 F.3d 265, 273 (6th Cir. 1994); *Kelley v. Bd. of Trs.*, 35 F.3d 265, 270 (7th Cir. 1994); *Chalenor v. Univ. of N.D.*, 291 F.3d 1042, 1046 (8th Cir. 2002); *Neal v. Bd. of Trs.*, 198 F.3d 763, 771 (9th Cir. 1999); *Roberts v. Colo. State Univ.*, 998 F.2d 824, 828-29 (10th Cir. 1993); see also *Nat'l Wrestling Coaches Ass'n v. U.S. Dep't of Educ.*, 263 F. Supp. 2d 82, 95-96 (D.D.C. 2003), *aff'd*, 366 F.3d 930 (D.C. Cir. 2004), *cert. denied*, 545 U.S. 1104 (2005).

⁵ United States Department of Education, Office for Civil Rights, *Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance* (July 11, 2003).

⁶ *Cohen v. Brown Univ.*, 101 F.3d at 179; see also *McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d at 295 (“Interest is often a function of experience and opportunity.”).

⁷ *Cohen v. Brown Univ.*, 101 F.3d at 179.

⁸ United States Department of Education, Office for Civil Rights, *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test*, Jan. 16, 1996, at 10, available at <http://www.ed.gov/about/offices/list/ocr/docs/clarific.html> (hereinafter “1996 Clarification”).

⁹ *Pederson v. Louisiana State Univ.*, 213 F.3d at 878.

¹⁰ *Barrett v. West Chester Univ. of Pennsylvania*, 2003 WL 22803477 (E.D. Pa. Nov. 12, 2003).

¹¹ *Id.* at *9 (citing NCAA guidelines).

¹² 2005 Clarification at p. 10.

¹³ *Id.*

¹⁴ 1996 Clarification at p. 11.

¹⁵ *Id.* at p. 10.

¹⁶ 2005 Clarification at p.6.

¹⁷ *Id.* at p. 6, note 10.

¹⁸ *Neal v. Bd. Of Trs.*, 198 F.3d 763, 768 & n.4 (9th Cir. 1999).

¹⁹ *Cohen v. Brown Univ.*, 101 F.3d at 180-81.

²⁰ 2005 Clarification at p. 7.


²¹ See, e.g., Carnegie Corporation, *The Role of Sports in Youth Development* 9 (March 1996); NFHS, *The Case for High School Activities* (2002) at 3, 9; The National Campaign to Prevent Teen Pregnancy, *Fact Sheet: Not Just Another Single Issue: Teen Pregnancy and Athletic Involvement* (July 2003); *The Women's Sports Foundation Report: Sport and Teen Pregnancy* (1998) at 5-7; The President's Council on Physical Fitness and Sports, *Physical Activity & Sports in the Lives of Girls* (Spring 1997); *Black Female Athletes Show Grad-Rate Gains*, The NCAA News (June 28, 1995).

²² U.S. General Accounting Office, No. 01-297, *Intercollegiate Athletics: Four-Year Colleges' Experiences Adding and Discontinuing Teams*, March 2001.

²³ The College Sports Council (CSC), which focuses on protecting men's athletics opportunities, recently issued a study purporting to show an “alarming decline in men's college athletics opportunities.” College Sports Council Longitudinal Study of NCAA Participation Data, available at <http://savingsports.org/presentation/>. Examination of that study, however, demonstrates its numerous analytical and methodological flaws. See Cheslock, J. (forthcoming), *Intercollegiate Athletic Participation and Title IX*, East Meadow, New York: Women's Sports Foundation (2007).

²⁴ National Women's Law Center, *Debunking the Myths About Title IX and Athletics* (October 2006), available at <http://www.nwlc.org/pdf/DebunkingMyths.pdf>.

²⁵ *Id.*



Judith Sweet

Independent Contractor and Consultant
National Collegiate Athletic Association








JUDITH M. SWEET
NCAA Independent Contractor and Consultant


Judy Sweet joined the NCAA as Vice President for Championships and Senior Woman Administrator in January 2001. In 2003, she was promoted to Senior Vice President for Championships and Education Services. Prior to her work with the NCAA, Judy served as Director of Athletics at the University of California, San Diego beginning in 1975, when she became one of the first women in the nation selected to direct a combined men's and women's intercollegiate athletics program, until 1999 when she returned to a faculty position in Social Sciences at UC San Diego. During her tenure as athletics director, the UCSD Athletics Program involved 23 varsity teams; from 1981 until 1999, UCSD athletics teams won 26 NCAA National Championships, 32 additional teams were National Finalists and 28 other teams had third place national finishes. In 1998, UCSD received the Sears Directors Cup for being the most successful athletics program in NCAA Division III. In September 2006, Judy returned to San Diego where she is doing consulting work and serving as an independent contractor for the NCAA.

A native of Milwaukee, Wisconsin, Judy is a graduate of the University of Wisconsin, Madison where she majored in Physical Education and Mathematics, and served as president of the Women's Recreation Association and national president of the Athletic and Recreation Federation of College Women. She earned a Master's of Science Degree from the University of Arizona, Tucson and a Master's of Business Administration Degree from National University, San Diego. Prior to her faculty appointment at UC San Diego in 1973, she taught and coached at the University of Arizona and Tulane University.



Judy was elected to a two-year term as membership President of the NCAA in January 1991 and was Secretary-Treasurer of the NCAA from 1989 to 1991, becoming the first woman to serve in each of those positions. She was Division III Vice President, the presiding officer of that division, from 1986-88. Her presidential responsibilities included presiding over the NCAA Administrative Committee, Council, and Executive Committee, and at the NCAA Annual Convention. She chaired the NCAA Budget Committee and the Special Advisory Committee to Review Recommendations Regarding Distribution of Revenues. That committee was formed as a result of the successful negotiations with CBS Television personnel, which resulted in a seven-year television contract beginning in 1991, worth \$1 Billion. Judy served as a member of the Negotiating Committee for that TV contract also.

Judy's other NCAA Committee service was extensive, including the Subcommittee to Review Minority Opportunities in Intercollegiate Athletics, NCAA Foundation, and Gender Equity Task Force. She has served on various local, state, and national committees including the Board of Directors of the National Association of College Women Athletics Administrators (serving as president 2000-2001), the Board of Directors of the National Association of College Directors of Athletics and the Board of Trustees for The United States Sports Academy. She was a member of the United States Olympic Committee's Task Force on Minorities, and serves on the Board of Trustees of National University.



Judy's biography appears in several editions of Who's Who, and in 1984 she was selected as an Outstanding Young Woman of America. In 1990 the Los Angeles Times selected her as the Top Southern California College Sports Executive of the 80's. In 1992 the National Association of College Women Athletic Administrators named Judy Administrator of the Year and she received the W. S. Bailey Award from the Touchdown Club of Auburn-Opelika as the nation's distinguished athletic administrator. She further was honored with a 1992 Giant Steps Award in Athletic Administration from the Center for the Study of Sport in Society. She has received three honorary doctorate degrees. In 1993 the California State Senate selected Judy as District 39 Woman of the Year and in 1995 she received a Big Ten Conference Centennial Award. In 1998 she received The Honda Award for Outstanding Achievement in Women's Collegiate Athletics. Judy was also selected 1998-99 NACDA/Continental Division III Athletic Director of the Year. In 2006 she was listed among the NCAA's Centennial Anniversary 100 Most Influential Student-Athletes and received the NACDA James J. Corbett Memorial Award, which is presented annually to the collegiate administrator who "through the years has most typified Corbett's devotion to intercollegiate athletics and worked unceasingly for its betterment." In October 2006 she also was named the first NACWAA Legacy Honoree.

STATEMENT OF JUDITH M. SWEET
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION
CONTRACTOR/CONSULTANT
FORMER SENIOR VICE-PRESIDENT FOR CHAMPIONSHIPS
AND EDUCATION SERVICES
BEFORE THE
CIVIL RIGHT'S COMMISSION
MAY 11, 2007

I am Judith Sweet, and I currently serve as an Independent Contractor and Consultant for the National Collegiate Athletic Association (NCAA). For the previous six years I was NCAA Senior Vice President for Championships and Education Services. On behalf of the National Collegiate Athletic Association and its more than 1,200 member colleges, universities, conferences and affiliated organizations, I am pleased to have the opportunity to provide the Commission with information about the impact of Title IX on intercollegiate athletics; comments about the application of the law, particularly Prong Three of the Three Part Test; and any other assistance wherever possible as you undertake your important review.

I have been involved in intercollegiate athletics and higher education for more than 30 years as an athletics director, faculty member and in leadership roles within the NCAA. During my tenure in the field of intercollegiate athletics, I have worked extensively on matters involving the growth of opportunities and advancement of both men and women in athletics. Through my work, I have seen first-hand the commitment of the NCAA and many universities to promote equity and consequently the resulting strides that have been made in the pursuit of gender equity on campuses and NCAA programs. I am pleased with the progress, excited about the future, but wary of efforts to undo more than three decades of work. The gap in opportunities and support remains significant for women and thus more needs to be done to ensure parity. The goals of Title IX are far from realized.

Following are the questions provided by the Civil Rights Commission for comment and my responses.

1. According to the Department of Education's (DOE's) March 17, 2005 guidance, if a college or university chooses prong three of the three-part test, it will be found to be in compliance with Title IX "unless there exists a sport(s) for the underrepresented sex for which all three of these conditions are met: (1) unmet interest sufficient to sustain a varsity team in the sport(s); (2) sufficient ability to sustain an intercollegiate team in the sport(s); and (3) reasonable expectation of intercollegiate competition for a team in the sport(s) within the school's normal competitive region." The DOE guidance includes a Model Survey to measure student interests and abilities in intercollegiate varsity athletics. Please comment on strengths and weaknesses of DOE's new guidance, including those of the Model Survey.

Shortly after the additional clarification was issued on March 17, 2005, the NCAA Executive Committee, which consists of university presidents and chancellors representing all three divisions of the NCAA, and NCAA President Myles Brand reviewed the 2005 DOE's new guidance and found it to be an inappropriate means of assessing interest and Title IX compliance. The Executive Committee and President Brand submitted a letter to Secretary of Education Margaret Spellings and issued a resolution distributed to the NCAA membership outlining the most glaring flaws of the 2005 clarification. Both the letter and resolution are attached to this statement. The Department of Education's previous clarification in 1996 acknowledged that surveys are to be one element of several measures that provide a thorough and complete evaluation of interest by women in sports participation. By contrast, the 2005 clarification proposes the survey as a sole method of measurement and is contrived to show that females are not interested in participation. These are strikingly different approaches, and the 2005 survey methodology permits institutional manipulation to prove disinterest – an approach contrary to the spirit and the 35-year history of Title IX.

While I would like to believe that all universities are committed to equal opportunity and Title IX compliance, a review of Equity in Athletics Disclosure Act (EADA) data shows this is not the case. There is much work to be done to address the existing inequities. The reality is that 35 years after passage of Title IX, women still only receive 43 percent of athletics participation opportunities, 38 percent of operating budgets and 33 percent of recruiting budgets. All this is despite the well-documented and burgeoning interest by women in sports since the passage of Title IX. At the high school level, participants have increased 10 fold and six fold at the college level as new opportunities have been provided and societal attitudes toward female participation in sports has improved. In 2005-06, there were close to three million female high school student-athletes and 180,000 collegiate female student-athletes. The pool of high school female student-athletes suggests that if more opportunities were provided at the collegiate level, there would be a larger number of interested participants.

The bottom line is this: Women are still the underrepresented gender in college sports and less funding is devoted to the support of women's programs. The spirit of Title IX with regard to athletics and other campus opportunities recognizes that participation has educational and life-developmental value for both men and women. The 2005 additional clarification provides an easy way for non-compliant institutions to claim compliance with prong three by merely administering an electronic survey that by its nature measures inattention or neglect as disinterest. The effect of this survey approach potentially would be to freeze participation opportunities at their current level or worse to roll back the progress made over the last 35 years.

One of the greatest weaknesses of this electronic survey approach is counting a non-response as a lack of interest. Researchers have repeatedly stated that a non-response is just that, a non-response, and should not be interpreted in any other way. Attached is a report from the NCAA Data Analysis Research Network, which consists of university faculty researchers throughout the country, identifying the flaws in the 2005 Clarification. The overall tenor of that report is that the 2005 Clarification allows for the

use of a survey method that does not meet accepted professional standards for conducting this type of study. In addition, students have consistently indicated that they rarely, if ever, respond to online surveys. Oftentimes such surveys are filed in SPAM folders and/or totally ignored. The NCAA leadership and its membership strongly support the 1996 Clarification which considers many factors in determining interest of the underrepresented sex and has urged the withdrawal of the 2005 additional clarification.

Under the 2005 guidance, even if there was a favorable response from the underrepresented sex indicating interest in sports not currently sponsored by the college or university, there would be many other conditions that would need to be present, including a demonstration of acceptable skill before an institution might add the identified sport team. Since the sport doesn't exist on the respective campus, there would be no coach to fairly evaluate skill level. Furthermore, this approach of sampling ignores the fact that athletics team members are recruited to a campus from regional or national pools of high school and community college students. Sampling the existing student-population eliminates the input of students who potentially would have attended that university or college had their preferred sport been sponsored. The consistent and uniform opinion of college presidents, chancellors and athletics administrators is that the 2005 guidance is contrary to the original intent of Title IX in that it provides an incomplete means of measuring interest.

2. Some key findings from the Model Survey and the ways in which (a) OCR and (b) colleges and universities have made use of the survey data.

I am not aware of how OCR has used the survey data but I do know that very few universities or colleges have acknowledged using the Model Survey. The 2005 clarification is cumbersome, confusing and unprecedented in length, detail and method of dissemination. It covers one part of one program component of the 13 program components reviewed for compliance under Title IX, but exceeds the length of OCR's 166-page 1990 Title IX Athletics Investigator's Manual, which addresses all 13 program components. Furthermore, OCR warns institutions not to drop an existing, viable team if the Model Survey results show insufficient interest for that team, suggesting that such survey results are possible when a viable team exists, which raises questions about the Survey's reliability.

At various national meetings, NCAA members have been asked if they have used the 2005 clarification and almost no one has responded affirmatively. In one instance, a university administrator stated that she had used the survey not to measure unmet interest, but to get a sense of what sports might be most appropriate to add for the underrepresented sex in the future. In order to increase the potential for a student response, a \$10 gift certificate was offered to those responding. There was expressed concern that the gift certificate could be viewed as an inappropriate bribe and might not have produced honest responses. If 10,000 students (less than 50 percent of the total enrollment) responded, the survey process would have cost an additional \$100,000 for the gift certificates.

3. The extent to which each of the three prongs are used by colleges and universities to demonstrate compliance with Title IX since 1979 till the Department of Education's new guidance of March 17, 2005, and the degree to which colleges and universities have shifted, if any, to the new guidance since that date.

I am not aware of any statistics kept on how individual colleges and universities choose to demonstrate compliance with Title IX other than those provided by OCR after OCR reviews are done. The most recent figures that I have seen, which were collected prior to the 2005 additional clarification, suggested that 67 percent of the OCR institutions reviewed were using prong three for compliance, 27 percent were using prong one and six percent were using prong two. It is important to note that institutions may change which prong they are using at any time depending on philosophy, history, demographics, conference sports sponsored, interest in the regional area, shifting enrollment, etc. Based on informal inquiries of NCAA members, it does not appear that colleges and universities have shifted to the new guidance as they remain concerned about the flawed survey approach and other related factors.

4. If the new guidance has made it easier for colleges and universities to demonstrate compliance with Title IX compared to prong one and to prong two and if compliance with Title IX has generally improved over time, particularly since the new guidance's introduction.

Most university presidents, chancellors and athletics administrators believe that the new guidance inappropriately has made it easier to comply with Title IX, and thus not truly comply with the spirit and intent of the law to provide equal opportunity for the under-represented sex. The new guidance is viewed as a flawed means of compliance for the reasons stated previously. In addition, OCR's Clarification acknowledges that the Model Survey narrows the scope of OCR's analyses for interests and abilities. My understanding of the creation of the three part test is that it was intended to provide institutions flexibility in meeting the goals of Title IX, but not to make one prong a means for easier compliance, especially when the results are not consistent with the true spirit of providing equal opportunity.

5. If the cost of using the new guidance (such as staffing) to show compliance is the same, higher, or lower than that of using prong one or prong two for (a) OCR and (b) the institutions.

I am not aware of any statistics that could answer this question nor can one accurately compare costs of the respective prongs. If the intent is to do a survey and not truly meet the interests of the under-represented gender which the new guidance allows, a survey could be a very inexpensive way of compliance while actually ignoring the intent of Title IX. In addition, the 2005 guidance allows for programs where interest has been identified to initially meet that interest by providing intramural or club teams for a few years to assess ability. Such an approach, which obviously is less expensive, violates Title IX which states that intercollegiate athletics experiences are not to be substituted by or

compared with sports clubs and intramurals, both of which should be evaluated for equity separately.

In a perfect world, Title IX would not be necessary. There would be resources and will enough to do the right thing and meet everyone's needs. Social legislation exists, of course, because we do not live in that perfect world. Even with more than 35 years of experience and the examples of the several hundred thousand female student-athletes who have benefited from increased athletics participation for women, equity has yet to be achieved. NCAA and campus leaders, who are committed to equity for female and male students and are charged with athletics program administration, have uniformly expressed concerns about the 2005 Clarification. I hope these comments will result in better understanding of the weaknesses of the 2005 Clarification and why it should be withdrawn. In July 2003 after more than a year of work by the Commission on Opportunity in Athletics, Secretary of Education Rodney Paige announced that Title IX policies would not be changed and that Title IX would be more strongly enforced. Commitment to Title IX compliance by colleges and universities and strong enforcement by OCR are the steps that must be taken moving forward. Thank you for your attention to this important legislation.



May 6, 2005

VIA FACSIMILE

P.O. Box 6222
Indianapolis, Indiana 46206
Telephone: 317/917-6222

The Honorable Margaret Spellings
Secretary, U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Shipping/Overnight Address:
1802 Alonzo Watford Sr. Drive
Indianapolis, Indiana 46202

Dear Secretary Spellings:

On behalf of the NCAA membership, we are writing in response to the recently announced Additional Clarification of Intercollegiate Athletics Policy: Three Part Test – Part Three.”

www.ncaa.org

As we expect you know, the NCAA is a membership organization of 1,028 colleges and universities and governs intercollegiate athletics nationally. Providing positive educational experiences for student-athletes, male and female, is the mission of the NCAA and Title IX is critical to that goal.

We appreciate your commitment to Title IX and therefore would like to share with you concerns that were expressed by the NCAA Executive Committee and divisional boards, which are the NCAA leadership bodies composed of university presidents, at their April 28, 2005, meetings.

The presidents identified several components of the Additional Clarification that conflict with the goals of Title IX and that are contrary to sound research practices. Among our concerns, we believe that an Internet survey is a poor tool to determine interest, and it is unreasonable to expect a high rate of return since students are bombarded with Internet and e-mail surveys. In fact, a 10 percent return on such a survey would not be uncommon. That inadequacy is compounded by counting non-responders as among those uninterested in athletics participation.

In the past 33 years, since the passage of Title IX, we have seen significant progress in the numbers of women participating in intercollegiate athletics, but women still only have 42 percent of participation opportunities on our campuses, although they comprise 53 percent of student bodies on average and receive only 36 percent of athletics department finances. Had this new clarification been in effect in 1972, these numbers would be even lower than they are now as a result of historical biases against women in sports. It would be inappropriate to allow for anything that could stymie the growth of women's sports as we believe the new clarification might do.

National Collegiate Athletic Association

An association of over 1,200 members serving the student-athlete
Equal Opportunity/Affirmative Action Employer



The Honorable Margaret Spellings

May 6, 2005

Page No. 2

We are attaching a resolution passed by the NCAA Executive Committee on April 28, which we hope will be helpful to you in understanding the issues created for those of us on college campuses. We would welcome an opportunity to discuss ways that the NCAA may assist you in ensuring that Title IX meets its original intent to provide opportunities for the under-represented gender and not discriminate on the basis of sex.

Sincerely,


Sincerely,

Myles Brand
NCAA President

Carol A. Cartwright
Chair, NCAA Executive Committee
President, Kent State University

MB/CAC:ks

Attachment



cc: NCAA Committee on Women's Athletics
Selected NCAA Staff Members



NCAA EXECUTIVE COMMITTEE RESOLUTION

Whereas the United States Department of Education, without notice or opportunity for public input, issued an "Additional Clarification of Intercollegiate Athletics Policy: Three-Part Test – Prong Three," on March 17, 2005, which Clarification allows schools to gauge female students' interest in athletics under the third prong of the three-part test by conducting an e-mail survey and further allows schools to treat a lack of response to the survey as a lack of interest in playing additional sports;

Whereas the Additional Clarification is inconsistent with the 1996 Clarification and with basic principles of equity under Title IX because it, among other problems (a) permits schools to use surveys alone, rather than the factors set forth in the 1996 Clarification, as a means to assess female students' interest in sports; (b) conflicts with a key purpose of Title IX – to encourage women's interest in sports and eliminate stereotypes that discourage them from participating; (c) allows schools to restrict surveys to enrolled and admitted students, thereby permitting them to evade their legal obligation to measure interest broadly; (d) authorizes a flawed survey methodology; (e) shifts the burden to female students to show that they are entitled to equal opportunity; and (f) makes no provision for the Department of Education to monitor schools' implementation of the survey or its results;

Whereas for these reasons, the Additional Clarification provides the opportunity to evade the legal obligation to provide equal opportunity in sports and violates the Department's 2003 commitment to strongly enforce long-standing Title IX standards;

Now, therefore, be it RESOLVED that:

- (1) NCAA members are urged to decline use of the procedures set forth in the March 17, 2005 Additional Clarification and abide by the standards of the 1996 Clarification to evaluate women's interest in sports under the third prong of the three-part test, which standards anticipate the use of a multiplicity of tools and analyses to measure that interest;
- (2) The NCAA Executive Committee, on behalf of its members, NCAA members urges the Department of Education and federal policymakers to rescind the Additional Clarification and to honor the Department's 2003 commitment to strongly enforce the standards of long-standing Title IX athletics policies, including the 1996 Clarification.

NCAA Data Analysis Research Network
Report on Recent Title IX Clarification

At its May 24-25, 2005 meeting, the NCAA Data Analysis Research Network (DARN) was asked to review a recent Department of Education Clarification related to Title IX which allows institutions to gauge the interests of female students by conducting an e-mail survey. The Clarification also allows schools to treat a lack of response to the survey as a lack of interest in playing additional sports.



The members of DARN reviewed the clarification without regard to political or ideological concerns; they were simply interested in assessing the survey methodology from a scientific perspective. They also did not review or comment on the survey instrument, itself. However, the members of DARN were unanimous in the opinion that the methodology for distributing and analyzing the survey and the responses as stated in the Clarification is scientifically unsound and inappropriate. Specific concerns raised by the group include:

1. Surveys conducted by e-mail are subject to poor response rates and significant response bias. This was seen as an inappropriate methodology to use for such a sensitive topic.
2. Assuming a non-response is akin to a response that the student is not interested in something is highly questionable. As an example of the flaws in this methodology, the members of the committee pointed out that one could envision the survey as written from the opposite perspective. That is, the respondents would be asked if they did not want to participate in a given sport. Would it then be appropriate to assume that non-respondents were all highly interested in participating? The committee members did not believe so, and felt this was the most compelling flaw in the method.
3. The members of DARN felt that surveying only current students would leave a large gap in knowledge related to future potential students for a given institution. When the NCAA developed a similar survey in the late 1980s, a great deal of attention was paid to identifying the population from which the institution draws potential students and making significant efforts to survey secondary school students in those areas. Without this population represented, all survey results related to interests of the student body are suspect.

For these reasons, the NCAA Data Analysis Research Network concurs with the resolution adopted by the Executive Committee and urges the NCAA research Committee to suggest to NCAA members that they decline use of the procedures set forth in the March 17, 2005, Additional Clarification, and urge the Department of Education and federal policymakers to rescind the Additional Clarification and to honor the Department's 2003 commitment to strongly enforce the standards of long-standing Title IX athletics policies.

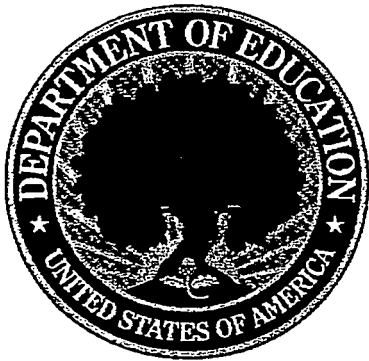


Department of Education, Office for Civil Rights: Documents and Related Materials

1. US Department of Education, Office for Civil Rights, *Additional Clarification of Intercollegiate Athletics Policy: Three-Part Test—Part Three*, March 17, 2005
 2. National Center for Education Statistics, *User's Guide to Developing Student Interest Surveys Under Title IX*, March 2005
 3. National Institute of Statistical Science, *Title IX Data Collection: Technical Manual for Developing the User's Guide*
 4. US Department of Education, Office for Civil Rights Response to the Senate Committee on Appropriations—Intercollegiate Athletics: Additional Factors Considered by Post-Secondary Institutions, March 17, 2006
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Department of Education, Office for Civil Rights: Documents and Related Materials

US Department of Education, Office for Civil Rights, Additional Clarification of
Intercollegiate Athletics Policy: Three-Part Test—Part Three, March 17, 2005



**ADDITIONAL CLARIFICATION OF
INTERCOLLEGIATE ATHLETICS
POLICY: THREE-PART TEST –
PART THREE**

**U.S. Department of Education
Office for Civil Rights**

U.S. Department of Education
Margaret Spellings
Secretary

Office for Civil Rights
James F. Manning
Delegated the Authority of Assistant Secretary for Civil Rights

March 17, 2005

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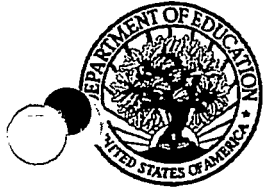
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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

March 17, 2005

Dear Colleague:

On behalf of the Office for Civil Rights (OCR) of the U.S. Department of Education (Department), and as a follow-up to OCR's commitment to providing schools with technical assistance on Title IX of the Education Amendments of 1972 (Title IX), I am sending you this "Additional Clarification of Intercollegiate Athletics Policy: Three-Part Test — Part Three" (Additional Clarification). Accompanying the Additional Clarification is a "User's Guide to Developing Student Interest Surveys Under Title IX" (User's Guide) and a related technical report. The Additional Clarification outlines specific factors that guide OCR's analysis of the third option for compliance with the "three-part test," a test used to assess whether institutions are effectively accommodating the interests and abilities of male and female student athletes under Title IX. The User's Guide contains a model survey instrument to measure student interest in participating in intercollegiate varsity athletics.

As you know, OCR enforces Title IX, an anti-discrimination statute, which prohibits discrimination on the basis of sex in education programs or activities by recipients of federal financial assistance. Specifically, OCR investigates complaints of such discrimination and may, at its discretion, conduct compliance reviews. The Department's regulation implementing Title IX, published in 1975, in part, requires recipients to provide equal athletic opportunity for members of both sexes and to effectively accommodate the interests and abilities of their male and female students to participate in intercollegiate athletics. In the Intercollegiate Athletics Policy Interpretation published in 1979 (Policy Interpretation), the Department established a three-part test that OCR will apply to determine whether an institution is effectively accommodating student athletic interests and abilities. An institution is in compliance with the three-part test if it has met any one of the following three parts of the test: (1) the percent of male and female athletes is substantially proportionate to the percent of male and female students enrolled at the school; or (2) the school has a history and continuing practice of expanding participation opportunities for the underrepresented sex; or (3) the school is fully and effectively accommodating the interests and abilities of the underrepresented sex.

OCR has pledged to provide further guidance on recipients' obligations under the three-part test, which was described only in very general terms in the Policy Interpretation, and to further help institutions appreciate the flexibility of the test. Based on OCR's experience investigating complaints and conducting compliance reviews involving the three-part test, OCR believes that institutions may benefit from further specific guidance on part three.

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Our mission is to ensure equal access to education and to promote educational excellence throughout the nation.

Today, in response, OCR issues this Additional Clarification to explain some of the factors OCR will consider when investigating a recipient's program in order to make a Title IX compliance determination under the third compliance option of the three-part test. The Additional Clarification reflects OCR's many years of experience and expertise in administering the three-part test, which is grounded in the Department's long-standing legal authority under Title IX and its implementing regulation to eliminate discrimination on the basis of sex in education programs and activities receiving federal financial assistance.

Under the third compliance option, an educational institution is in compliance with Title IX's mandate to provide equal athletic participation opportunities if, despite the underrepresentation of one sex in the intercollegiate athletics program, the institution is fully and effectively accommodating the athletic interests and abilities of its students who are underrepresented in its current varsity athletic program offerings. An institution will be found in compliance with part three unless there exists a sport(s) for the underrepresented sex for which *all* three of the following conditions are met: (1) unmet interest sufficient to sustain a varsity team in the sport(s); (2) sufficient ability to sustain an intercollegiate team in the sport(s); and (3) reasonable expectation of intercollegiate competition for a team in the sport(s) within the school's normal competitive region. Thus, schools are not required to accommodate the interests and abilities of all their students or fulfill every request for the addition or elevation of particular sports, unless all three conditions are present. In this analysis, the burden of proof is on OCR (in the case of an OCR investigation or compliance review), or on students (in the case of a complaint filed with the institution under its Title IX grievance procedures), to show by a preponderance of the evidence that the institution is not in compliance with part three.

Many institutions have used questionnaires or surveys to measure student athletic interest as part of their assessment under part three. To assist institutions, this Additional Clarification is being issued with a User's Guide prepared by the National Center for Education Statistics (NCES), as well as a detailed technical report prepared by the National Institute of Statistical Sciences (NISS). These documents were prepared after careful analysis of 132 of OCR's cases involving 130 colleges and universities from 1992 to 2002. They evaluate both the effective and problematic aspects of survey instruments. OCR intends this combined document to serve as a guide to facilitate compliance with part three of the three-part test.

Based on the analysis of the OCR cases and other information, the User's Guide provides a web-based prototype survey (the "Model Survey") that, if administered consistent with the recommendations in the User's Guide, institutions can rely on as an acceptable method to measure students' interests in participating in sports. When the Model Survey is properly administered to all full-time undergraduate students, or to all such students of the underrepresented sex, results that show insufficient interest to support an additional varsity team for the underrepresented sex will create a presumption of compliance with part three of the three-part test and the Title IX regulatory requirement to provide nondiscriminatory athletic participation opportunities. The presumption of compliance can only be overcome if OCR finds direct and very persuasive evidence of unmet interest

sufficient to sustain a varsity team, such as the recent elimination of a viable team for the underrepresented sex or a recent, broad-based petition from an existing club team for elevation to varsity status. Where the Model Survey shows insufficient interest to field a varsity team, OCR will not exercise its discretion to conduct a compliance review of that institution's implementation of the three-part test.

Although more than two-thirds of the institutions involved in the 132 cases complied with the three-part test using part three, OCR believes that some institutions may be uncertain about the factors OCR considers under part three, and they may mistakenly believe that part three offers less than a completely safe harbor. Therefore, for colleges and universities seeking to achieve Title IX compliance using part three, OCR intends that the Additional Clarification and User's Guide serve to facilitate an institution's determination of whether it is in compliance with part three of the three-part test. A recipient may choose to use this information to assess its own athletic programs and then take appropriate steps to ensure that its athletic programs will be operated in compliance with the Title IX regulatory requirements.

Despite the focus on part three, OCR strongly reiterates that each part of the three-part test is an equally sufficient and separate method of complying with the Title IX regulatory requirement to provide nondiscriminatory athletic participation opportunities. In essence, each part of the three-part test is a safe harbor. OCR will continue to determine that a school has met its obligations to provide nondiscriminatory participation opportunities in athletics so long as OCR finds that the school has satisfied any one of the three options for compliance under the three-part test. Schools are also reminded that nothing in Title IX or the three-part test requires the cutting or reduction of opportunities for the overrepresented sex, and OCR has pledged to seek remedies that do not involve the elimination of opportunities.

OCR hopes the Additional Clarification and User's Guide will help reinforce the flexibility of the three-part test and will facilitate application of part three for those schools that choose to use it to ensure Title IX compliance. OCR welcomes requests for individualized technical assistance and is prepared to join with institutions in assisting them to address their particular situations.

Thank you for your continuing interest in this subject.

Sincerely,

James F. Manning
Delegated the Authority of the
Assistant Secretary for Civil Rights

CONTENTS

DEAR COLLEAGUE LETTER	iii
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ADDITIONAL CLARIFICATION OF INTERCOLLEGIATE ATHLETICS POLICY: THREE-PART TEST – PART THREE

Background	1
Additional Clarification and NCES User's Guide	3
Three-Part Test – Part Three: Is the Institution Fully and Effectively Accommodating the Interests and Abilities of the Underrepresented Sex?	3
A. Assessment of Interest Sufficient to Sustain a Varsity Team	5
B. Assessment of Sufficient Ability to Sustain an Intercollegiate Team	9
C. Assessment of Sufficient Number of Interested and Able Participants to Sustain a Team	11
D. Determining Whether There Is a Reasonable Expectation of Intercollegiate Competition for the Team.....	11
E. Implementation	12
Conclusion	13

USER'S GUIDE TO DEVELOPING STUDENT INTEREST SURVEYS UNDER TITLE IX

Introduction to Title IX	1
The Three-Part Test	1
The Title IX Commission and the Assistant Secretary's letter	2
Background on This User's Guide	2
The OCR Case Files	3
Findings on institutional differences and similarities	3
Current Survey Practices	5
How to Conduct a Survey of Student Interest	9
Problem formulation	9
Target population	10
Census versus sample	10
Periodicity	11
Excluding students	11
Confidentiality	11
Nonresponse	12
The prototype	13

List of Screens	15
Technical Details	23
Additional Steps	24

ADDITIONAL CLARIFICATION OF INTERCOLLEGIATE ATHLETICS POLICY: THREE-PART TEST — PART THREE

BACKGROUND

The Office for Civil Rights (OCR) of the U.S. Department of Education (Department) enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, an anti-discrimination statute, which prohibits discrimination on the basis of sex in education programs and activities by recipients of federal funds.¹ The regulation implementing Title IX, at 34 C.F.R. Part 106, effective July 21, 1975, contains specific provisions governing athletic programs. In part, the regulation requires schools to “provide equal athletic opportunity for members of both sexes.” 34 C.F.R. § 106.41(c). In determining whether equal opportunities are available, the regulation provides that OCR will consider, among other factors, whether the selection of sports and levels of competition effectively accommodate the interests and abilities of students of both sexes.

To provide further clarification of the Title IX regulatory requirements, the Department published the Intercollegiate Athletics Policy Interpretation (Policy Interpretation) in the *Federal Register* on December 11, 1979 (44 Fed. Reg. 71,413 (1979)).² The Policy Interpretation provides that, as part of determining whether an institution is effectively accommodating the interests and abilities of male and female athletes, institutions must provide the opportunity both for individuals of each sex to participate in intercollegiate competition, and for athletes of each sex to have competitive team schedules that equally reflect their abilities.³ The Policy Interpretation permits three alternate ways of assessing whether institutions are providing nondiscriminatory opportunities to participate in intercollegiate athletics. In essence, each part of the three-part test is a safe harbor, and no part is favored by OCR. The three-part test is intended to allow institutions to maintain flexibility and control over their athletic programs. OCR does not preapprove or review compliance with these standards by every institution. OCR investigates complaints of discrimination and may, at its discretion, conduct compliance reviews.⁴

The Policy Interpretation specifically delineates the following three-part test and stipulates that compliance will be assessed in any one of the following ways:

¹ OCR does not enforce the Fourteenth Amendment to the U.S. Constitution. Furthermore, because the scope of the Equal Protection Clause of the Fourteenth Amendment may differ from the scope of the Title IX statute, this Additional Clarification does not regulate or implement constitutional requirements or constitute advice about the Constitution.

² The regulation implementing Title IX and the Policy Interpretation were originally published by the former Department of Health, Education, and Welfare, and were later adopted by the Department of Education, established in 1980.

³ This document does not address competitive team schedules that equally reflect student abilities.

⁴ There is a private right of action under Title IX, so that individuals may take legal action directly against the colleges or universities.

1. Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
2. Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or
3. Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a history and continuing practice of program expansion, as provided above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

44 Fed. Reg. at 71,418.

On June 27, 2002, Secretary of Education Rod Paige created the Secretary's Commission on Opportunities in Athletics to investigate whether additional guidance on the Title IX requirements regarding intercollegiate athletics was needed and to provide recommendations on how to improve application of the current standards. The Commission's report, "Open to All: Title IX at Thirty," presented on February 26, 2003, found broad support throughout the country for the goals and spirit of Title IX.

Soon thereafter, in July 2003, OCR issued the Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance (2003 Clarification). It made clear that the elimination of teams is a disfavored practice and that, in negotiating compliance agreements, OCR will seek remedies that do not involve the elimination of opportunities. That policy remains in effect and is emphasized in this Additional Clarification.

In order to ensure that schools have a clear understanding of their options for compliance, OCR also promised in the 2003 Clarification to provide further information to help educational institutions appreciate the flexibility of the law, to explain that each part of the test is a viable and separate means of compliance, and to provide technical assistance to assist schools in complying with Title IX. Of the 130 institutions OCR investigated under the three-part test from 1992 to 2002, approximately two-thirds came into compliance with part three of the test. Based on OCR's experience investigating the three-part test and the fact that OCR has not investigated the vast majority of recipient institutions, OCR believes that institutions may be uncertain about the factors OCR considers under part three, and may be unaware that they may choose to assess the interests and abilities of their students through a variety of flexible nondiscriminatory methods.

ADDITIONAL CLARIFICATION AND NCES USER'S GUIDE

This Additional Clarification, User's Guide to Developing Student Interest Surveys Under Title IX (User's Guide), and related technical report are resources to assist institutions in meeting their compliance obligations. Taken together, they serve to clarify many of the factors OCR will consider under part three, and to facilitate compliance with part three for those schools that choose to comply with that part of the test. The User's Guide was prepared by the National Center for Education Statistics (NCES), and the technical report was prepared by the National Institute of Statistical Sciences (NISS). These documents analyze 132 OCR complaints and compliance reviews involving 130 colleges and universities from 1992 to 2002. They discuss the effective and problematic elements of 52 survey instruments used in OCR cases⁵ and five survey instruments used by other institutions. Based on that analysis, the User's Guide provides a prototype survey ("Model Survey") to measure student interest under part three. The User's Guide summarizes the information in the technical report that is most relevant to the practical concerns of institutions considering the use of a survey. The technical report provides the statistical analysis that is the basis for the User's Guide and Model Survey.

Although the Additional Clarification, User's Guide, and related technical report focus on part three of the three-part test, they are not intended to discourage compliance with the other parts of the test. Instead, they are designed to offer guidance to those schools that choose to comply with part three. Institutions have flexibility and choice regarding how they will provide nondiscriminatory participation opportunities, and each part of the three-part test is an equally sufficient means of compliance.

This combined document is designed specifically for intercollegiate athletics. However, these general principles will often apply to club, intramural, and interscholastic athletic programs, which are also covered by the Title IX implementing regulation.

THREE-PART TEST — PART THREE: IS THE INSTITUTION FULLY AND EFFECTIVELY ACCOMMODATING THE INTERESTS AND ABILITIES OF THE UNDERREPRESENTED SEX?

Under part three of the three-part test, an institution may provide proportionally fewer athletic participation opportunities to one sex, as compared to its enrollment rate, if the interests and abilities of the enrolled and admitted students of the underrepresented sex are being fully and effectively accommodated by the institution's current varsity athletics program.⁶ Merely showing that there is disproportionality in the athletic opportunities provided to male and female athletes is not evidence of unmet interests and abilities of

⁵ The focus of the analysis is on the use of surveys. However, the institutions investigated by OCR may have used other means to assess interest in addition to surveys.

⁶ When determining whether an institution is fully and effectively accommodating the interests and abilities of its students of the underrepresented sex, OCR considers the interests and abilities of currently enrolled students, as well as students who have been admitted. References to the interests and abilities of "students" or "undergraduates" throughout this document are intended to include only enrolled students and admitted students.

the underrepresented sex. There must be actual evidence of unmet interests and abilities among the underrepresented sex. The burden of proof is on OCR (in the case of an OCR investigation or compliance review); or on students (in the case of a complaint filed with the school under its Title IX grievance procedures), to show by a preponderance of the evidence that the institution is not in compliance with part three.

The part three analysis centers on whether there are concrete and viable interests among the underrepresented sex that should be accommodated by the institution's athletic program. OCR has explained that an institution will be found in compliance with part three unless there exists a sport(s) for the underrepresented sex for which *all* three of the following conditions are met:

- a) unmet interest sufficient to sustain a varsity team in the sport(s);
- b) sufficient ability to sustain an intercollegiate team in the sport(s); and
- c) reasonable expectation of intercollegiate competition for a team in the sport(s) within the school's normal competitive region.

If the school decides to comply with part three of the three-part test, the assessment of each of the above three conditions is an essential prerequisite for determining a school's Title IX obligation to create a new intercollegiate varsity team or elevate an existing club team to varsity status.

When one or more of these conditions is absent, a school is in compliance with part three. It follows that schools are not required to accommodate the interests and abilities of all their students of the underrepresented sex or to fulfill every request for additions of new varsity teams or elevations of particular club sports to varsity status. However, when each condition is present, a school is under an obligation to accommodate the particular interests and abilities of its students of the underrepresented sex – not the interests and abilities of the general population – if the institution elects to comply with part three.⁷ Moreover, the school must accommodate these interests and abilities within a reasonable period of time.

As explained in the Policy Interpretation, OCR requires that the assessment of students' interests and abilities use "methods [which] are responsive to the expressed interests of students capable of intercollegiate competitions who are members of an underrepresented sex." 44 Fed. Reg. at 71,417. However, part three imposes no obligation on an institution to generate interest among its students of the underrepresented sex.

Schools choosing to comply with part three of the three-part test may continue to provide more athletic opportunities for the overrepresented sex than for the underrepresented sex,

⁷ When a school chooses to comply with part one of the three-part test, it is not required to accommodate the specific interests of all of its students of the underrepresented sex. An institution is in compliance with part one if it provides participation opportunities for male and female students at rates that are substantially proportionate to the rates of their respective enrollments. Under part one, an institution has discretion in selecting which sports to put in place; it does not necessarily need to provide a sport because there is higher interest in that sport than in another sport. OCR does not consider unfilled slots when determining the number of participation opportunities.

or even to add more opportunities for the overrepresented sex. Part three does not impose any limitations on the number of opportunities a school may add for the overrepresented sex or the amount of interest it may accommodate for that sex, provided the school is fully and effectively accommodating the interests and abilities of the underrepresented sex. Nothing in Title IX or the three-part test requires the cutting or reduction of opportunities for the overrepresented sex. In the event of a finding of noncompliance, OCR seeks remedies that do not involve the elimination of opportunities.

A. Assessment of Interest Sufficient to Sustain a Varsity Team

Under the Policy Interpretation, institutions have discretion and flexibility in choosing the nondiscriminatory methods to determine the athletic interests and abilities of the underrepresented sex. OCR has never required elaborate scientific validation of assessments. Schools may continue to use a variety of straightforward and inexpensive techniques, consistent with the standards set forth herein.

1. Model Survey and Proper Implementation to Assess Interest Sufficient to Sustain a Varsity Team

One method schools may use to measure student interest is the web-based Model Survey provided in the User's Guide. NCES's expert statisticians carefully designed the web-based Model Survey, after extensive analysis of the 57 survey instruments, to effectively measure student interest in a simple, straightforward manner. The Model Survey is an unbiased, standardized methodology that maximizes the possibilities of obtaining correct information and facilitating responses. It effectively captures information on interest, experience, and self-assessment of ability across multiple sports, while not unnecessarily complicating responses with superfluous or confusing questions. Since part two, like part three of the three-part test, involves the assessment of the interests and abilities of the underrepresented sex, the Model Survey may also be used by schools to help them comply with part two.

The User's Guide also provides specific guidance on the proper implementation of the Model Survey to measure student interest sufficient to sustain a varsity team. It recommends that institutions conduct a census, meaning that the survey is provided to all undergraduate students, or to all such students of the underrepresented sex. This contrasts with a sample survey, which is administered to only a subset of students from the target population. The User's Guide concludes that a census is superior to a sample survey in almost every respect for purposes of assessing student interest under part three of the three-part test. Using a census, rather than a sample survey, avoids several complex issues associated with sample surveys, including the selection of the sampling mechanism, selection of the sample size, and calculation of sampling error.⁸

⁸ National Center for Education Statistics, U.S. Department of Education, User's Guide to Developing Student Interest Surveys Under Title IX 10 (2005).

The User's Guide states that schools may assume that nonresponse to the census indicates an actual lack of interest if all students have been given an easy opportunity to respond to the census, the purpose of the census has been made clear, and students have been informed that the school will take nonresponse as an indication of lack of interest.⁹

The User's Guide also emphasizes that the census need only be conducted periodically to permit institutions to identify developing interests of the underrepresented sex in a timely and responsive manner.

2. Conduct a Census Using the Model Survey Consistent With the User's Guide

OCR will presume that the Model Survey is an accurate measure of student interest, absent other direct and very persuasive evidence of unmet interest sufficient to sustain a varsity team,¹⁰ if an institution administers the Model Survey in a manner consistent with the following recommendations in the User's Guide. First, the Model Survey must be administered periodically to permit schools to identify developing interests.

Second, an institution properly administers the Model Survey if it conducts a census whereby the Model Survey is provided to all full-time undergraduates, or to all such students of the underrepresented sex.¹¹ The regulation requires that institutions provide equal athletic opportunity for members of both sexes and effectively accommodate the interests and abilities of members of both sexes. OCR, consistent with the User's Guide, expects that the Model Survey ideally will be administered to students of both sexes. By doing so, a school can learn the degree to which unmet demand exists among male and female students, and use this information to help ensure obligations under the regulation continue to be met as the institution plans the future of its athletic program. It avoids any implication that the school is concerned only with the needs of the underrepresented sex and eliminates the need to restrict access to the survey to only a subset of the undergraduate student body, easing administration.

If an institution conducts a sample survey, rather than a census, OCR will not presume that Model Survey results indicating lack of interest are evidence of actual lack of interest, and the institution will not benefit from the presumption.

Third, schools must administer the census in a manner that is designed to generate high response rates, and students must have an easy opportunity to respond to it. Thus, schools may either require students to complete the census or provide the census in a context in which most students will complete it. For instance, a school may want to

⁹ Id. at 12.

¹⁰ Direct evidence is actual evidence that is not circumstantial. A recent broad-based petition from an existing club team for elevation to varsity status is direct evidence of interest in that sport by students on the club team. On the other hand, evidence that feeder high schools for the institution offer a particular interscholastic sport is circumstantial, not direct, evidence of interest by students at the institution.

¹¹ Schools are not required to meet the athletic interests of potential, part-time, or graduate students.

administer the Model Survey as part of the registration process whereby students must complete or actively bypass the Model Survey to register for courses. Alternatively, a school may send an email to the entire target population that includes a link to the Model Survey, provided the school has accurate email addresses, students have access to email, and the school takes reasonable steps to follow-up with students who do not respond. In either approach, students must also be advised of the purpose of the Model Survey and that a nonresponse to the Model Survey will indicate to the school that the student is not interested in additional varsity athletic opportunities. Although rates of nonresponse may be high with the email procedure, under these conditions, OCR will interpret such nonresponse as a lack of interest.¹²

Fourth, schools must include in the census at least the full list of sports recommended in the Model Survey. That list includes all varsity sports, including “emerging sports,” currently recognized by the three national intercollegiate athletic associations to which most schools belong.¹³ The Department will periodically modify the sports identified on the Model Survey to reflect any changes in varsity sports. Unless the Department notifies schools of any changes in the Model Survey, schools may presume that it accurately reflects all varsity sports currently recognized by these three national intercollegiate athletic associations.

When a school conducts a census using the Model Survey consistent with the User’s Guide, OCR will presume that Model Survey results indicating lack of interest sufficient to sustain a varsity team are evidence of such actual lack of interest, and an institution will therefore be determined to be in compliance with part three of the three-part test. The presumption that the results are an accurate measure of student interest can only be overcome if OCR finds direct and very persuasive evidence of unmet interest sufficient to sustain a varsity team, such as the recent elimination of a viable varsity team for the underrepresented sex or a recent, broad-based petition from an existing club team for elevation to varsity status. Where the Model Survey shows insufficient interest to field a varsity team, OCR will not conduct a compliance review of that institution’s implementation of the three-part test.¹⁴

Whether or not schools use the Model Survey consistent with the recommendations in the User’s Guide, schools cannot use the failure to express interest during a census or survey to eliminate a current and viable intercollegiate team for the underrepresented sex. Students participating on a viable intercollegiate team have expressed interest in

¹² NCES, User’s Guide, at 12.

¹³ The three associations are the National Collegiate Athletic Association (NCAA), the National Association of Intercollegiate Athletics (NAIA), and the National Junior College Athletic Association (NJCAA). Institutions may also be members of additional athletic associations, which may recognize other varsity sports that are not currently recognized by the NCAA, NAIA, or NJCAA. Schools may add additional varsity sports to the census if they so choose, provided the census, at a minimum, includes all the sports identified on the Model Survey.

¹⁴ Compliance reviews are initiated by OCR at its discretion, but OCR is required by regulation to investigate complaints of discrimination.

intercollegiate participation by active participation, and census or survey results, including those of the Model Survey, may not be used to contradict that expressed interest.

3. Conduct a Census Other Than the Model Survey Consistent With the User's Guide

If a school uses a census other than the Model Survey, OCR will presume that the census results accurately measure student interest sufficient to sustain a varsity team under part three if OCR finds that the census is of equivalent reliability to the Model Survey and is administered consistent with the conditions articulated in section two above. OCR evaluates any such census for reliability and compliance with these conditions by examining the following concerns raised in the User's Guide:

- contents of the survey;
- target population that is surveyed;
- response rates; and
- frequency of conducting the survey.

4. Other Means to Assess Interest Sufficient to Sustain a Varsity Team When a School Does Not Use the Model Survey or an Equivalent Census

OCR emphasizes that compliance with part three does not require use of the Model Survey or any other survey. Institutions continue to have discretion and flexibility when determining the athletic interests and abilities of students, and may do so through a variety of nondiscriminatory methods of their choosing that need not be elaborate or expensive as long as the process complies with the requirements of the Policy Interpretation. While surveys like the Model Survey provide a standard method by which to collect information on students' athletic-participation interests, experiences, and self-assessment of ability, surveys of this kind are only one method by which a school may obtain data on its students' interests. OCR is not mandating the use of this specific prototype or requiring that individual schools conduct elaborate scientific validation or assessment of student interest. Consequently, should a school already employ an effective set of procedures to assess student interest, OCR does not require the school to alter its assessment process to incorporate the Model Survey or any other survey.

When a school chooses not to use a survey, uses a survey other than the Model Survey that is not equivalent to the Model Survey, conducts a sample survey rather than a census, or does not otherwise administer the Model Survey consistent with the recommendations in the User's Guide, OCR will not presume that survey results (if any) alone are adequate to measure student interest under part three. Instead, OCR will look to a broader range of factors drawn from previous OCR guidance on the three-part test in determining whether the school has accurately measured student interest. Specifically, OCR will consider the following factors when assessing student interest under part three:

- requests for the addition of a varsity team or elevation of an existing club sport to intercollegiate varsity status;
- participation in club or intramural sports;
- participation rates in high schools, amateur athletic associations, and community sports leagues that operate in areas from which the institution draws its students; and
- intercollegiate varsity participation rates, as identified by national and regional intercollegiate sports governing bodies, in the institution's normal competitive region.

OCR also finds a recent broad-based petition to create and participate in a varsity team or elevate a club team to varsity status to be indicative of interest. Schools may wish to develop policies and procedures for accepting, handling and responding to such requests, and widely disseminate such policies and procedures to existing and newly admitted students, as well as coaches and other employees. The procedures available for requesting the addition or elevation of teams also play a role in compliance with part two of the three-part test, and effective implementation of these policies and procedures may facilitate compliance with part two, as well as part three. Since recipients are required to designate at least one employee to coordinate their Title IX responsibilities, recipients may wish to consider whether the processing of requests for the addition or elevation of teams should be part of those procedures or the responsibilities of their Title IX coordinators. (See 34 C.F.R. § 106.8.)

By participating on a club or intramural team, students have already expressed interest in a particular sport, though not necessarily in participation at the intercollegiate varsity level. Consequently, schools may wish to regularly monitor their club and intramural sports — including, but not limited to, participation rates and the extent to which the team engages in varsity competition — as part of their assessment of student interest.

B. Assessment of Sufficient Ability to Sustain an Intercollegiate Team

Because athletic directors and coaches have unique expertise when assessing athletic ability, their assessments will be presumed to be valid, provided the methods used to assess ability are adequate and evaluate whether the students have sufficient ability to sustain an intercollegiate varsity team.

OCR recognizes that students interested in a particular sport may have a broad range of athletic abilities. Schools are not required to create a varsity team or elevate a club team to intercollegiate varsity status unless there are a sufficient number of interested students that have the ability to sustain an intercollegiate varsity team. When OCR is required to make this determination, it may consider such factors as the following:

- the athletic experience and achievement — in interscholastic, club or intramural competition — of underrepresented students interested in playing the sport;
- participation in other sports, intercollegiate or otherwise, that may demonstrate skills or abilities that are fundamental to the particular sport being considered;

- self-assessment of ability to compete in a particular interscholastic varsity sport;
- if the team has previously competed at the club or intramural level, whether the competitive experience of the team indicates that it has the potential to sustain an intercollegiate team;
- tryouts in the particular sport in which there is an interest;
- other direct observations of participation in the particular sport being considered; and
- opinions of coaches, administrators, and athletes at the institution regarding whether interested students have the potential to sustain a varsity team.

When measuring students' athletic abilities, surveys, including the Model Survey, are generally limited to measuring a student's athletic experiences and self-assessment of ability. Although a student's experience in a particular sport may be a good indicator of ability, it does not necessarily reflect the student's ability to compete on a team at the higher level required of intercollegiate athletes. In particular, a survey such as the Model Survey does not capture information on the level of performance or competition of a team or a particular student. Conversely, a lack of experience or limited experience in a particular sport does not necessarily indicate the inability to compete in a particular sport at the intercollegiate level. For example, a student may have athletic skills, gained from experience in other sports, which are fundamental to the particular sport in which the student has expressed an interest.

If a school chooses to use the Model Survey or an equivalent survey, OCR will presume that a student's self-assessment of lack of ability to compete at the intercollegiate varsity level in a particular sport is evidence of actual lack of ability.

If an institution has a team that currently or previously competed at the club or intramural level, OCR will consider the competitive experience of the team, as well as the opinions of coaches and others within the institution that have observed or otherwise have knowledge of the team members' athletic abilities.

Because OCR considers participation in club and intramural sports to be an important indicator of interest and ability, schools that are unsure whether the interests and abilities they have measured will be sufficient to sustain a new varsity team are permitted – though not required – to create a club or intramural team to further assess those interests and abilities. We refer here, not to lack of confidence in the Model Survey or other results, but to whether the accurately measured interests and self-assessed abilities are sufficient to sustain a new varsity team. Just as an institution might conduct tryouts or hold organizational meetings after a survey or other initial assessment shows the potential interest and ability to create a new varsity team, an institution has the option to field a club or intramural team for a reasonable period of time to further assess the depth and breadth of the interests and abilities of the participating athletes. However, this option must be exercised as only a part of the assessment process, using standards that apply equally to male and female athletes. Once a school completes the assessment process by concluding that there is sufficient interest and ability to support a new varsity team, the school is under an obligation to create a varsity team within a reasonable period of time.

C. Assessment of Sufficient Number of Interested and Able Participants to Sustain a Team

To trigger an institution's obligation to create a team for the underrepresented sex under part three of the three-part test, the number of interested students with ability must be sufficient to sustain an intercollegiate team in that sport. Each of the various intercollegiate sports has a minimum number of athletes needed to compete in a contest. While it is theoretically possible to have teams with only these minimum numbers of athletes, OCR recognizes that the reality of how sports are played involves practical factors that schools must take into consideration in setting the minimum number of participants needed for a particular sport. Athletic directors and coaches for a particular sport will generally have the experience with the mechanics and realities of operating a team to determine the impact of these factors and decide the number of students needed to establish teams by sport. In general, OCR defers to decisions of the athletic directors and coaches. As a frame of reference, OCR may consider the average size of teams in a particular sport, a number that will typically vary by institution, sport, sex, and competitive region. When evaluating the minimum number of athletes needed, OCR may consider factors such as:

- rate of substitutions, caused by factors such as intensity of play or injury;
- variety of skill sets required for competition; and
- effective practices for skill development.

In particular, some sports require a higher rate of substitutions, both in intercollegiate competition and in practice because, for example, they involve a higher intensity of play or have higher frequency rates of injury than other sports. Some team sports may require an athlete in a certain playing position to develop a particular set of athletic skills that it may not be necessary for other team members to develop to the same degree of proficiency. For example, a baseball or softball pitcher, to be successful, must develop athletic skills very different from those of the catcher. Similarly, the skill set needed to play offensive positions in football are different from those in defensive positions. Additional players may be needed for purposes of practice and skill development. To have effective practice to simulate regulation play, a basketball team, for example, may need twice the number of participants than are permitted on the court at once during varsity competition. OCR may consider these factors when evaluating the minimum number of athletes needed to sustain a particular team.

D. Determining Whether There Is a Reasonable Expectation of Intercollegiate Competition for the Team

In addition to the requirement that students have an interest in athletics and sufficient ability to sustain a team, there must be a reasonable expectation of intercollegiate competition for the team in the institution's normal competitive region. OCR will look at available competitive opportunities in the geographic area in which the institution's athletes primarily compete.

Institutions are not required to create an intercollegiate varsity team or elevate teams to varsity status absent a reasonable expectation that intercollegiate competition in that sport will be available within the institution's normal competitive region. However, institutions may be required by the Title IX regulation to encourage the development of such competition as part of a resolution agreement or remedy.

If an institution's normal competitive region includes an area outside its own geographic area, OCR will not require the creation of a particular sport if, due to climate or topography, it would not be possible as a practical matter for students at the institution to practice that sport. For example, Institution A's normal competitive region includes the Rocky Mountains, although Institution A is located in the Plains. Students at Institution A are interested in and able to compete in skiing. Due to the geographic area in which Institution A is located, there are no mountains on which students at Institution A could practice. Thus, in order to prepare for competition, the skiing team would have to travel to the Rocky Mountains for each practice. Therefore, OCR would not require the school to create a ski team.

E. Implementation

When a school has sufficient unmet interest and ability in a sport to sustain an intercollegiate team in that sport, and a reasonable expectation of intercollegiate competition for a team in that sport within the school's normal competitive region, the school is under an obligation to create a varsity team in that sport or elevate the club team to varsity status, if it elects to comply with part three of the three-part test. Moreover, the school must accommodate those interests and abilities within a reasonable period of time.¹⁵ Thus, schools may wish to use the results of their assessment under part three, including the Model Survey, to inform and support budget decision-making.

OCR recognizes that, for practical and financial reasons, a school may be unable to immediately create a new varsity team or elevate a team to varsity status. When determining whether the period of time to create or upgrade a team is reasonable, OCR will account for the steps necessary to establish the varsity team, which will vary by sport and by school and may include obtaining necessary approval and funding to establish the team, building or upgrading facilities, obtaining varsity level coach(es), and acquiring necessary equipment and supplies. If a school must construct or renovate facilities for the varsity team, it may immediately accommodate the interests and abilities of the underrepresented sex by providing temporary facilities.

¹⁵ The addition of a new varsity team necessarily will increase the number of varsity athletes at the school, and the development of a new team may require a school to spread scholarships for these new varsity athletes over as much as four years. If a school takes such action, OCR will consider the creation of a new team to be a nondiscriminatory factor justifying the award of fewer scholarships in the first few years of the newly established team than would be necessary to create substantial proportionality between male and female athletes.

CONCLUSION

OCR intends that the Additional Clarification and User's Guide will serve to facilitate compliance with part three of the three-part test for those institutions that choose to use part three to ensure Title IX compliance. Although the focus of this combined document is on part three, OCR reiterates that each part of the three-part test is an equally sufficient and separate method of complying with the Title IX regulatory requirement to provide nondiscriminatory athletic participation opportunities, and institutions maintain flexibility and control over their athletic programs.

Department of Education, Office for Civil Rights: Documents and Related Materials

National Center for Education Statistics, *User's Guide to Developing Student Interest Surveys Under Title IX*, March 2005



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User's Guide to Developing Student Interest Surveys Under Title IX

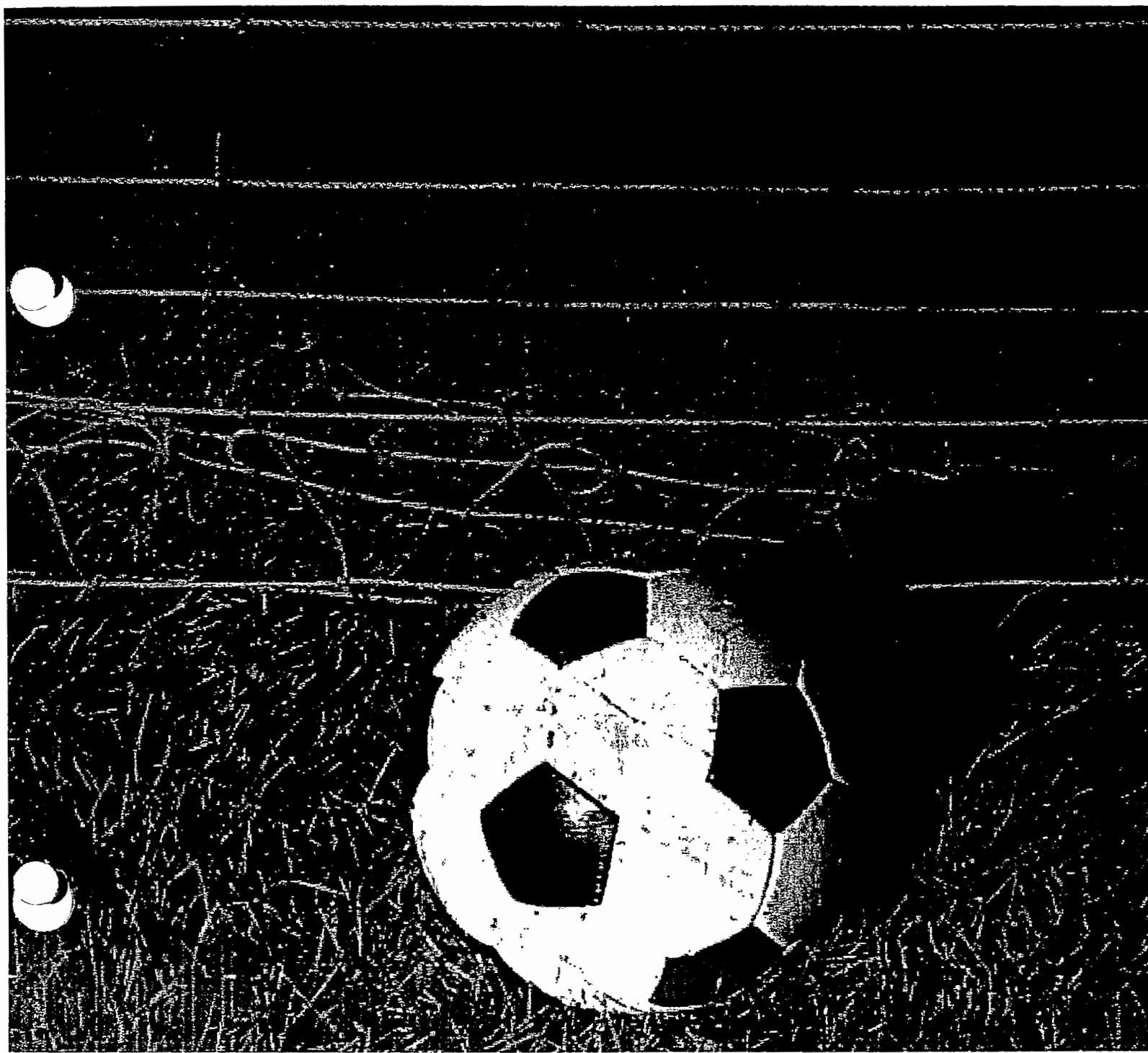


Table of Contents

Introduction to Title IX	1
The Three-Part Test	1
The Title IX Commission and the Assistant Secretary's letter	2
Background on This User's Guide	2
The OCR Case Files	3
Findings on institutional differences and similarities	3
Current Survey Practices	5
How to Conduct a Survey of Student Interest	9
Problem formulation	9
Target population	10
Census versus sample	10
Periodicity	11
Excluding students	11
Confidentiality	11
Nonresponse	12
The prototype	13
List of Screens	
Screen 1: Initial screen of the prototype data collection instrument, containing the purposes of the survey, a confidentiality statement, and an explanation of the structure of the instrument	15
Screen 2: Second screen of the prototype data collection instrument, in which respondents provide four items of demographic and student status information. This example shows a respondent who is 20 years old, female, a junior, and a full-time student	16
Screen 3: Third screen of the prototype data collection instrument, on which respondents with no experience, current participation, or interest in future participation can so indicate and complete the process	17
Screen 4: Fourth screen of the prototype data collection instrument, which is reached only by respondents who wish to enter information concerning athletic experience, interests, and abilities	18
Screen 5: Fifth screen of the prototype data collection instrument, which is reached only by respondents who wish to enter information concerning athletic experience, interests, and abilities. Here, respondents select the sports for which they wish to provide	

information. The list is illustrative, consisting of the 23 sports in which the NCAA conducts championships and 7 “emerging sports.” The respondent illustrated here has chosen basketball, lacrosse, and volleyball, which appear in screen 6.	19
Screen 6: Sixth screen of the prototype instrument, on which respondents enter information concerning experience, current participation, interest in future participation, and ability <i>only for those sports selected on screen 5</i>	20
Screen 7: Seventh and potentially final screen of the prototype data collection instrument, which offers respondents the opportunity to provide comments or other feedback, or to request being contacted by the athletic department. Only respondents who check the box are taken to screen 8	21
Screen 8: Eighth and final screen of the data collection instrument, reached only by respondents who expressed interest and ability in specific sports, to ask whether they wish to be contacted by the athletic department and if so, to provide contact information.....	22
Technical Details	23
Additional Steps	24

USER'S GUIDE TO DEVELOPING STUDENT INTEREST SURVEYS UNDER TITLE IX

The purpose of this report, prepared by the National Center for Education Statistics (NCES) for the Office for Civil Rights of the U.S. Department of Education, is to provide a guide for conducting a survey of student interest in order to satisfy Part 3 the Three-Part Test established in the 1979 Policy Interpretation of the intercollegiate athletic provisions of Title IX of the Higher Education Act of 1972.

Introduction to Title IX

Title IX (20 U.S.C. §§ 1681-1688), enacted in 1972, addresses issues of gender discrimination in colleges and universities. Specifically, it states that

“...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 (a)).

In 1975, the former U.S. Department of Health, Education, and Welfare issued regulations implementing Title IX (34 CFR Part 106). The regulations pertaining to athletics require that a recipient which sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes (34 CFR 106.41(c)).

Enforcement of Title IX is primarily the responsibility of the Office for Civil Rights (OCR) of the U.S. Department of Education. Courts, however, have resolved some cases. The associated body of case law has addressed legal issues ranging from the standing of plaintiffs to whether Title IX violates the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.

The Three-Part Test

Postsecondary educational institutions may be required to demonstrate compliance with Title IX in response to either specific complaints or OCR's compliance reviews.

The 1979 Policy Interpretation of Title IX established, among other things, three means by which institutions can demonstrate compliance with the interests and abilities factor, which is one of the factors for determining equivalence in athletic benefits and opportunities. Collectively, these are known as the “Three-Part Test” or, alternatively, as the “Three-Prong Test.” An institution may demonstrate compliance in any one of the following ways (44 Fed. Reg. 71,418 Dec. 11, 1979):

1. Demonstrate that intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; *or*

2. Where the members of one sex have been and are underrepresented among intercollegiate athletes, show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; *or*
3. Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion such as that cited above [in Part 2], demonstrate that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

The Title IX Commission and the Assistant Secretary's letter

On June 27, 2002, then Secretary of Education Rod Paige created the Commission on Opportunity in Athletics to investigate whether further guidance on Title IX requirements regarding intercollegiate athletics was needed. On February 26, 2003, the 15-member Commission issued its final report entitled "*Open to All: Title IX at Thirty*."

In response to the Commission's report, on July 11, 2003, OCR issued a Dear Colleague letter providing further clarification on the intercollegiate athletics policy guidance regarding Title IX compliance. The letter reaffirmed that each of the three parts was a valid means of compliance and that "institutions have flexibility in providing nondiscriminatory participation opportunities to their students, and OCR does not require quotas." Further, OCR encouraged schools to request individualized assistance from OCR to meet the requirements of Title IX. OCR also indicated that it would share information on successful approaches with the broader scholastic community.

Background on This User's Guide

Pursuant to the July 11, 2003 clarification letter, OCR desired assistance in providing technical guidance to schools on meeting the requirements of Title IX. At OCR's request, NCES produced this guide and commissioned a related technical report by the National Institute of Statistical Sciences (NISS). The intent of this report is to provide guidance on conducting a survey of student interest with respect to Part 3 of the Three-Part Test.

To lay the foundation for the guide, NISS conducted an historical analysis of the use of surveys for Part 3 within the legal and regulatory context of OCR. The history of the use of surveys to comply with Title IX provides a context for identifying good existing practices as well as desirable improvements. To conduct this analysis, OCR provided files to NCES of the 132 cases of possible noncompliance with Title IX that OCR investigated during the period of 1992–2002. These cases involved 130 colleges and universities in 43 states. Such cases either resulted from complaints or arose from compliance reviews conducted by OCR; all were resolved.

In order to ascertain the unique needs of institutions attempting to demonstrate Title IX compliance using Part 3, the files were examined with two general questions in mind. The first was the degree to which the institutions in the OCR Title IX compliance case files, and the subset of those institutions that used Part 3, were similar to the universe of postsecondary institutions that offer intercollegiate sports programs. To the extent that the

institutions in the OCR case files are similar to the larger universe of institutions, it is easier to generalize from their history.

The second question was with regard to the specific survey practices that were used by those institutions that employed a survey. For instance, what kind of data collection process was used? How did institutions ask about student interest in various sports? How was nonresponse handled? NISS examined the survey instruments that have been employed to date and considered the technical challenges to conducting a survey that will be both easy to implement and adequate to ascertaining whether the interests and abilities of the underrepresented sex have been effectively accommodated.

Once the analyses were conducted, it was possible to develop suggestions for an improved process for conducting a Part 3 interest survey. The next sections of this report summarize the analysis of the OCR case files. The final section of this report provides guidance on how to conduct a Part 3 interest survey. It includes procedures that represent the best of the practices found in the OCR case files and further improvements. The practices that are recommended in this guide do not, in some particulars, meet the standards that would govern the collection and analysis of data by a federal statistical agency such as NCES. The goal was to identify and provide guidance on ways to improve practice within the context of compliance with Part 3 of the Three-Part Test.

This User's Guide draws extensively from a technical report, *Title IX Data Collection: Technical Manual for Developing the User's Guide* (Karr, A.F., and Sanil, A.P., 2005), that is provided as a companion to this User's Guide. The technical report was prepared for NCES by the National Institute of Statistical Sciences, a highly respected independent research institute. This User's Guide presents the information in the technical report that is most relevant to the practical concerns of institutions considering the use of a survey to comply with Title IX.

The OCR Case Files

Findings on institutional differences and similarities

There were 130 unique institutions in the OCR case files ("OCR institutions"). The cases were initiated and resolved during the years from 1992 to 2002. Of these, 95 were the subject of a complaint and 35 were the subject of an OCR-initiated compliance review.

About two-thirds of the 130 OCR institutions opted to use Part 3 (n = 86) rather than Parts 1 or 2 (n = 44) to comply with Title IX. There were so few attempts to comply using Part 2 (n = 8) that separate analysis of Part 2 cases was not conducted. About three-fourths of the 86 institutions that achieved compliance using Part 3 did so by means of a student interest survey (n = 67). The remainder achieved compliance with Part 3 in some other manner (n = 19).

In order to gain a sense of how representative the 130 OCR institutions are, they were compared to a base population of 1,723 institutions that include every institution that is a member of at least one of the intercollegiate athletic organizations: the National

Collegiate Athletic Association (NCAA), the National Association of Intercollegiate Athletics (NAIA), and the National Junior College Athletic Association (NJCAA).

The comparisons were made using 14 different characteristics. These are divided into three groups. The first group, Institutional Characteristics, consists of Sector, Geographical Region, Urbanicity; Carnegie Classification, Selectivity, In-State Cost, and Out-of-State Cost. The second group, Student Body Demographics, consists of Enrollment, Percent Female, Percent Black, and Percent Out-of-State. The third group, Athletic Program Characteristics, contains Association Membership, Football, and Number of Sports. Complete details describing the full set of characteristics and a complete set of tables displaying the results summarized here are given in the accompanying technical report.

Although the OCR cases consist of institutions of all types located in 43 states, there are some differences between them and the comparison population. OCR cases tend to involve large state colleges and universities (including doctoral universities) that are highly involved in intercollegiate sports. More specifically, relative to the comparison institutions, they are more likely to have football as one of their conference membership sports, are more likely to participate in all four major conference sports (i.e., baseball, football, basketball, and track), and are more likely to belong only to the NCAA than to one of the smaller sports associations. In addition, they are more likely to be located in the Southeast and the Far West than are the comparison institutions.

The OCR institutions that used Part 3 to achieve compliance, compared to Part 1 and Part 2 users, are more likely to be public, 2-year institutions and to have a greater percentage of female students and Black students. They are also more likely to be small, less expensive, and located in the Southeast. In contrast, they are less likely to be doctoral universities, belong to the NCAA, participate in conference sports, and to have out-of-state students than those institutions that opted to use Parts 1 or 2.

About three-fourths of the institutions that achieved compliance using Part 3 did so by means of a student interest survey (n = 67).¹ The differences among institutions using Part 3 that employed an interest survey and those that did not are few and are detailed in the technical report.

Finally, there is some evidence that use of Part 3 and the use of surveys to achieve Part 3 compliance have increased over time.

In summary, the OCR institutions tend to be those that educate large numbers of undergraduates. However, the OCR institutions that used Part 3, including those that used a student interest survey, tend to be smaller institutions that are not as involved at the

¹ Following the completion of the NISS analysis, OCR provided documentation showing that 10 of the 29 institutions identified as not having surveys in the NISS report had, in fact, used a survey. However, copies of the survey instruments used were not available for analysis. The numbers in this guide have been adjusted to reflect the change in these 10 cases.

most competitive levels of intercollegiate athletics. We have no way of ascertaining why institutions that use Part 3 differ from those that do not. There is no reason, however, from a statistical and measurement perspective, for student interest surveys to be more appropriate for one type of institution than another.

Current Survey Practices

In this section, we summarize the information obtained from the 52 OCR files containing survey instruments.² This information was used as the foundation for the guidance we provide in the last section on how to conduct a Part 3 interest survey.

The 52 instruments were classified along 20 categorical dimensions.

The first set of dimensions consists of the following properties of the survey itself:

- Whether the case is the result of a complaint against the institution or routine monitoring activities of OCR.
- The target population, which may consist of the entire student body, only females, or some other group. This is the group whose interests and abilities the survey purports to describe.
- The sampling mechanism, which indicates whether there is explicit selection of a subset of the target population or whether the survey is meant to be a census, that is, completed by all students.
- The degree of proactivity in conducting the survey. This is the extent to which the institution exerted effort to secure a reasonable response rate.

The second set of dimensions consists largely of characteristics of the survey instrument. Most of these are the presence or absence of specific kinds of questions:

- Age: are respondents asked their age?
- Class: are respondents asked which class (i.e., freshman, ...) they are a member of?
- Gender: are respondents asked their gender?
- Spectator interest: are respondents asked about their interest as spectators, either in person or via television or radio, of athletic events?
- Attitudes about athletics: are respondents asked explicitly about their attitudes regarding athletics in general or intercollegiate athletics?
- Opinion about the institution's athletic programs: are respondents asked explicitly for opinions regarding whether the institution's athletic programs address their needs (as opposed to implicit questions associated with whether their personal interests and abilities are satisfied)?
- Identifying information: are respondents asked for information that identifies them?
- Ability: are respondents asked explicitly about their athletic ability?

² There were a total of 15 OCR case files that did not contain an instrument despite being recorded as having carried out a survey.

- Recruiting: are respondents asked whether they had been recruited as athletes by a postsecondary institution?

The third set of dimensions is the global characteristics of the instrument:

- Caveats and benefits: are questions regarding intercollegiate athletics accompanied by a statement of the potential disadvantages (for example, time spent in practice or missed classes) and advantages (for example, financial aid)?
- Reasons for the survey: are respondents told why the survey is being conducted?
- Statement of confidentiality: are respondents promised explicitly that their responses will be kept confidential?

The final set of dimensions concerns how athletic interest, experience, and ability are represented in the survey instrument.

- For interest, representation of sports (i.e., type of sports activity)
- For interest, number of levels (i.e., amount of interest)
- For experience, representation of sports
- For experience, number of levels.

In examining these surveys, it was found that close to two-thirds (44 of the 67) were administered in response to a complaint being filed. Detailed data were available on three-fourths of these surveys (52 of the 67). Of the institutions with available surveys, a majority included the entire student body in its purview rather than some other group (e.g., campus visitors or applicants for admission). Also noteworthy is that a majority of these surveys included all students rather than just women, as might be expected from the language in Part 3 of the Three-Part Test, which refers only to the interests of the underrepresented sex as being relevant to compliance. Nearly two-thirds of these surveys used a census approach, which attempted to ascertain the responses of all students rather than those of only a sample of students.

As best as could be determined, few if any institutions made an effort to obtain high response rates. The typical institution simply distributed the questionnaires in a central place. Only a few provided incentives for students to complete the survey or provided any indication that they attempted to contact nonrespondents in order to induce them to complete the survey.

A majority of institutions included questions on student age, class (freshman, sophomore, etc.), and gender. More than three-fourths did not ask respondents to provide identifying information.

Most did not ask about student interest as athletic spectators, or their attitude towards intercollegiate athletics in general. Less than one-half of the surveys included a question about their institution's athletic program, and less than 20 percent (10 of 52) of survey instruments contained direct questions about whether interests as spectators are being met. One example of a direct question about interests being met is the following:

"Are your desires for participation in [recreational, intramural, intercollegiate, club] sports met at XXX?"

Less than one-third of the 52 institutions explicitly asked respondents to rate their athletic abilities. Many institutions asked about previous high school experience or previous collegiate experience as a surrogate for asking about athletic ability.

Only a few institutions asked students whether or not they had been recruited as athletes. Less than one-third reported that students were told the purpose of the survey. Less than 20 percent of surveys promised student confidentiality to potential respondents.

Given the purpose of the study, every survey contained some question or questions concerning student interest. There are two separate issues: (1) how were individual sports represented, and (2) how many levels of interest were offered to respondents as part of the question wording.

The most substantive of the differences among the survey instruments are in how they operationalize these concepts. These differences are of two kinds. The first is how sports are represented, which occurs in the instruments three ways:

- By fixed entries (e.g., archery, baseball, basketball, ...) in the "Sport" column.
- By blank entries in the "Sport" column, in which respondents are asked to write in the names of sports for which they wish to provide information.
- By blank entries in the "Sport" column, into which respondents are to place numerical codes for sports of interest, which are listed somewhere in the instrument.

Nearly two-thirds of surveys provided fixed entries for individual sports as a way of representing them in the questionnaire.

The second difference is the number of levels provided to respondents as response categories, which ranges from one ("some interest") to ten levels. The dominant practice is to offer simply one (non-zero) level of interest for respondents, treating this as a yes/no question. In contrast to the limited variation in questions about interest, questions about previous experience varied widely. There was no predominant pattern of question wording and type, even though every survey contained questions about previous experience. Similarly, the number of levels of experience varied widely, suggesting an absence of a standardized format for response.

Several (15 of 52), albeit a minority, of the instruments contained statements of caveats and benefits associated with participation in intercollegiate athletics. The following statement appeared in several of the instruments:

"Intercollegiate athletics usually requires athletes to devote 20 hours of practice each week during the season. The athlete is expected to follow an individual regimen of training during the off-season. Many intercollegiate athletes receive financial awards that cover all or a portion of school expenses. Athletes are

required to travel and occasionally miss classes. They are given access to academic support services, including tutoring, counseling and study tables.”

It is inherent in Part 3 surveys that questions of interest and ability need to be asked of respondents with respect to many different sports. A number of surveys struggled with this problem unsuccessfully, in that they did not use a format that both maximized the possibilities of obtaining correct information and facilitated responses because it was easy to use. Some of the questionable procedures include insufficient definition of the number of levels of interest, unnecessary forced-choice response categories, and insufficient space for free-form responses. In addition, surveys that use only free-form responses may lead to underreporting of levels of interest in sports that do not immediately occur to respondents as they are filling out the questionnaire.

Many questions included on these surveys appeared to be irrelevant to the purpose of Title IX, including questions about race and ethnicity and student living arrangements. Eliminating superfluous questions would improve these survey instruments.

A major problem with these surveys is that response rates reported by the OCR institutions are typically low. One-half of these institutions reported the data needed to compute their survey response rates; the range varied from 8 percent to 70 percent. Coupled with the problem of low response rates is the lack of attention to questions of nonresponse bias. While it is a reasonable conjecture that most student nonresponse is due to the lack of interest in athletics on the part of those students, there is no evidence that any institution sought to test this view or, alternatively, that they informed students that nonresponse would be interpreted as lack of interest.

On a positive note, while some of the question wording is awkward, there was little or no attempt to slant the responses on the part of the 52 survey institutions by biasing question wording.

In order to see whether student athletic interest surveys have been done more generally, an Internet search for additional survey instruments identified a number of institutions that reported such surveys, including five for which survey instruments were obtained. They are similar to the surveys conducted by the OCR institutions in that they were used to survey the student body rather than applicants, they tend to be complete censuses rather than based on samples, they use questions about experience as surrogates for questions of ability, they do not take steps to deal with any nonresponse problem they may have faced, and they include a question on gender.

A major difference between these five surveys and the instruments used by the OCR institutions is that four of the five were conducted using the Web. In part, this reflects the evolution of survey technology, since these surveys were conducted between the years 2000 and 2004, while the surveys conducted by OCR institutions were carried out between 1992 and 2002 at the latest. However, the additional surveys failed to exploit the full potential of Web interactivity and of Web technology that excuses respondents from unnecessary responses and can help guarantee respondents' confidentiality.

In summary, the 52 surveys conducted by OCR institutions and the five Internet surveys exhibit a mixture of strengths and weakness. Lack of explicit bias is one of the great strengths of these instruments, as is the tendency of more recent surveys to explicitly use the Web for their data collection process. One weakness of many of these instruments is that their representation of interest, ability, and experience across many sports is often confused and unnecessarily complex, while another weakness is the inclusion of irrelevant information on the questionnaire. The most serious problem, though, is the inattention to low response rates. A complete discussion and summary of these issues is contained in the technical report.

How to Conduct a Survey of Student Interest

A survey instrument and data collection process that improves on current practice by utilizing the newest Internet technologies and adopting procedures that will generate high response rates is presented below. It avoids many of the problems found in the examination of current practice and seeks to simplify the process for institutions that might wish to comply with Part 3 of the Three-Part Test by means of a student interest survey.

The technical requirements of such a survey, which is designed to measure whether the “interests and abilities of the members of that underrepresented sex have been fully and effectively accommodated by the present program,” indicate that certain choices will make it easier to conform to legal requirements as well as the technical requirements of surveys. All of the criteria for doing so are set out in the technical report.

Problem formulation

In order to simplify the presentation, attention is restricted to a single sport not currently offered at the varsity level for women. We assume that women are the underrepresented sex. An institution employing Part 3 is attempting to determine, using data collected from a student survey, whether the interests and abilities of women have been fully and effectively accommodated by the present program.

An operational formulation of the problem is as follows: There are a minimal number of team members necessary to “field” a team in the given sport. The institution must specify this number. It depends on the sport and possibly contextual factors. For instance, a basketball team cannot play with fewer than five players, but this is not the minimal number of players needed for basketball. Instead, the minimal number is presumably in the range 10–15. NCAA or other association rules may provide other bounds for the number of players, but prevailing values in the conference to which the institution belongs are also relevant.

There is, conceptually, some number of women students who possess the interest and ability to compete in the sport at the varsity level. If that number were known with certainty, then determination of compliance by OCR would be straightforward:

- If the number of women with interest and ability is equal to or greater than the minimum number of players required to field a team, then the institution must take additional steps that could lead to offering the sport at the varsity level.

- If the number of women with interest and ability is less than the minimum number of players required to field a team, then the institution does not have to take steps to offer that sport.

It is the “known with certainty” qualification in this formulation that creates challenges for a survey. In particular, it raises questions about the target population to be surveyed, whether a census or sample is to be used, how frequently the survey should be conducted, and most importantly, how to deal with the problem of students not responding to the survey and the possible bias introduced by such nonresponse.

Target population

The ideal implementation of this kind of survey should fix the population to be surveyed to be the entire undergraduate student body. Even though compliance with Title IX for intercollegiate athletics is restricted to accommodating the interests of full-time undergraduates of the underrepresented sex, a survey of the entire undergraduate population can provide institutions with evidence related to the degree to which unmet demand differs for males versus females and full-time versus part-time students; it avoids the suggestion that the institution is concerned only with the needs of the underrepresented sex and eliminates the need to restrict access to the survey to only a subset of the undergraduate body. Even though the entire undergraduate student body is surveyed, the determination of the number with interest and ability for purposes of compliance with Part 3 should be restricted to full-time students of the underrepresented sex.

An alternative to surveying the entire student population is to survey a catchment population consisting of both the entire student population and potential applicants. However, the use of a catchment population is very problematic. The size of the catchment area is dependent on the student population served by a specific institution. The catchment area might be local for a rural community college, national for a small state college, and international for large 4-year and doctoral institutions. Even if definable, such a large target population is almost surely unreachable in any meaningful way and thus is not recommended here.

Census versus sample

There are two alternative possibilities for selecting cases. The first would be to conduct a census whereby all undergraduates are asked to provide information regarding whether their interests and abilities are accommodated by the present program. The second possibility would be to conduct a sample survey: only a subset of students is asked to provide information regarding whether the present program accommodates their interests and abilities.

While a census is a larger scale undertaking than a sample survey, it is superior in almost every respect for Part 3 interest surveys. Using a census avoids several difficult issues associated with sample surveys: selection of the sampling mechanism, selection of the sample size, and calculation of sampling error. In fact, a majority of the OCR institutions using a survey attempted to conduct a census. For those OCR cases not using a census approach, a few institutions selected a random sample while others used a non-random

purposive sample of what the institution took to be an interested population, such as students in physical education classes. For technical reasons, if an institution intends to select a sample, it is necessary to select an extremely large sample in order to get a precise estimate of interested students of the underrepresented sex. Further, even with technically sophisticated sampling and analysis procedures, the compliance implications of sample estimates are unclear. For instance, how is an institution to handle the margin of error in a sample survey that generates an estimate of 15 interested and able women (with a margin of error of ± 3) in a sport that requires 18 people to form a team? In contrast, the implications of a census in which 15 women identify interest and ability in a sport that requires 18 are clear – the institution has determined that there are an insufficient number of interested females on campus to field that sport. Thus, the recommended data collection strategy is to conduct a census (i.e., to survey all students) rather than to select a sample of respondents.

Periodicity

How frequently should a survey of student interests be conducted? Since most cases of survey use in the OCR files were in response to complaints being filed, there is little case history to indicate how frequently an institution acting proactively should administer a survey. A survey of the entire undergraduate student body that generates high response rates and demonstrates that the interests of the underrepresented sex are fully accommodated might serve for several years if the demographics of the undergraduate population at the institution are stable and if there are no complaints from the underrepresented sex with regard to a lack of athletic opportunities. In contrast, an institution with rapidly changing demographics, or whose previous survey detected levels of student interest and ability in particular sports that were close to the minimum number of players required to field a team, or an institution receiving complaints with regard to unmet needs should consider more frequent surveys.

Excluding students

With respect to varsity participation, part-time students and members of the overrepresented sex should not be included in the calculation of the number of students in the underrepresented sex who have interest and ability. Should institutions exclude seniors from the calculation of this number if the survey is conducted at a point in time when it is too late for the seniors who have completed the survey to participate in the sport in which they have expressed interest and ability? The inclusion of seniors in the calculation of this number is recommended, particularly for those institutions that do not plan to implement an annual survey. The inclusion of seniors provides the best estimate for future years of the number of students in the underrepresented sex who have the interest and ability, and acknowledges the reality that creating a new sports team at the intercollegiate level may be a multiyear process.

Confidentiality

When asking for any personal or potentially individually identifiable data, protecting the respondents' confidentiality is essential to obtaining high quality data and to achieving acceptable response rates. The recommendation to use e-mail and the Internet to improve on current practices may seem to some as increasing the risks of violating confidentiality. However, by utilizing the newest Internet technologies, there are readily available

alternatives (such as one-way hashed keys) that make it possible to track who has responded, while at the same time protecting the confidentiality of their responses. One such alternative would be to embed an encrypted ID within the link to the URL of the data collection instrument. The encrypted ID would be severed from the response itself and used in the database file containing respondents' e-mail addresses to mark that a response had been received. The software would then use the encrypted ID to record that a person has responded without being able to link to that person's response. This strategy allows an institution to track responses, conduct nonresponse follow-up and to protect against multiple responses by a single individual. For example, the institution could use the database with encrypted IDs and e-mail address (but no individual responses to survey items) to send e-mail messages to nonrespondents.

Nonresponse

The final issue is the question of nonresponse. Most OCR institutions that included surveys either did not report their response rates or reported them as low. None explicitly considered any kind of nonresponse bias analysis to determine whether those students who did not respond to the survey differed in interests and abilities from those who responded.

In general, institutions have treated nonresponse as indicating no interest in future sports participation. This assumption is defensible if all students have been given an easy opportunity to respond to the survey, the purpose of the survey has been made clear, and students have been informed that the institution will take nonresponse as an indication of lack of interest.

The procedures for conducting an analysis of nonresponse bias and generating statistically valid adjustments to the original data based on such an analysis are complicated and beyond the capacity of some institutions. Thus we conclude that the best method for dealing with nonresponse is to generate high enough response rates that nonresponse can safely be ignored for the purposes of Title IX compliance. A web-based survey instrument, which is described in detail below, can accomplish that goal, either by being made mandatory or by being provided in a context in which most students will complete it. For instance, a web-based survey that students have to complete or actively by-pass to access the web screens that allow them to register for courses is likely to produce very high response rates. Another possibility is for institutions to send an e-mail to all students that describes the purpose of the survey, includes a link to the web-based survey, and includes a disclaimer that states that if a student does not respond to the survey, the institution will understand that the student is not interested in additional athletic participation. Although rates of nonresponse may be high with this procedure, nonresponse is interpretable as a lack of interest.

In addition, a data collection instrument suitable for gathering information regarding whether "interests and abilities of the members of the underrepresented sex have been fully and effectively accommodated by the present program" with minimal respondent effort is best implemented on the Web. This allows effective implementation of skips and other selection devices through which a respondent can go to a list of sports and choose those that the respondent wishes to respond to in detail.



The prototype


Our proposed survey instrument, a prototype, consists of eight screens. Not all respondents need to proceed through all eight screens.

Screen 1 introduces the survey and informs respondents of the purposes of the census, provides an explicit confidentiality statement, and provides an explanation of the structure of the instrument.

Screen 2 requests four items of demographic information—age, year in school, gender, and whether the student is full-time. The dropdown boxes and radio buttons constrain responses to those allowed by the institution conducting the census.

Screen 3 explains the next set of questions—on athletic experience, participation, and ability. It allows respondents with no interest in future participation in athletics to so indicate and complete the instrument without having to view any of the other screens.

Screen 4 of the proposed instrument is reached only by respondents who wish to enter information concerning athletic experience, interests, and abilities. It lists the responses that will be allowed when the information is requested (on screen 6), and contains a neutral statement of the burdens and benefits associated with participation in intercollegiate athletics. A more sophisticated version of the instrument might contain hyperlinks to definitions of various terms.



Screen 5 allows respondents who wish to enter information concerning athletic experience, interests, and abilities to *select the sports for which they wish to provide information*. The purpose of this is to reduce the size and complexity of screen 6, on which the information is actually entered. Only those sports selected on screen 5 are listed on screen 6. The NCAA administers championships in 23 sports for its member institutions. In addition, it recognizes 7 “emerging sports” that are intended to provide additional athletics opportunities to female student-athletes. The number of intercollegiate sports sanctioned by the NAIA and NJCAA is smaller. We recommend listing all the NCAA championship and “emerging sports” on screen 5.

Screen 6 is where actual information regarding experience, current participation, interest in future participation, and self-assessed ability is entered. These four categories appear side-by-side, which is sensible conceptually and psychometrically but was not done in any of the 57 survey instruments in the OCR case files. The allowable responses, which are constrained by radio buttons that also prevent multiple responses, are as follows:

- For experience at the high school level, “Recreational,” “Intramural,” “Club,” “Junior Varsity” and “Varsity.”
- For current participation, “Recreational,” “Intramural,” “Club” and “Varsity.”
- For interest in future participation at the institution: “Recreational,” “Intramural,” “Club” and “Varsity.”
- For ability: “Yes, I have the ability” and “No, I would need to develop the ability.”

The reason for inclusion of four separate categories is that a determination of interest and ability is related to the pattern of response across these categories. For example, to determine the number of students of the underrepresented sex with interest and ability in a varsity sport, the students to be counted could be those who express an interest in future participation at the varsity level, indicate that they have the ability to do so, and have current or high school experience beyond the recreational level.

Although not shown in screen 6, hyperlinks could be used to provide access to definitions of these terms (or any other terms, for example, sports with which not all respondents may be familiar). Placing the definitions in a separate window avoids impeding the flow of the survey instrument.

Screen 7 offers respondents the opportunity for comments or other feedback, asks them to click a button to record their responses, and thanks them for participating.

Screen 8 is a pop-up screen that appears only for full-time students of the underrepresented sex who have expressed an interest and ability to participate at a higher level. It lists the sport(s) in which the student has indicated an ability and interest in future participation, and asks the student to provide contact information if the student wishes to be contacted by the athletics department or some other organization in the university with respect to her interests. The student can exit this screen without providing the requested information by indicating that she does not wish to be contacted.

This prototype web-based data collection instrument has the following properties:

- Simplicity;
- Explicit explanation of reasons for the data collection;
- Explicit confidentiality statement;
- Opportunity for global “no interest or ability” response;
- Opportunity to filter sports for which detail is provided;
- Nonprejudicial wording of items;
- Inclusion of all of experience, current participation, interest in future participation, and ability; and
- Fixed-form responses.



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Institute of Education Sciences
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User's Guide to Developing Student Interest Surveys Under Title IX

March 2005

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Margaret Spellings
Secretary

Institute of Education Sciences
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National Center for Education Statistics
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Acting Commissioner

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Screen 1: Initial screen of the prototype data collection instrument, containing the purposes of the survey, a confidentiality statement, and an explanation of the structure of the instrument.

Assessment of Athletic Interests and Abilities: Introduction - Mozilla Firefox

file:///e:/Alan/NISS/NCES/OCR2004/MinimalInstrument/TMP/kjdbck3g9.htm

XXX University
Assessment of Students' Athletic Interests and Abilities
January 2005

Purpose: This data collection is being conducted to determine the extent to which the athletic interests and abilities of students at XXX University are being met by the current offerings of recreational, intramural, club and intercollegiate athletics. The information, which is being requested from all students, will be used by the university for evaluation, research and planning purposes.

Confidentiality Statement: All responses are strictly confidential. No personal identifying information is collected, and while we do ask for some demographic information, this information cannot be used to identify you.

Structure: You will be asked first for demographic information (your age, gender, year in school and whether you are a full-time or part-time student), and then you will be asked questions pertaining to your athletic interests, experience and ability. Finally, you will have the opportunity to provide comments or other feedback. The entire process takes less than 10 minutes. Please click on the button below when you are ready to proceed.

Click to Proceed

SOURCE: NISS-produced prototype.

Screen 2: Second screen of the prototype data collection instrument, in which respondents provide four items of demographic and student status information. This example shows a respondent who is 20 years old, female, a junior, and a full-time student.

The screenshot shows a web browser window with the following content:

- Browser title: Assessment of Athletic Interests and Abilities: Demographic Information - Mozilla Firefox
- Address bar: file:///E:/Alan/NISS/NCE5/OCR2004/ProposedSurveyInstrument/TPPW60rb7fK3.htm
- Page title: XXX University
- Section title: Assessment of Students' Athletic Interests and Abilities
- Section title: Demographic Information
- Text: Please provide the following demographic information. When you have entered the information, click the button to proceed.
- Form fields:
 - Your age:
 - Your gender: Female Male
 - Your year at XXX:
 - Your student status: Full-time Part-time
- Submit button:

SOURCE: NISS-produced prototype.

Department of Education, Office for Civil Rights: Documents and Related Materials

National Institute of Statistical Sciences *Title IX Data Collection: Technical Manual for Developing the User's Guide*

(Full document available on the US Department of Education Web's site)

NISS

Title IX Data Collection: Technical Manual for Developing the User's Guide


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Technical Report Number 150
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Contents

Introduction.....	1
Chapter 1: Background.....	3
1.1 Introduction to Title IX.....	3
1.2 The Three-Part Test.....	3
1.3 The Title IX Commission and the Assistant Secretary's Letter.....	4
Chapter 2: Analysis of OCR Cases.....	5
2.1 Summary of the Data.....	5
2.2 Results.....	7
2.2.1 Comparisons Between OCR and COMPARISON.....	7
2.2.2 Comparisons of PART 3 to NON-PART 3.....	13
2.2.3 Comparisons of SURVEY to NO SURVEY.....	17
2.2.4 Comparisons of COMPLAINT to COMPLIANCE MONITORING.....	18
2.3 Time Effects in the Use of Part 3 and Non-Part 3.....	19
Chapter 3: The Data Collection Instruments.....	22
3.1 Characteristics of the Data Collections and Instruments.....	25
3.2 Notable Items.....	33
3.3 Generic Issues.....	37
Chapter 4: Other Data Collection Instruments.....	40
4.1 Characteristics of the Instruments.....	40
4.2 Notable Items.....	45
Chapter 5: Implementation of Part 3 Data Collections.....	46
5.1 Problem Formulation.....	46
5.2 Process Specification.....	48
5.3 Data Collection Process.....	52
5.4 Web-Based Data Collection.....	54
5.4.1 Data Collection Instrument.....	54
5.4.2 Software.....	65
5.5 Data Analysis.....	66
5.5.1 Preprocessing.....	67
5.5.2 Data Analysis in the Absence of Non-Response.....	68
5.5.3 Data Analysis in the Presence of Non-Response.....	71
5.6 Precautions.....	73
5.7 Pre- and Post-Data Collection Procedures.....	73
Acknowledgments.....	76
References.....	78
Appendix A: List of OCR Populations.....	80
Appendix B: The Institutional Characteristics.....	84
Appendix C: Complete Set of Institutional Comparisons.....	88
C.1 Comparisons of OCR to COMPARISON.....	88
C.2 Comparisons of PART 3 to NON-PART 3.....	94
C.3 Comparisons of SURVEY to NO SURVEY.....	101
C.4 Comparisons of COMPLAINT to COMPLIANCE MONITORING.....	107
Appendix D: Data Collection Classification Characteristics.....	114



Appendix E: Data Collection Instruments in Chapter 4	116
Appendix F: Complete Analysis in the Presence of Non-Response.....	118

Introduction

The purpose of this report, undertaken at the behest of the Office for Civil Rights (OCR) of the U.S. Department of Education, is to develop a user's guide for conducting student interest and ability surveys in order to satisfy Part 3 of Title IX that are based on scientifically accepted survey practice.

Chapter 1 of the report provides concise background on Title IX (section 1.2), the "Three-Part Test" (section 1.2) for demonstrating compliance, and the responses to the Title IX Commission (section 1.3) that provided the impetus for producing this manual.

Chapter 2 summarizes the data on which chapters 3 and 4 are based. It provides background information for ascertaining the representativeness of understanding institutional differences between **OCR cases** and a national set of **COMPARISON** institutions, between **OCR cases** that resulted from a **COMPLIANCE** review and those that were the result of a **COMPLAINT** that was filed, between those **OCR** institutions that have used **PART 3** as opposed to **PARTS 1 AND 2**, between those **PART 3** institutions that have used a **SURVEY** and **NO SURVEY** institutions. The differences are represented by means of fourteen characteristics having to do with the nature and scale of each institution, the demographics of its student body, and its athletic programs. There are a total of 56 comparisons. This chapter highlights selected differences among these sets of institutions. The complete set of tables is located in appendix C.

Chapter 3 is a review and analysis of the 52 data collection instruments contained in the OCR files. In section 3.1, these instruments are categorized along 21 dimensions, which range from the target population to the presence or absence of particular kinds of questions to the representation of sports and levels of interest, experience or ability. Section 3.2 discusses notable items from the individual data collections. Most of these are notable because they are problematic or simply baffling, but a few seem to be quite effective. The chapter concludes in section 3.3, with discussion of a number of issues that are generic to virtually all of the surveys.

Chapter 4 describes a small number of data collections regarding students' athletic experience, interest and ability that have been located by means of searches of the World Wide Web. Although most of these are web-based, none of them is dramatically better than the data collection instruments discussed in chapter 3.

Finally, chapter 5 describes a recommended procedure for Part 3-stimulated data collection, including a web-based data collection instrument and procedures for principled statistical analysis of the data. The prototype instrument uses web-associated interactivity to avoid the pitfalls exhibited by the data collection instruments reviewed in chapters 3 and 4. In particular, a compact, comprehensible representation of "sports across levels" of experience, interest and ability is provided. Chapter 5 contains detailed advice as to how to conduct a scientifically valid data collection that will satisfy the requirement of Part 3.

Chapter 5: Implementation of Part 3 Data Collections

In this chapter we describe a process for implementation of data collection when Part 3 of the “Three-Part Test” is employed.

For clarity, we focus on one very specific problem. Attention is restricted to a single sport not currently offered at the intercollegiate (varsity) level by the institution, and we assume—*solely for concreteness*—that women are the underrepresented sex. The problem is to determine (see section 1.2) “whether the interests and abilities of [women] have been fully and effectively accommodated by the present program [for that sport],” *on the basis of data collected from women students.*

We formulate the problem conceptually and mathematically in section 5.1. Sections 5.2 through 5.5 address key steps in the procedure of solving it: specifying the process (section 5.2), data collection process (section 5.3), web-based data collection (section 5.4) and data analysis (section 5.5). A number of precautions imposed by the entire process are discussed in section 5.6, and section 5.7 discusses issues arising prior to and following the data collection process. Each principal component of the chapter contains three particular items:

Practice among SURVEY Institutions, a summary of how that component was addressed by the 57 SURVEY institutions. Most of this information is also in chapter 3, but including it here makes this chapter more self-contained.

Recommendation for Improvement, which would improve SURVEY institution practice without imposing large barriers in terms of information technology or statistical sophistication.

High-Quality Recommendation, describing an approach that satisfies the NCES statistical standards and other important criteria.

5.1 Problem Formulation

As stated in the introduction to this chapter, we restrict attention to a single sport not currently offered at the intercollegiate level, and assume that women are the underrepresented sex. We focus on an institution employing Part 3 that is attempting to determine, using data collected from women students, whether the interests and abilities of women have been “fully and effectively accommodated by the present program.” The alternative is that the interests and abilities of women can be accommodated only by offering the sport at the intercollegiate level.

We now describe an operational formulation of the problem. Let M (for minimum) be the minimal number of team members necessary to “field” a team in the given sport. This number must be specified by the institution. It depends on the sport and possibly contextual factors. For instance, a basketball team cannot play with fewer than five players, but this is not the value of M for basketball, which is presumably in the range 10-15. NCAA or other association rules may provide information about how large M might

be (M cannot exceed maximum allowable team sizes), but prevailing values in the conference to which the institution belongs are also relevant.

There is, conceptually, some number N^+ of women students who, given the current offerings of the institution, possess the interest and ability to compete in the sport at the intercollegiate level. If N^+ were known with certainty, then determination of compliance by OCR would be straightforward:

- If $N^+ \geq M$, and if other OCR-determined criteria are fulfilled, then the institution must offer the sport at the intercollegiate level. These criteria are complex, and discussed in section 5.7.
- If $N^+ < M$, then the interests and abilities of women have been accommodated by the present program.

It is the “conceptually” and “known with certainty” qualifications in this initial formulation that create several significant difficulties.

The first difficulty is that the definitions of interest and ability are subjective. How to assess them for the purposes of Part 3 is discussed in section 5.4.

The second difficulty is that exact determination of N^+ may be impossible. As discussed in chapter 3, most institutions that have demonstrated Title IX compliance using Part 3 have done so using data collections that conceptually are censuses but yield very low response rates. In the samples, retaining our one-sport/women-underrepresented setting, only a—randomly or otherwise—selected subset of women were asked whether their interests and abilities are accommodated by the present program. Even absent other problems that we discuss momentarily, rather than obtain exact knowledge of N^+ , the institution may be forced either to construct a statistical estimator \hat{N}^+ or to regard N^+ as random and calculate its distribution given the observed data. Then, the simple decision criterion stated above is no longer valid; alternatives are discussed in section 5.5.

But, there are further complications. By far the most difficult-to-deal-with of these is that in almost all cases, the number of respondents—those who are asked to complete the data collection instrument who actually do so—is only a fraction, and possibly a rather small fraction. Non-response is a problem in its own right, because it changes both the form and the properties of the estimator \hat{N}^+ .

Another problem is *non-response bias*: the prevalence of interested and able students in the sample who do not respond may differ from the prevalence of interested and able students in the sample who do respond. Indeed, in the setting of Part 3, non-response bias seems almost inevitable: uninterested students are less likely to respond than interested students. Dealing with non-response bias is discussed in section 5.5.3.

There are additional issues when only a sample of the target population is asked to provide information, because the sampling process introduces additional randomness and uncertainty. Sampling is avoidable, however, while non-response bias is not.

A third difficulty is that the data collection process itself may influence the results. This issue was alluded to in chapter 3, in connection with whether data collection instruments accurately or inaccurately depict the benefits and obligations associated with intercollegiate sports. The prototype instrument in section 5.4.1 is specifically intended not to influence the data it generates.

Given these difficulties, an ideal Part 3 implementation would proceed as follows:

1. The target population for purposes of Title IX compliance consists of full-time women undergraduate students.
2. The data collection protocol is a census: all members of the target population are asked for information. In fact, as discussed in section 5.2, we recommend that all students, both female and male, be part of the data collection.
3. Data collection is web-based.
4. Because non-response may be inevitable, telephone-based follow-up of non-respondents may be conducted at a level that supports necessary non-response bias analyses.
5. Data analysis is restricted to responses from the data analysis population, and consists of combining the responses and the non-response bias analysis in a principled statistical manner to produce an estimator \hat{N}^+ and to calculate the distribution of this estimator.
6. The decision criterion employed by OCR is to calculate the conditional probability that \hat{N}^+ (or, in Bayesian formulations, N^+ itself) exceeds the minimum team size M given the observed data from both the census and the non-response bias sample. If this probability exceeds a pre-determined threshold, and if other criteria are satisfied, then OCR would determine that the institution must offer the sport at the intercollegiate level. Otherwise, the determination would be that the interests and abilities of women are accommodated by the present program.

Sections 5.2-5.5 describe various parts of this process in more detail.

5.2 Process Specification

Here we discuss selection of the data collection population, the data collection protocol and the data analysis population.

Data Collection Population. As also mentioned in section 3.1, selection of the data collection population presents both conceptual and logistical issues. For a number of reasons, collecting data only from members of the underrepresented sex is not feasible. Consequently, there are only two defensible choices:

- The entire student population;
- A “catchment” population consisting of both the entire student population and a set of actual or potential applicants.

If the data collection population is the entire student population, then while there are response rate and other issues, at least the population is well-defined and in principle accessible.

Legal cases, however, have implied that the data collection should be larger—for example, a set of potential applicants. This would happen if applicants believed that the institution was not able to satisfy their athletic interests and abilities, and therefore chose either not to apply or to decline offers of admission. The “potential applicant/catchment” population is very problematic. It depends on the nature of the institution, and ranges from quite local to the entire nation or beyond, for institutions with international students. Even if definable, such a large data collection population is almost surely unreachable in any meaningful manner. Attempts to do so described in the OCR files are weak at best. They include requesting information from participants in campus tours or (local) high school administrators. Either of these approaches raises more problems than it solves.

Moreover, the statistical implications of employing a catchment population are effectively impossible to characterize. Even the population size is not known, which prevents calculation of response rates, and non-response bias analyses are simply infeasible.

A data collection population of applicants is better defined but not easier to sample. The same is true of surrogates, such as campus tour participants.

If the data collection population is entire student population, then some issues remain. For example, does “student” mean “full-time student?” Must students be enrolled currently? Given that the purpose of the data collection is to determine whether a sport must be offered to women at the intercollegiate level, perhaps the most sensible definition would be students who are eligible for intercollegiate athletic participation as determined by the athletic association (for example, the NCAA) to which the institution belongs and the institution itself. However, this is not likely to be feasible if criteria such as academic standing are involved.

Practice among SURVEY Institutions: As discussed in section 3.1 (see table 3.4), most of the 52 INSTRUMENT institutions treated the entire student body as the data collection population.

Recommendation for Improvement: The data collection population should be the entire population of full-time students.

High Quality Recommendation: The data collection population should be the entire student population eligible for intercollegiate athletic participation.

Data Collection Protocol. Again, there are two choices:

- A *census*: all members of the data collection population are asked to provide information regarding whether their interests and abilities are accommodated by the present program.
- A *sample survey*: only a subset of members of the data collection population are asked to provide information regarding whether their interests and abilities are accommodated by the present program.

Our use of these terms is consistent with that of the federal statistical agencies. While a census is a larger scale undertaking than a sample survey, it is superior in almost every respect. If response could be mandated, then N^+ would be known with certainty, and the “simple” decision criterion described above is applicable. Moreover, none of the complicated methodology for dealing with non-response bias outlined in section 5.5.3 is necessary. In reality, however, mandating a response may not be feasible.

Perhaps most important, employing a census avoids two difficult issues associated with sample surveys: selection of the sampling mechanism and selection of the sample size. In the OCR surveys described in chapter 3, two classes of sampling mechanisms are employed widely:

- Simple random samples, in which those asked to provide data are selected randomly from the data collection population, in such a way that all members of the population have equal probability of being in the sample. This method has the advantage of simplifying analysis of the data, but has other shortcomings discussed below.
- Targeted non-random samples. The “target” in this case is generally a sub-population of what we have termed “the target population” thought to be likely to contain students with athletic ability and interest. The principal example is enrollees in health or physical education courses.

Intermediate methods, such as randomly selected courses, are present as well in the surveys discussed in chapter 3. These surveys also, however, include some simply indefensible sampling methods, whose statistical properties cannot be adequately described. The most egregious example is placing survey forms in a place where students might simply pick them up.

The statistical implications of such samples are virtually impossible to characterize. In particular, non-response bias analyses are not possible. For this reason we recommend that such samples not be employed.

Given the ready availability of electronic means of data collection (see section 5.4), simple random samples seem unnecessary. Another reason to avoid them is that small sample sizes may not be feasible. To illustrate why this is true, let P be the size of the target population, and suppose that the sample size is S . Then roughly, each student in the sample represents P/S students in the target population. Let N_S^+ be the number of positive

responses (interested and able to participate at the intercollegiate level in the given sport) in the sample. Recalling that the goal is to estimate the number N^+ of students in the target population interested and able to participate at the intercollegiate level in the given sport and ignoring non-response, the estimated value of N^+ is

$$\hat{N}^+ = N_s^+ + \frac{N_s^+}{S} (P - S).$$

To explain briefly (more complicated expressions appear in section 5.5), the N_s^+ sampled students who responded positively are known with certainty to be interested and able. The fraction of students sampled who responded positively, N_s^+ / S , is assumed to be the same as the fraction of the $P - S$ unsampled students who are interested and able, so the estimated number of such students is just the product of these two terms.

If S is small, then every positive response in the survey has a large effect on \hat{N}^+ . At the extreme, if P/S exceeds the minimum team size M , then a single positive response in the sample produces an estimated value of N^+ that exceeds M ! Of course, there is also high variability in the estimate, but still this is a clear problem. But unless P/S is large, the advantages of a sample are negated. Therefore, arguments in favor of a sample are not convincing.

One issue, discussed briefly in chapters 3 and 4, is the use of incentives to promote responses to the census. At an extreme, the institution might *require* response, for example, linking completion to registration status or refusing to provide grade reports to those who had not responded. Even though measures this extreme may be seen by some to have negative consequences such as heavy handedness, decreased data quality in the form of frivolous or inaccurate responses is a more important issue, in part because there are no models or tools to characterize effects on data quality. This problem would be particularly problematic with a data collection instrument of the type described in section 5.4.1. Checking the global “no athletic experience, current participation or interest in future participation” box on screen 3 there (see figure 5.3) becomes the simplest way to fulfill the requirement. The clear consequence of this behavior is an underestimate of N^+ .

Practice among SURVEY Institutions: As shown in table 3.5, most of the INSTRUMENT conceptualized the data collection as a census. However, the term “census” is used in chapter 3 in a much looser sense than in this chapter, to mean the absence of a discernible, explicit sampling mechanism.

Recommendation for Improvement: The data collection protocol should be a census, in the strict sense that every member of the data collection population is contacted individually (for example, by e-mail) and requested to respond.

High Quality Recommendation: The data collection protocol should be a census in the strict sense that every member of the data collection population is contacted individually and requested to respond.

Data Analysis Population. By “data analysis population” we mean that part of the data collection population whose data will be used for purposes of determining compliance with Title IX. For the specific setting of this chapter, only females—the assumed underrepresented sex—belong to the data analysis population. OCR has stated that fourth-year and beyond students (assuming a traditional four-year curriculum) should also be excluded from the data analysis population. The data collection instrument in section 5.4.1 requests both gender and year, and so supports either choice of data analysis population. The analysis procedures in section 5.5 are valid in either of these cases.

Practice among SURVEY Institutions: The OCR files contain few to no details regarding statistical analyses of the data. Moreover, there are cases in the files where the data collection population contained both females and males, but respondents were not asked to provide their gender.

Recommendation for Improvement: The data analysis population should consist of all full-time first-, second- and third-year students of the underrepresented sex.

High Quality Recommendation: The data analysis population should consist of all full-time first-, second- and third-year students of the underrepresented sex who meet all criteria for participation in intercollegiate athletics.

5.3 Data Collection Process

Here we discuss principal steps in an electronic data collection process centered on a web-based collection instrument of the type described in section 5.4. We assume that recommendations in section 5.2 are implemented: the data collection population is the entire student population, and the data collection protocol is a census.

Prior to any of the steps described below, the data collection instrument and software must be in place; the former is described in section 5.4.1 and the latter in section 5.4.2.

The initial step is to compile a database of e-mail addresses and telephone numbers (for non-response follow-up; see section 5.5.3) of all members of the data collection population. We assume that all students are required to have e-mail addresses at the institution.

The second step is to send an e-mail message to each member of the data collection population, requesting that she or he complete the data collection instrument. In addition to the request to provide the data, this message should contain:

- A link to the URL of the data collection instrument;
- Embedded within the link, a unique, encrypted ID that allows the software to record that a person has responded without being able to link to that person's

response (see below). This strategy also precludes multiple responses by one individual.

Non-response follow-up is likely to be necessary. In principle, using the encrypted ID, the institution could monitor responses in such a way that it can determine who has responded without being able to link responses to respondents, and could send e-mail messages to non-respondents. This may not be desirable, however, and a non-response bias analysis may be the only feasible form of follow-up. The NCES standard of a response rate of 85 percent for a census not used as a sampling frame (U.S.DOE, 2003) does not seem likely to be met in the absence of follow-up.

If the response rate falls below 85 percent, then the NCES statistical standards (U.S. DOE, 2003) call for a *non-response bias analysis*, which is described in section 5.5.2. The purpose of the non-response bias analysis is to determine whether the likelihood of response depends on the value of the response. In this case, there is reason to suspect that it does: those with interest and ability are more likely to respond.

The non-response bias analysis consists of a data collection phase and an analysis phase. In the former, a random sample of non-respondents to the census is contacted and their responses ascertained. The data collection phase of the non-response bias analysis would ordinarily be done by telephone.

As discussed in section 5.2, “requiring” a response in a strong sense (that failure to respond places a student somehow “not in good standing”) may not be possible. Nevertheless, there may be methods beyond follow-up that increase response. These include:

- Embedding the survey in a process—registration is the clear and perhaps only example—that every student must perform. This was somewhat successful in some of the OCR cases. The web-based instrument in section 5.4.1 could be linked in a natural way to web-based registration, and could inherit the confidentiality protections and mechanisms for preventing multiple responses associated with the registration process.
- Positive mechanisms: for instance, one survey in chapter 4 offers a tee shirt said to be worth \$10 to respondents. Alone these seem unlikely to be effective at a scale at which they are feasible economically. Moreover, their effects on non-response bias are difficult to characterize.
- Public relations activities, including statements by institution leaders about the importance of responding.

Practice among SURVEY Institutions: The proactivity characteristic reported in table 3.6 measures, albeit qualitatively, the extent to which SURVEY instruments were proactive in attempting to increase response rates. This table shows little evidence of proactivity.

Recommendation for Improvement: The data collection process should be web-based, using e-mail and, if necessary to follow up on non-response, telephone as a means of

contacting members of the data collection population. Linking the data collection to registration should be considered.

High-Quality Recommendation: The data collection should be web-based, using e-mail to initiate the process. Linking the data collection to registration should be considered. Means such as those described in section 5.5 should be in place to deal with low response rates.

5.4 Web-Based Data Collection

In this section, drawing on chapters 3 and 4, we sketch the structure of a data collection instrument that would accomplish the necessary objectives (collection of information regarding whether “interests and abilities of the members of that [underrepresented] sex have been fully and effectively accommodated by the present program.”) with minimal effort. The instrument is web-based, allowing effective implementation of skips and other selection devices. For example, a respondent can choose from a larger list of sports the subset for which she wishes to respond in detail.

Web-based instruments are absent entirely from the SURVEY institution instruments discussed in chapter 3, which is understandable because most of the OCR cases preceded widespread use of the web and e-mail. By contrast, they dominate in the more recent instruments in chapter 4. Alternative modes of data collection appearing in the instruments in chapters 3 and 4 include paper forms (mailed, distributed in classes, or “left for the taking”) and one telephone survey.

Section 5.4.1 describes the instrument itself; the software necessary to create it and store data is discussed in section 5.4.1.

5.4.1 Data Collection Instrument

The proposed data collection instrument consists of seven screens, which are shown in figures 5.1-5.7, together with one additional screen, shown in figure 5.8, to which only respondents in the *data analysis population* who indicated interest and ability are taken.

This instrument requests little more information than absolutely necessary to determine compliance with Title IX. Requests for large amounts of superfluous information are a concern because they lower response rates. However, compared to some of the instruments in chapter 3, this instrument is quite minimal.

We now describe the screens one-by-one. Not all respondents need to proceed through all seven (or eight) screens.

Screen 1, shown in figure 5.1, is an introductory screen, on which respondents are informed of the purposes of the data collection and provided an explicit confidentiality statement as well as an explanation of the structure of the instrument.

Screen 2, shown in figure 5.2, requests four items of demographic information—age, gender, year in school and student status. The dropdown boxes and radio buttons constrain responses to those allowed by the institution conducting the census.

Screen 3, shown in figure 5.3, explains the next set of questions—on athletic experience, participation and ability. It allows respondents with no experience, current participation or interest in future participation to so indicate and complete the instrument without having to view any of the other screens.

Screen 4 of the proposed instrument, shown in figure 5.4, is reached only by respondents who wish to enter information concerning athletic experience, interests and abilities. It lists the responses that will be allowed when the information is requested (on screen 6), and contains a neutral statement of the burdens and benefits associated with participation in intercollegiate athletics. A more sophisticated version of the instrument might contain hyperlinks to definitions of various terms.


Screen 5, shown in figure 5.5, allows respondents who wish to enter information concerning athletic experience, interests and abilities to *select the sports for which they wish to provide information*. The purpose of this is to reduce the size and complexity of screen 6, on which the information is actually entered. Only those sports selected on screen 5 are listed on screen 6. The list of sports in figure 5.5 is illustrative, consisting of twenty-three sports in which the NCAA conducts championships and seven NCAA-identified “emerging sports.”³ Reflecting the considerations noted in section 5.7, sports for which Title IX non-compliance is not feasible because of the absence of competitive opportunities would not need to be included on this screen.

Screen 6, shown in figure 5.6, is where actual information regarding experience, current participation, interest in future participation and ability is entered. These four categories appear side-by-side, which is sensible conceptually and psychometrically, but was not done in any of the 57 data collection instruments reviewed in chapters 3 and 4. The allowable responses, which are constrained by radio buttons that also prevent multiple responses, are as follows:

- For experience at the high school level, “Recreational,” “Intramural,” “Club,” “Junior Varsity” and “Varsity”;
- For current participation, “Recreational,” “Intramural,” “Club” and “Intercollegiate”;
- For interest in future participation at the institution: “Recreational,” “Intramural,” “Club” and “Intercollegiate”;
- For ability: “Yes, I have the ability” and “No, I would need to develop the ability”.

The reason for inclusion of four separate categories is that, as discussed further in section 5.5.1, a positive response is defined in terms of at least three and possibly all four.


³ See www2.ncaa.org/sports/general_information/emerging_sports.html.



For some purposes, the number of allowable responses might be reduced. If the sole concern were interest in intercollegiate participation, and assuming that an intercollegiate team does not exist currently, “Intercollegiate” could be eliminated from current participation (as could any others than do not apply), and all but “Intercollegiate” could be eliminated from interest in future participation. Because this screen would be generated dynamically, using information from screen 5, the sets of allowable responses can be sport-dependent.

Although not shown in figure 5.6, hyperlinks could be used to provide access to definitions of these terms (or any other terms, for example, sports with which not all respondents may be familiar). Placing the definitions in a separate window avoids impeding the flow of the data collection instrument.

Screen 6 does not implement default responses, but it could. It does state clearly how item non-responses will be treated.



Screen 7, shown in figure 5.7, is for most respondents the final screen of the instrument. It offers the opportunity for comments or other feedback, asks them to click a button to record their responses, and thanks them for participating. It also informs those who have responded positively about interest and ability that unless they check the “Check here if you do not wish to be contacted” box, they will be taken to one more screen (screen 8), on which they will be asked for contact information.

Screen 8, shown in figure 5.8, is a screen reached only by respondents who are members of the data analysis population (in the example in this chapter, full-time female students who are freshmen, sophomores or juniors) who indicate interest and ability in one or more sports not currently offered at the intercollegiate level. (The language on both this screen and screen 7 is less precise, because no clear purpose is served by complete details.) On this screen, such respondents may request to be contacted by the athletic department regarding their interests. It summarizes their responses and asks for contact information—name, e-mail address and telephone number. This information could either be stored in a CSV file separate from the main data, or forwarded by e-mail to the appropriate office in the institution.

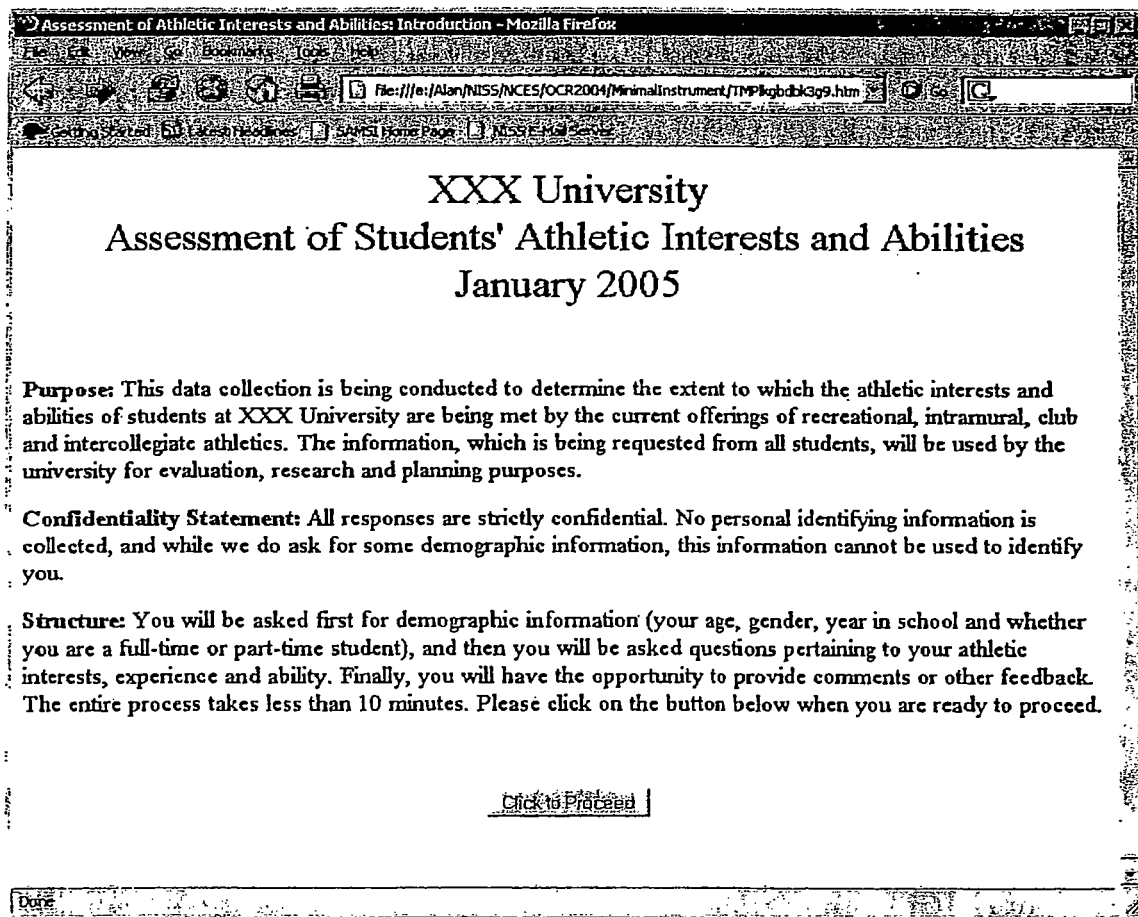
Practice among SURVEY Institutions: As noted above, no SURVEY institution employed web-based data collection.

Recommendation for Improvement: For extremely narrow surveys (one sport, for example) respondents might be asked simply to respond to an e-mail message. Simplified web-instruments (for instance, with less protection for confidentiality) are possible, but should state explicitly their shortcomings relative to the high-quality recommendation. Although, as stated in section 5.6, we believe that if failure to respond (at the item level) is treated as a “no interest” or “no ability” response, the instrument should state so in some difficult-to-ignore manner.

High-Quality Recommendation: The web-based data collection instrument should have the same properties as the prototype described here:

- Simplicity;
- Explicit explanation of reasons for the data collection;
- Explicit confidentiality statement;
- Opportunity for global “no interest or ability” response;
- Opportunity to filter sports for which detail is provided;
- Non-prejudicial wording of items;
- Inclusion of all of experience, current participation, interest in future participation and ability;
- Fixed-form responses.

Figure 5.1: Initial screen of the prototype data collection instrument, containing the purpose of the data collection, a confidentiality statement and an explanation of the structure of the instrument.



SOURCE: NISS-produced prototype.

Figure 5.2: Second screen of the prototype data collection instrument, in which respondents provide four items of demographic and student status information. This example shows a respondent who is 20 years old, female, a junior and a full-time student.

Assessment of Athletic Interests and Abilities: Demographic Information - Mozilla Firefox

File:///E:/Alan/NISS/NCES/OCR2004/ProposedSurveyInstrument/TPw02db7/13.htm

XXX University

Assessment of Students' Athletic Interests and Abilities

Demographic Information

Please provide the following demographic information. When you have entered the information, click the button to proceed.

Your age:

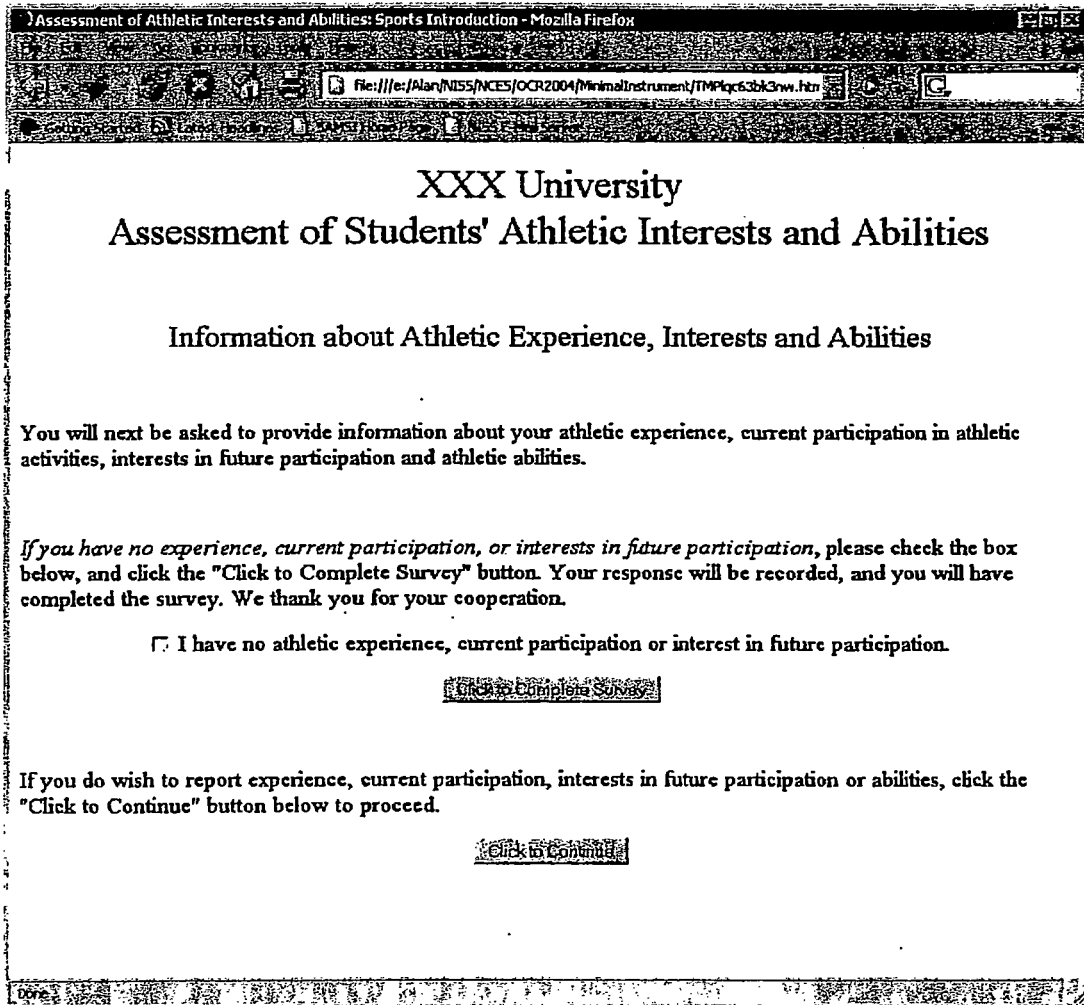
Your gender: Female Male

Your year at XXX:

Your student status: Full-time Part-time

SOURCE: NISS-produced prototype.

Figure 5.3: Third screen of the prototype data collection instrument, on which respondents with no experience, current participation or interest in future participation can so indicate and complete the process.



SOURCE: NISS-produced prototype.

Figure 5.4: Fourth screen of the prototype data collection instrument, which is reached only by respondents who wish to enter information concerning athletic experience, interests and abilities.

Assessment of Athletic Interests and Abilities: Sports Explanation - Mozilla Firefox

File:///E:/NISS/NCES/OCR2004/MinimalInstrument/data-sportsintro2-minime

XXX University

Assessment of Students' Athletic Interests and Abilities

Information about Athletic Experience, Interests and Abilities

For the sports that you choose on the next screen, you will be asked to provide information about your athletic experience, current participation, interests in future participation and abilities. The format in which the information is to be entered is:

- **Experience:** At what level did you participate in this sport in high school? Responses from which you may choose are "Recreational," "Intramural," "Club", "Junior Varsity" and "Varsity."
- **Current Participation:** At what level are you participating in this sport at XXX? Responses from which you may choose are "Recreational," "Intramural," "Club" and "Varsity."
- **Interest in Future Participation:** At what level do you wish participate in this sport at XXX? Responses from which you may choose are "Recreational," "Intramural," "Club" and "Varsity."
- **Ability:** Do you believe that you have the ability to participate at the level at which you indicated interest? Responses from which you may choose are "Yes, I have the ability" and "No, I would need to develop the ability."

Because of the large number of sports, please check the boxes below for those sports for which you wish to provide information about your athletic experience, current participation, interests in future participation, and abilities. When you have done so, click the button to proceed. *You will be able to enter information only for those sports that you have checked.*

Before you proceed, you should be aware that participation in intercollegiate athletics imposes burdens on student-athletes, but also creates opportunities. For example, intercollegiate athletics usually requires athletes to devote 20 hours of practice each week during the season, as well as individual regimens of training during the off-season. Athletes are required to travel and occasionally miss classes. On the other hand, many intercollegiate athletes receive financial awards that cover all or a portion of school expenses. They are also given access to academic support services, including tutoring, counseling and study tables, that are not available to other students. Of course, how these burdens and opportunities balance against one another is a matter of personal circumstances and judgment.

[Click to Proceed](#)

Done

SOURCE: NISS-produced prototype.

Figure 5.5: Fifth screen of the prototype data collection instrument, which is reached only by respondents who wish to enter information concerning athletic experience, interests and abilities. Here, respondents select the sports for which they wish to provide information. The list consists of 23 sports in which the NCAA conducts championships and seven "emerging sports." The respondent illustrated here has chosen basketball, lacrosse and volleyball, which appear in screen 6.

Assessment of Athletic Interests and Abilities: Sports Selection - Mozilla Firefox

file:///E:/Alan/NISS/NCES/OCR2004/MinimalInstrument/TMP/gwrobrcy0.h

XXX University

Assessment of Students' Athletic Interests and Abilities

Information about Athletic Experience, Interests and Abilities

Because of the large number of sports, and since any one person is unlikely to have experience, current participation, or interest in future participation in more than a few, please check the boxes below for those sports for which you wish to provide information about your athletic experience, current participation, interest in future participation, and abilities. When you have done so, click the button to continue. *You will be asked to enter information only for those sports that you have checked.*

Sport	Sport	Sport
<input type="checkbox"/> Archery	<input type="checkbox"/> Golf	<input type="checkbox"/> Squash
<input type="checkbox"/> Badminton	<input type="checkbox"/> Gymnastics	<input type="checkbox"/> Swimming and Diving
<input type="checkbox"/> Baseball	<input type="checkbox"/> Ice Hockey	<input type="checkbox"/> Synchronized Swimming
<input checked="" type="checkbox"/> Basketball	<input checked="" type="checkbox"/> Lacrosse	<input type="checkbox"/> Team Handball
<input type="checkbox"/> Bowling	<input type="checkbox"/> Rifle	<input type="checkbox"/> Tennis
<input type="checkbox"/> Cross Country	<input type="checkbox"/> Rowing	<input type="checkbox"/> Indoor Track and Field
<input type="checkbox"/> Equestrian	<input type="checkbox"/> Rugby	<input type="checkbox"/> Outdoor Track and Field
<input type="checkbox"/> Fencing	<input type="checkbox"/> Skiing	<input checked="" type="checkbox"/> Volleyball
<input type="checkbox"/> Field Hockey	<input type="checkbox"/> Soccer	<input type="checkbox"/> Water Polo
<input type="checkbox"/> Football	<input type="checkbox"/> Softball	<input type="checkbox"/> Wrestling

[Click to Continue](#)

Done

SOURCE: NISS-produced prototype.

Figure 5.6: Sixth screen of the prototype data collection instrument, on which respondents enter information concerning experience, current participation, interest in future participation and ability only for those sports selected on screen 5. Continuing the example from screen 5, the respondent—who is female—has indicated high-school varsity experience, current intramural participation, interest in intercollegiate participation and ability for lacrosse.

Assessment of Athletic Interests and Abilities: Sports Detail - Mozilla Firefox

The IIIE-PISS/NCS/JOCR2004/MinimalInstrument/dtd/sportsdetail-minimal.html

XXX University

Assessment of Students' Athletic Interests and Abilities

Information about Athletic Experience, Interests and Abilities

The sports listed below are those you selected on the previous screen.

- If the list is not correct, please use your browser's back button to return to the previous screen and modify your choices.
- If the list is correct, please fill in all applicable responses. You do not need to respond to every question, and missing responses will be treated as (depending on category) "No Experience," "No Current Participation," "No Interest in Future Participation" and for Ability, "Not applicable." When you have completed all answers that you wish to complete, click the button to record your responses and proceed to the final part of the survey.

Sport	Experience: At what level did you participate in this sport in high school?	Current Participation: At what level are you participating in this sport at XXX?	Interest in Future Participation: At what level do you wish to participate in this sport at XXX?	Ability: Do you believe that you have the ability to participate at the level at which you indicated interest?
Basketball	<input type="radio"/> Recreational <input type="radio"/> Intramural <input type="radio"/> Club <input type="radio"/> Junior Varsity <input checked="" type="radio"/> Varsity	<input type="radio"/> Recreational <input type="radio"/> Intramural <input type="radio"/> Club <input type="radio"/> Intercollegiate	<input type="radio"/> Recreational <input type="radio"/> Intramural <input type="radio"/> Club <input type="radio"/> Intercollegiate	<input type="radio"/> Yes, I have the ability <input type="radio"/> No, I would need to develop the ability
Lacrosse	<input type="radio"/> Recreational <input type="radio"/> Intramural <input type="radio"/> Club <input type="radio"/> Junior Varsity <input type="radio"/> Varsity	<input type="radio"/> Recreational <input type="radio"/> Intramural <input type="radio"/> Club <input type="radio"/> Intercollegiate	<input type="radio"/> Recreational <input type="radio"/> Intramural <input type="radio"/> Club <input type="radio"/> Intercollegiate	<input type="radio"/> Yes, I have the ability <input type="radio"/> No, I would need to develop the ability
Volleyball	<input type="radio"/> Recreational <input type="radio"/> Intramural <input type="radio"/> Club <input type="radio"/> Junior Varsity <input type="radio"/> Varsity	<input type="radio"/> Recreational <input type="radio"/> Intramural <input type="radio"/> Club <input type="radio"/> Intercollegiate	<input type="radio"/> Recreational <input type="radio"/> Intramural <input type="radio"/> Club <input type="radio"/> Intercollegiate	<input type="radio"/> Yes, I have the ability <input type="radio"/> No, I would need to develop the ability

Done

SOURCE: NISS-produced prototype.

Figure 5.7: Seventh, and for most respondents final, screen of the prototype data collection instrument, which offers respondents the opportunity to provide comments or other feedback. Respondents who are members of the data analysis population and have expressed an interest in one or more sports (in our example, full-time female students who are freshmen, sophomores or juniors) are taken automatically to screen 8 unless they check the box "Check here if you do not wish to be contacted."

Assessment of Athletic Interests and Abilities: Completion - Mozilla Firefox

file:///e:/Alan/NISS/NCES/OCR2004/MinimalInstrument/TMPYsklrnbpyk.

XXX University

Assessment of Students' Athletic Interests and Abilities

If you *do not* wish to provide comments or other feedback, simply click the "Click to Record Responses" button.

If you *do* wish to provide comments, please enter them in the box below, and then click the "Click to Record Responses" button.

Some students who have indicated interest and ability in one or more sports will be taken to one final screen, on which they may request to be contacted by the athletic department regarding these interests. If you expressed interest but do not wish to be contacted, check the box below.

Check here if you do not wish to be contacted.

[Click to Record Responses](#)

Thank you very much for your cooperation and support!

Done

SOURCE: NISS-produced prototype.

Figure 5.8: Eighth and final screen of the data collection instrument, reached only by respondents who are members of the data analysis population (in our example, full-time female students who are freshmen, sophomores or juniors), on which they are asked whether they wish to be contacted by the athletic department, and if so to provide contact information. The illustrative values here are the same as in figures 5.2-5.7.

Assessment of Athletic Interests and Abilities: Demographic Information - Mozilla Firefox

File:///E:/Alan/NISS/NCES/OCR2004/MinimalInstrument/TMP7gxdeba17.htm

XXX University
Assessment of Students' Athletic Interests and Abilities.
Request to Be Contacted by Athletic Department

You have indicated interest and ability in one or more sports, as summarized below:

Age:	20
Gender:	Female
Year in school:	Junior
Status:	Full-time
Sport(s):	Lacrosse
	Experience = Varsity
	Current Participation = Intramural
	Interest in Further Participation = Intercollegiate
	Ability = "Yes, I have the ability"

If you would like to be contacted by the athletic department regarding these interests, please fill in the information below, and then click the "Click to Submit Request" button. This request is optional; your responses have already been recorded. Thank you.

Name:

E-mail address:

Telephone:

[Click to Submit Request](#)

Done

SOURCE: NISS-produced prototype.

5.4.2 Software

The screens shown in figures 5.1-5.8 are static HTML prototypes. There are at least two paths to create the software for a full-blown implementation that would generate most of these screens dynamically.

The first of these is commercial tools for web surveys, such as Survey Solutions (Perseus Corporation, 2005). The extent to which commercial tools support functionality such as confidentiality-preserving non-response follow-up is not clear. It is also likely that they involve significant hardware and software overheads that are really not necessary in the setting of this chapter.

The second path is to create CGI, Java, or Visual Basic scripts that

- Allow movement from each screen to the next, including dynamic generation of all screens other than the initial one in figure 5.1;
- Record responses (see additional discussion below).

Implementation of these scripts, together with appropriate security and support, would be a moderate-sized but straightforward programming task.

However, full automation of the process would require one more layer of scripts that would customize such items as

- The institution name;
- Details of wording, with defaults provided that can be edited as necessary;
- The list of sports on screen 5;
- The possibly sport-dependent responses on screen 6.

Storage of responses is straightforward. Other than the free-form text response on screen 7, the instrument described in section 5.4.1 generates only a small number of data items for each respondent:

- Four items of demographic information from screen 2;
- One Yes/No global “no athletic interest, current participation or interest in future participation” from screen 3;
- K Yes/No responses for each sport from screen 5, where K is the number of sports listed there;
- At most $4K$ categorical responses from screen 6, one each for experience, current participation, interest in future participation and ability.

The total number of items is $5K + 5$. To illustrate, for the 30 sports shown in the example in figure 5.5, the survey generates 155 items.

There are, of course, constraints on the item values. First, the instrument itself permits only pre-defined responses to all items (other than on screen 7). This guarantees that responses are interpretable and analyzable. Second, if the value of the global Yes/No

response on screen 3 is “No,” then the remaining 5K responses are empty. Similarly if the response on screen 5 for a sport is “No,” meaning that it is not listed on screen 6, then its four items associated with screen 6 are empty.

Finally, the software could store the data in a comma-separated-variable (CSV) file, with one (5K + 5) item line for each response. Since no identifying information is stored, confidentiality of responses is guaranteed. The CSV data file can then be read and manipulated by tools ranging from Microsoft Excel to more powerful statistical packages such as SAS, SPSS, STATA and S-Plus.

The encrypted ID provided in the original e-mail would be severed from the response itself, and used in the database file containing respondents’ e-mail addresses to mark that a response had been received.

Practice among SURVEY Institutions: No SURVEY institution employed web-based data collection.

Recommendation for Improvement: OCR, NCES or another agency should investigate use of commercial software, and either recommend particular products or support development of custom tools such as those described here.

High-Quality Recommendation: OCR, NCES or another agency should investigate use of commercial software, and either recommend particular products or support development of custom tools such as those described here. In either case, data should be stored in “long form” (allowing empty responses) in CSV files, which maximizes flexibility and portability.

5.5 Data Analysis

Recall that goal analysis of the data generated by the census is to estimate N^+ , the number of students in the data analysis population interested and able to participate at the intercollegiate level in the given sport. If data concerning multiple sports is collected in the same instrument, then each sport requires an analysis of the type described in this section. For technical reasons, it is necessary to calculate the distribution of the estimator \hat{N}^+ .

We assume throughout this section that respondents answer truthfully. While there is good reason to expect untruthful responses in some settings, there seems to be none in this case.

As discussed in section 5.2, the data analysis population consists of the subset of members of the data collection population whose data are relevant to determination of compliance with Title IX. Although the techniques in this section are applicable to any choice of the data analysis population, for concreteness, we take that population to be full-time female students not in their final year of study.

Practice among SURVEY Institutions: There is little evidence in the OCR files that any of the 57 SURVEY institutions or the five “additional survey” institutions in chapter 4 has conducted principled statistical analyses of their data that account for possible non-response bias.

5.5.1 Preprocessing

The “raw data” generated by the data collection instrument in section 5.4.1 consist, in a form different from that in section 5.4.1, of six items for each sport:

- The global Yes/No response from screen 3, in which case the remaining five items are empty;
- The Yes/No selection response for that sport from screen 5; if this response is “No,” then the remaining four items are empty;
- The four categorical responses from screen 6.

Preprocessing of the data reduces these six items to a single Yes/No response, with “Yes” signifying that the respondent is interested in and able to participate in the sport at the intercollegiate level, and “No” signifying all other cases. While there is some flexibility—and obviously changes would be needed if a different instrument were employed—we recommend that “Yes” require all of the following conditions:

- On, screen 3, global response = “Yes”;
- On screen 5, selection response for that sport = “Yes”;
- On screen 6, for that sport
 - Experience in high school for = “Club,” “Junior Varsity” or “Varsity”
 - Current participation at any level (i.e., the response is not empty)
 - Interest in future participation = “Intercollegiate”.

This approach provides justification for three of the categories on screen 6.

Another approach, keeping in mind that ability is self-characterized, would also require

- On screen 6, Ability = “Yes, I have the ability”

We do not specifically recommend for or against this stronger criterion.

Effecting this preprocessing, either within a statistical package or with dedicated software, is straightforward. The result, for each sport and respondent, is a single Yes/No item.

Recommendation for Improvement: Data should be pre-processed to produce a single “Yes = Interested and able” or “No = either not interested or not able” response for each respondent and each sport.

High-Quality Recommendation: Data should be pre-processed to produce a single “Yes = Interested and able” or “No = either not interested or not able” response for each respondent and each sport.

5.5.2 Data Analysis in the Absence of Non-Response

In this section and the next, “non-response” means only subject-level non-response—failure of a member of the data collection population to respond at all. The data collection instrument in section 5.4 contains two mechanisms designed to minimize item non-response. The first is screen 3, which permits a global “no experience, participation or interest” response that concludes the data collection. The second is the statement on screen 6 that “... missing responses will be treated as (depending on category) “No Experience,” “No Current Participation,” “No Interest in Future Participation” and for Ability, “Not applicable.””

Here we describe analysis of the data for a single sport when there is not a problem with response rate. According to NCES statistical standards for censuses (U.S. DOE, 2003), this requires a subject-level response rate of at least 85 percent.

In this case, the analysis is straightforward. Recall the notation:

- P = size of target population, all of whom have been requested to provide information;
- N^+ = number of women in the target population who are interested in and able to participate in the sport at the intercollegiate level;
- M = minimum team size.

Also, let

- R = number of respondents;
- N_R^+ = number of “Yes” responses.

Table 5.1 summarizes the definitions and sources of these values.

Table 5.1: Sources of values used to estimate N^+

Value	Definition	Source
P	Target population size	Institution
N^+	Number of “Yes” responses in full target population	To be estimated
M	Minimum team size	Institution
R	Number of responses	Data
N_R^+	Number of “Yes” responses	Data

Source: This document.

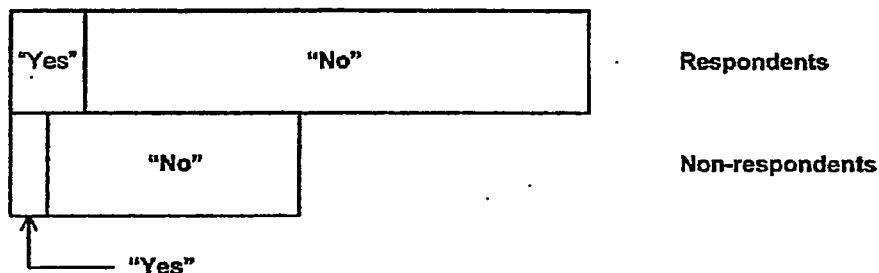
It is important to emphasize that we do not assume that $R = P$, which corresponds to a 100 percent response rate. Were this to happen, then $N^+ = N_R^+$, and the simple decision rule in section 5.1 can be applied by OCR.

Instead, we assume only that $R \geq .85P$. This obviates the need for the more complex analysis described in section 5.5.3, but still requires estimation of the number of "Yes" responses among non-respondents. The estimated value of N^+ is then

$$\hat{N}^+ = N_R^+ + \frac{N_R^+}{R}(P - R)$$

The principal assumption underlying this equation is that the rate of "Yes" responses among the $P - R$ non-respondents has the same value, namely N_R^+ / R , as among respondents. This is shown pictorially in Figure 5.9.

Figure 5.9: Pictorial representation of data analysis in the absence of significant non-response. The proportion of "Yes" responses among non-respondents is *assumed* to be the same as among respondents.



Source: NISS

The value \hat{N}^+ is not exact. Rather, it is a statistical estimator derived from the census data. As such, it has an associated probability distribution. As noted in section 5.1, we recommend that OCR employ a decision criterion of the form

- If $P\{\hat{N}^+ \geq M\} > \alpha$, where α is a threshold set in advance by agreement between OCR and the institution—in words, if the data indicate that there is sufficiently high probability that \hat{N}^+ exceeds M , then the data collection demonstrates that the interests and abilities of women are *not* accommodated by the present program. What action would be necessary, and under what additional conditions (see section 5.1), must be determined by OCR.
- If $P\{\hat{N}^+ \geq M\} \leq \alpha$ (in words, if the data indicate that there is not sufficiently high probability that \hat{N}^+ exceeds M), then the interests and abilities of women are accommodated by the present program, and no action by the institution is necessary.

Computation of $P\{\hat{N}^+ \geq M\}$ is a technical issue, because in models such as that described in appendix F, this probability depends on the unknown value N^+ . These difficulties can be avoided by treating the data values as known rather than unknown values, a simplification that is acceptable for high response rates but not when, as in section 5.5.2, a non-response bias analysis is conducted. Conditional on the data, the second component of \hat{N}^+ , that is, the estimated number of “Yes” responses among non-respondents, has a binomial distribution with parameters $P - R$ and N_R^+ / R , and tables, approximations or simulation may be used to calculate $P\{\hat{N}^+ \geq M\}$.

There is one case in which this entire analysis is unnecessary. If $N_R^+ \geq M$ then among the census respondents alone there are sufficiently many interested and able students, and it is certain that $N^+ \geq M$.

Practice among SURVEY Institutions: Only one-half of the OCR files containing data collection instruments report response rates or contain enough information to calculate response rates; reported values range from less than 1 percent to approximately 70 percent. There is no description in the files of any principled statistical analyses that were performed on the data. Those files that do contain results have nothing beyond tabulations of responses to items on the data collection instrument. Not one file contains any evidence that results were viewed as uncertain, or that uncertainties were calculated.

Recommendation for Improvement: An institution that does follow up on non-respondents should include in both e-mails and the web-based data collection instrument explicit, difficult-to-ignore statements that non-responses will be recorded as “no interest.” In this case, the estimated value of N^+ is

$$\hat{N}^+ = N_R^+$$

In this case, N^+ is certain to exceed \hat{N}^+ , so a decision criterion on the form

- If $\hat{N}^+ < M$, then the institution is in compliance with Title IX
- If $\hat{N}^+ \geq M$, then the institution may not be in compliance with Title IX, depending on additional considerations discussed above and in section 5.7

is lenient in favor of the institution.

As an intermediate step, non-responses should not be treated as “no interest” and N^+ should be estimated as

$$\hat{N}^+ = N_R^+ + \frac{N_R^+}{R} (P - R)$$

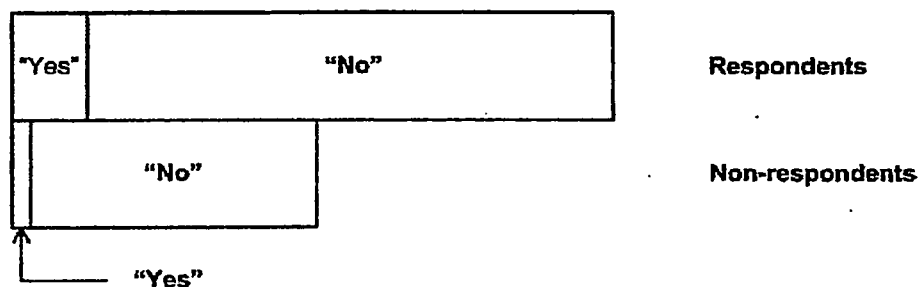
The decision criterion stated above is then unbiased, neither advantaging nor disadvantaging the institution.

High-Quality Recommendation: In the absence of significant non-response (that is, if the response rate exceeds 85 percent), N^+ should be estimated using methods described here, and the compliance decision should be based on $P\{\hat{N}^+ \geq M\}$.

5.5.3 Data Analysis in the Presence of Non-Response

When there is significant non-response, the central assumption in section 5.2.1 and figure 5.9 is called into question: that the probability of a “Yes” response is the same among non-respondents as among respondents. This failure is known as *non-response bias* and is shown pictorially in Figure 5.10, where the relative frequency of “Yes” is higher for respondents than for non-respondents.

Figure 5.10: Pictorial representation of non-response bias. “Yes” responses are relatively more frequent among respondents than among non-respondents.



Source: NISS.

There is, in fact, reason to suspect that the phenomenon in figure 5.8 arises in the setting of this chapter. Students who are interested and consider themselves able to participate in the sport at the intercollegiate level clearly have reason to respond, while those with no athletic interests have much less motivation to respond.

NCES statistical standards (U.S.DOE, 2003) prescribe that when the response rate (R/P in the notation of section 5.2.1) is less than 85 percent a non-response bias analysis be conducted. This process, which can be very resource-intensive, consists of

- Selecting (in most cases) a random sample of non-respondents;
- Contacting them (almost always by phone, to maximize the chances of reaching them);
- Ascertaining their response.

In principle, every selected non-respondent should be contacted, but often of course this is not possible.

Before proceeding, we emphasize that if $N_r^+ \geq M$, then regardless of the response rate, it is certain that $N^+ \geq M$, because among the census respondents alone there are

sufficiently many interested and able students. If this happens, there is no need to collect any additional data, and in particular no need for the non-response bias analysis.

In the most simplistic case, the products of the non-response bias analysis are:

- A sample size S_{NR} ;
- A number N_{NRBS}^+ of positive responses in the non-response bias analysis sample, from students in the non-response bias analysis sample who are interested and able to participate in the sport at the intercollegiate level;
- An estimate \hat{q}_{NR} of the frequency of “Yes” responses among the remaining non-respondents (i.e., those not in the non-response bias analysis sample). Assuming that the non-response bias analysis sample is a simple random sample, then in almost all cases, $\hat{q}_{NR} = N_{NRBS}^+ / S_{NR}$.

Using the same notation as in section 5.2.1, the estimated value of N^+ is then

$$\hat{N}^+ = N_R^+ + N_{NRBS}^+ + \hat{q}_{NR} (P - R - S_{NR})$$

The distribution of \hat{N}^+ , even conditional on the data, is more complex than in section 5.2.2, because \hat{q}_{NR} is based on a sample of non-respondents. An approach that parallels the approach in section 5.5.2 is to condition on all data values. In this case, the first two terms in the expression above are known, and the third term—corresponding to the number of students who neither responded nor are in the non-response bias analysis sample but who are interested and able—has a binomial distribution with parameters $P - R - S_{NR}$ and $\hat{q}_{NR} = N_{NRBS}^+ / S_{NR}$, which allows calculation of $P\{\hat{N}^+ \geq M\}$. Then, the decision criteria described in section 5.5.2 can be applied in the same manner.

The approach in the preceding paragraph overlooks randomness associated with the non-response bias sample. At a deeper level, it is also inconsistent with the underlying purpose of the non-response bias analysis, which is to determine if the *probability* of response depends on whether the response is positive or negative. A Bayesian modeling strategy is outlined in appendix F. In principle, it should be preferred to the approach described in the preceding paragraph, but it may be beyond the capabilities of some institutions, although the services of those who could implement it are readily available.

Recommendation for Improvement: In the presence of significant non-response (that is, if the response rate is less than 85 percent and consequent possible non-response bias, OCR should require, as NCES does, a non-response bias analysis. The decision criterion can be based solely on the estimator $\hat{N}^+ = N_R^+ + N_{NRBS}^+ + \hat{q}_{NR} (P - R - S_{NR})$, without consideration of associated uncertainties.

High-Quality Recommendation: In the presence of significant non-response (that is, if the response rate is less than 85 percent) and consequent possible non-response bias, OCR

should require, as NCES does, a non-response bias analysis. The estimated probability that N^+ exceeds M should be calculated using methods described in appendix F.

5.6 Precautions

The process outlined in sections 5.1-5.6 contains a number of safeguards against what would ordinarily be considered an “unsafe” situation: data collection conducted by an organization with a definable vested interest in the outcome. Specifically, if the institution did not want to offer the sport at the intercollegiate level, then one can assume that the institution would like the data collection to demonstrate N^+ is less than M , so that it will not have to offer the sport.

The census recommendation in section 5.2 avoids a potentially biased sample—a subset of the target population where interest and ability are thought to be low. Interestingly, many of the INSTRUMENT institution surveys summarized in chapter 3 actually focus on sub-populations where interest and ability would be expected to be high, such as students enrolled in physical education courses. This recommendation also avoids excessively small samples meant to produce no interested and able respondents. As discussed in section 5.2, such a strategy is risky, because every positive response carries high weight.

The data collection instrument in section 5.4.1 contains no prejudicial items or wording designed to induce negative responses. Some, but relatively few, of the instruments summarized in chapter 3 exhibit this shortcoming.

The data analysis procedures in section 5.5 specifically do not ever equate failure to respond at all with either lack of interest or ability. The OCR files do not contain information sufficient to determine whether this was done by any of the INSTRUMENT institutions.

5.7 Pre- and Post-Data Collection Procedures

The issues noted here lie outside the data collection process itself, but are important.

When an institution should (or must) conduct data collections such as those described in this chapter is influenced by both external and internal factors. OCR complaints or monitoring activities (see section 2.2.4) are the principal external stimuli. As noted in section 2.3, in the OCR files analyzed by NISS, use of Part 3, and within PART 3 institutions, use of data collections, seem to increase over time. An institution may also, however, wish to conduct periodic assessments on its own, or in response to petitions from students.

An OCR determination of non-compliance requires that the region in which the institution is located offer competitive opportunities in the sport for the under-represented sex. Presumably this can be determined in advance of any data collection. Whether the conference to which the institution belongs offers competitive opportunities is not part of the decision process.

Following completion of the data collection, if the estimated value of N^+ exceeds the minimum team size M , then additional steps take place before OCR would determine that the institution must offer the sport at the intercollegiate level:

1. Especially if the data collection is confidential as in section 5.4, the institution must identify those students who stated themselves to be interested, and ascertain that they remain interested. Holding one or more widely announced meetings appears to be the most common way of doing this. Students who self-identified using the process pictured in figure 5.8 can be contacted directly. If the number of students identified at this stage is less than M , the remaining steps do not occur. There is no logical necessity, however, that this number be less than \hat{N}^+ : the meeting itself may generate additional students—in particular, non-respondents to the data collection—who consider themselves interested and able.
2. If sufficiently many students are identified as interested, the institution (ordinarily, the athletic department) must determine if those students who state they are able to compete at the intercollegiate level are actually able to do so. In most cases, this would be by means of tryouts.
3. Finally, if the number of students who are interested and able, as determined by steps 1 and 2, exceeds M , then OCR would declare the institution not to be in compliance with Title IX.

Considerations of cost (that is, whether the institution would need to build or otherwise access) new facilities are not part of the OCR criteria for determination of Title IX compliance.

Department of Education, Office for Civil Rights: Documents and Related Materials

US Department of Education, Office for Civil Rights' Response to the Senate Committee on Appropriations—Intercollegiate Athletics: Additional Factors Considered by Post-Secondary Institutions, March 17, 2006

Office for Civil Rights
United States Department of Education

Response to the Senate Committee on Appropriations
Intercollegiate Athletics:
Additional Factors Considered by Post-Secondary Institutions

March 17, 2006

Chairman
Committee on Appropriations
United States Senate

Stephanie Monroe
Assistant Secretary
Office for Civil Rights

Introduction

As part of Senate Report No. 109-103, the Senate Committee on Appropriations (Committee) expressed concern about the Department of Education's (Department) March 17, 2005 Additional Clarification of Intercollegiate Athletics Policy (Additional Clarification). Subsequently, the Conference Report on H.R. 3010 (Departments of Labor, Health and Human Services, Education and Related Agencies Appropriations Act for FY2006, P. L. 109-149), which was enacted on December 30, 2005, cross-referenced the Senate Report language. As acknowledged by the Committee, the Additional Clarification was intended to provide recipient institutions with additional guidance concerning compliance with the third part of the Department's three-part test used to assess whether institutions are providing nondiscriminatory opportunities to participate in intercollegiate athletics. The Committee specifically expressed concern that the Additional Clarification may have created confusion about the use of interest surveys to demonstrate compliance with Title IX of the Education Amendments of 1972 (Title IX).

Further, the Committee requested that the Department prepare a report, to be received no later than March 17, 2006, addressing the following questions concerning institutions using student surveys to assess interest in intercollegiate sports:

- What actions, if any, do institutions take to gather and consider sources of information other than student surveys for assessing student interest used in demonstrating compliance with part three of the Title IX test;
- Specifically, what information other than student surveys, if any, do institutions consider when assessing student interest; and
- What decisions were made about athletic opportunities at those institutions?

In order to answer these questions, this report examines the use of surveys and the consideration of additional factors by recipient institutions for the period October 1, 1992 through January 31, 2006. The report presents detailed findings concerning the consideration of additional factors throughout the investigative, resolution, and monitoring stages of the Title IX athletics cases analyzed. With respect to the Committee's request concerning decisions made about athletic opportunities, this report also presents detailed findings of the institutional decisions whether to add additional sports teams, and the acceptance or rejection of such decisions by the Department.

Background

The Department's Office for Civil Rights (OCR) enforces Title IX, 20 U.S.C. § 1681 *et seq.*, an anti-discrimination statute that prohibits discrimination on the basis of sex in education programs and activities by recipients of federal funds. The regulation implementing Title IX¹ contains specific provisions governing athletic programs, including a requirement that institutions "provide equal athletic opportunity for members of both sexes."² In determining whether equal opportunities are available, the regulation provides that OCR will consider, among other factors, whether the selection of sports effectively accommodates the interests and abilities of students of both sexes.

To provide further clarification of the Title IX regulatory requirements, the Department published the Intercollegiate Athletics Policy Interpretation (Policy Interpretation) in the *Federal Register* on December 11, 1979.³ The Policy Interpretation provides that, as part of its responsibility to effectively accommodate the interests and abilities of male and female athletes, an institution must provide the opportunity for individuals of each sex to participate in intercollegiate competition. The Policy Interpretation permits three alternate ways of assessing whether institutions are providing nondiscriminatory opportunities to participate in intercollegiate athletics. Specifically, the Policy Interpretation delineates the following "three-part test" for assessing compliance:

1. Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
2. Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or
3. Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a history and continuing practice of program expansion, as provided above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

The part three analysis centers on whether there are concrete and viable interests among the underrepresented sex that should be accommodated by the institution's athletic program. An institution will be found in compliance with part three unless there exists a sport(s) for the underrepresented sex for which *all* three of the following conditions are met:

- a) unmet interest sufficient to sustain a varsity team in the sport(s);
- b) sufficient ability to sustain an intercollegiate team in the sport(s); and

¹ 34 C.F.R. Part 106, effective July 21, 1975.

² *Id.* § 106.41(c).

³ 44 Fed. Reg. 71,413 (1979).

- c) reasonable expectation of intercollegiate competition for a team in the sport(s) within the school's normal competitive region.

If the school decides to comply with part three of the three-part test, the assessment of each of the above three conditions is an essential prerequisite for determining a school's Title IX obligation to create a new intercollegiate varsity team or elevate an existing club team to varsity status. Under the Policy Interpretation, institutions have discretion and flexibility in choosing the nondiscriminatory methods to determine the athletic interests and abilities of students.⁴ Nondiscriminatory assessment methods may include the administration of student surveys and a consideration of additional factors.

Previous OCR guidance on the three-part test has included a discussion of the consideration of additional factors.⁵ This report, however, focuses on specific factors our analysis indicated may have been considered by either recipients or OCR during the course of an investigation and post-investigation monitoring. The following additional factors were identified in one or more of the OCR case files reviewed for this report:

- Interviews with the recipient's coaches
- Interviews with the recipient's athletes
- Expressed student interest in the addition of new teams
- Expressed student interest in the elevation of existing club teams to varsity status
- Participation on club or intramural teams
- Participation in recipient elective physical education classes
- Sports offered by local community recreation leagues and participation rates in those sports
- Sports offered by local high schools and participation rates in those sports
- Sports offered by other high schools from which the recipient normally draws its student population (i.e., "feeder" schools) and participation rates in those sports
- Interviews with or surveys of local high school coaches and athletic directors

⁴ "Institutions may determine the athletic interests and abilities of students by nondiscriminatory methods of their choosing provided: a. The process takes into account the nationally increasing levels of women's interest and abilities; b. The methods of determining interest and ability do not disadvantage the members of an underrepresented sex; c. The methods of determining ability take into account team performance records; and d. The methods are responsive to the expressed interests of students capable of intercollegiate competition who are members of an under represented sex." 1979 Policy Interpretation.

⁵ The 1996 Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (1996 Clarification) provided "OCR would look for interest through the following factors, among others: requests by students and admitted students that a particular sport be added; requests that an existing club sport be elevated to intercollegiate team status; participation in particular club or intramural sports; interviews with students, admitted students, coaches, administrators and others regarding interest in particular sports; results of questionnaires of students and admitted students regarding interests in particular sports; and participation in particular interscholastic sports by admitted students." Furthermore, the 1996 Clarification indicated that "OCR will look at participation rates in sports in high schools, amateur athletic associations, and community sports leagues that operate in areas from which the institution draws its students in order to ascertain likely interest and ability of its students and admitted students in particular sport(s)." The 1996 Clarification noted, however, that "while these indications of interest may be helpful to OCR in ascertaining likely interest on campus, particularly in the absence of more direct indicia, an institution is expected to meet the actual interests and abilities of its students and admitted students."

- Intercollegiate sports sanctioned by the recipient's athletic conference
- Intercollegiate sports sanctioned by other athletic associations
- Intercollegiate sports offered in the recipient's normal competitive region
- Nationally emerging sports, increasing levels of interest in sports in general, and increasing levels of interest and ability in particular sports
- Other factors

Although many of the above factors are suited to evaluating one or more of the part three conditions, i.e., interest, ability, and expectation of competition, we have not attempted to conduct a comprehensive analysis of which particular condition each of the factors was designed to measure in each of the cases. However, our review of the cases did reveal that often these additional factors were not used to determine student interest, but rather to assess the feasibility of creating a team, the ability to sustain a team, and/or the reasonable expectation of competition for a team. The use of these factors by OCR and recipient institutions is detailed in our findings, below.

Scope and Methodology

The Committee requested that the Department conduct random compliance reviews of postsecondary institutions that used interest surveys to determine what additional factors were considered in determining student interest. We met with Committee staff to discuss the difficulties in conducting such an examination in the limited time available, particularly because institutions do not report this type of information to OCR.

In addition, a recipient's choice of how to comply with Title IX is not static, and a school may choose to alter its method of compliance consistent with its own circumstances (such as fluctuations in student enrollment or other circumstances). Unless the institution requests technical assistance, the only way OCR would be in a position to determine how a recipient has chosen to achieve Title IX compliance, would be for OCR to conduct an investigation based on a complaint investigation or proactive compliance review.

Instead, we proposed to do an analysis of the issues raised by the Committee based on a review of OCR's case files from October 1, 1992 through January 31, 2006. None of these cases was opened following the issuance of the Additional Clarification. However, we were able to determine the factors used by institutions and OCR in determining student interest in the cases examined.

Consequently, OCR examined all 166 case files, initiated between October 1, 1992 and January 31, 2006, and identified as Title IX athletics cases involving the use of the three part test. An initial review of these cases revealed 27 files remaining active. These open files were excluded to avoid potential interference with ongoing OCR activity.

The remaining case files were then examined to determine whether they met the criteria specified by the Committee. In accordance with the specified criteria, files not involving the use of part three of the Title IX test or the administration of a student interest survey were excluded from

further consideration.⁶ After all exclusions, 54 files remained in the pool for analysis. These files all proceeded beyond the initial evaluation stage, were closed, and involved institutions that chose to use part three of the Title IX test and to utilize a student interest survey. OCR conducted a detailed examination of all 54 files in the pool.

The Committee is cautioned that the findings herein, such as the consideration of a particular additional factor or the number of teams added as the result of assessments, may not provide a complete representation of the cases under consideration. Because of the very few number of cases available for inclusion in our analysis, it must be noted that small changes or missing documentation could have a significant effect on our analysis.⁷ Moreover, because of the nature of OCR investigations and the uniqueness of each institution, even those files containing relatively complete documentation do not routinely address every data collection category. For most of the period under review, OCR procedures did not require full investigations. Rather, at any time before or during an investigation when a recipient agreed to take action that appeared to resolve the complaint allegations, OCR would enter into an agreement with the recipient and the case was closed prior to a finding.

Finally, because no attempt was made to determine if the cases examined represent a valid sample of postsecondary institutions, it is not suitable to generalize the findings presented in this report to all other recipient institutions.

Results

We discovered that as part of its initial investigation, in many cases OCR considered additional factors to assist in its determination of whether potential sufficient unmet interest, ability, and competitive opportunities existed within the institution's current underrepresented student population. In addition, as part of a voluntary compliance or resolution agreement entered into with OCR, many institutions agreed to not only conduct a student survey, but also to consider specific additional factors. We found that approximately half of all institutions' assessments of student interests and abilities and potential competitive opportunities included the consideration of student interest surveys as well as additional factors. Many of those surveys, pre-dating the Additional Clarification, did not meet the design or implementation standards that now are more readily available as a result of the Additional Clarification. Finally, in only a very few instances, we noted that OCR examined additional factors following an institution's assessment, citing the factors as reasons for its rejection of the institution's conclusion not to add additional sports.

At the outset, our review of the files selected for consideration revealed that in many instances OCR initially made a determination that probable sufficient unmet interest, ability, and competitive opportunities existed within the institution's current underrepresented student population to justify the addition of at least one new sports team. OCR considered several additional factors to assist it in reaching this conclusion concerning probable interest, ability, and

⁶ Several files were excluded because the cases were closed early because OCR did not have jurisdiction, as the complainant failed to provide sufficient factual information for OCR to infer a potential violation of Title IX; because the complainant withdrew the complaint, generally as a result of an independent resolution between the complainant and the institution; or because OCR could not contact the complainant for additional information.

⁷ For instance, many case files, principally due to their age, do not contain complete documentation.

competitive opportunities. Most mentioned factors included current student participation in club or intramural sports, cited as tending to indicate current levels of interest and ability; sports offered and participation rates at local and other feeder high schools, generally considered as an indicator of likely interest by potential students needed to sustain any new sports teams added; and intercollegiate sports sanctioned by the recipient's current athletic conference, used as an indicator of potential competitive opportunities. In addition, opinions of the institution's coaches, athletes, and students concerning interest and ability were afforded particular weight by OCR in its determination.

In many cases, OCR accepted commitments from institutions to implement voluntary resolution agreements without OCR issuing findings. Other institutions entered into similar voluntary agreements after findings of noncompliance. All institutions entering into an agreement agreed to conduct a nondiscriminatory assessment of student interest and abilities, most agreeing to administer one or more student interest surveys and to consider specific additional factors. Factors most frequently mentioned included high school participation rates, included in fully half of all agreements; and intercollegiate sports offered in the recipient's normal competitive geographical region, which was mentioned in nearly 40% of all agreements.

Of the agreements examined, 19 agreed to add a total of 28 new sports teams, irrespective of the results of any assessment. As mentioned above, for most of the period under review, OCR procedures focused on the resolution of allegations of discrimination and did not require full investigations prior to implementation of voluntary resolution agreements. In these cases, evidence may have already existed justifying the addition of teams, such as an institution's recent elimination of a team for the underrepresented sex.

Note that because the institutions agreed to add these teams notwithstanding the results of any assessments conducted, during our analysis we maintained separate data for teams added as a result of assessments of interest, ability, and available competition. Those teams that were not added based on assessments (including surveys or additional factors) are not included in the data presented below.

All institutions conducted at least one assessment of student interest, ability and competitive opportunities, with a few conducting multiple assessments over the course of the investigation. We examined 63 assessments that included a student survey, including 34 in which the institution also considered other factors in addition to the survey results. Of these, five are multi-year composites we constructed during our analysis. These constructs were necessary because, although we did find sufficient documentation to describe the assessments as multi-year aggregates, the case files contained limited documentation concerning each individual assessment.

Assessments were designed to measure unmet student interest, sufficient ability to sustain a new team, and/or a reasonable expectation of competition for the team. We found surveys were always designed to measure student interest, and most often also designed to gauge athletic ability. Student interest surveys were never designed to assess competitive opportunities. In contrast, assessments of additional factors were frequently designed to measure competitive

opportunities in addition to student interest. Seldom were additional factors considered in order to assess potential ability.

Additional factors most frequently considered during all assessments included local and other feeder high school participation, intercollegiate sports sanctioned by the recipient's athletic conference, and student participation on the recipient's club and intramural teams. Other factors mentioned earlier were considered to an appreciably lesser degree.

We were able to determine overall response rates for 33 of the assessment surveys. Overall response rates varied from less than 1% to approximately 78%. Fully two-thirds of the surveys had response rates less than 40%, and only two had response rates above 75%. In addition, almost two-thirds of these assessments also included the consideration of additional factors. Ten assessments resulted in new team additions, with a total of 13 new teams added. We noted that most (10) teams were added by assessments considering both surveys and additional factors. Of the three teams added based on surveys alone, only one team was the result of a survey with less than a 65% response rate.

These findings are consistent with findings of the National Center for Education Statistics (NCES) as presented in the User's Guide to Developing Student Interest Surveys Under Title IX, and as presented in the Technical Manual for Developing the User's Guide, developed by the National Institute of Statistical Sciences (NISS), both published as accompaniments to the Department's Additional Clarification. Based on an analysis of the survey instruments used in OCR cases during nearly all of the time period covered by this report, NISS identified numerous deficiencies in both the survey instruments and their implementation during that time period. These deficiencies include limited pools of students to whom the surveys were administered and very low response rates. Consequently, under the Additional Clarification, OCR also considers other factors, in addition to surveys, if the surveys contain the deficiencies identified by NISS and are not administered consistent with the conditions articulated by NCES for effectiveness and reliability.

Although both surveys and additional factors may be used to measure interest and ability, we found almost no actual conflicts between the data from each of these assessment tools. Of the very few interest conflicts discovered, our analysis revealed that any finding of interest, whether through a survey or through the consideration of additional factors, always resulted in an overall assessment finding of interest. Specifically, we did note three cases in which the survey found unmet interest, but the additional factors did not, and a single case in which the survey did not find interest, but the additional factors did indicate interest. Of the three cases in which the survey indicated interest, one resulted in the addition of a new team, while the remaining did not, due to lack of competitive opportunities. In the single instance in which the survey did not indicate sufficient interest, the survey was based on a very low response rate of less than 1%. Nevertheless, because of student interest expressed apart from the survey, that case too resulted in the addition of a new team.

We noted that assessments that employed a student survey in combination with the consideration of additional factors were slightly more likely to find student interest. However, recipients' decisions to add a new sports team differed little between surveys and assessments including the

consideration of additional factors. In either case, approximately 44% of the assessments resulted in the addition of at least one new sports team.

We noted that many teams were added as a result of assessments that included surveys with low response rates. Of the assessments for which we were able to determine the survey response rates, we found that of the 14 teams added, only two were added as the result of an assessment including a survey with a response rate greater than 75%. Fully half (7) of those teams added, were added as the result of assessments including surveys with response rates between 1 -28%, including one assessment based solely on a survey that had a response rate of only 22%.

Further analysis revealed that the decisions to add teams, whether the result of a survey alone or of an assessment including the consideration of additional factors, appear to be attributable to the survey component of the assessment. Of the assessments including the consideration of additional factors and citing a reason for the institution's decision to add a new team, survey results were mentioned as frequently as additional factors as the basis for the decision. In addition, overall, survey results were most frequently mentioned as a determining factor in an institution's decision to add a team, cited in 23 of the 28 assessments. Additional factors were given as bases in ten assessments.

In sum, our analysis revealed that 28 assessments, conducted by 26 of the 54 institutions under consideration, resulted in the addition of 42 new teams. As mentioned previously, this total does not include team additions that were not based on assessments of interest, ability, and available competition. Overall, we found 28 teams added irrespective of the assessment results and 42 added as the result of assessments, resulting in a total of 70 teams added by the 54 institutions under consideration.

We found that the number of assessments resulting in team additions exceeded the number of assessments finding all three of the criteria necessary to raise an obligation to add a new team under part three of the three-part test. Some of this difference was attributable to those teams added after OCR disputed the recipient's determinations regarding unmet interest, ability, or competitive opportunities. Of the 28 assessments that resulted in the addition of new teams, OCR disputed the recipient's findings in five instances, effecting the addition of six new teams. The remaining difference was attributable to those few institutions deciding to add teams based on indeterminate results.

We discovered only six instances in which OCR independently evaluated additional factors subsequent to an institution's assessment. The most frequently cited factor was student participation on club or intramural teams. In all six cases, OCR used this evaluation of additional factors as a basis for its decision to reject the recipient's interpretation of the results as not requiring the addition of a new team.

Most institutions eventually attained compliance through the use of part three of the three-part test. Most of these recipients cited insufficient remaining unmet interest as the primary deciding factor not to add a team although a considerable minority did indicate that lack of competitive opportunities was a factor. A probable contributor to these findings of insufficient interest was the fact that nearly two-thirds of those schools added at least one new sports team, certainly

contributing to a reduction in student interest. Significantly, only two of these institutions attained compliance by demonstrating a lack of sufficient athletic ability within their current student population.

A few institutions (4) that utilized assessments with the aim of achieving part three compliance actually achieved compliance under either parts one or two of the three-part test. The institutions accomplishing such compliance did so through the use of assessments and subsequent team additions based on those assessments.

Conclusion

In summary, of the 63 assessments that included a student survey, we found that approximately half (34) of all institutions' assessments of student interests and abilities and potential competitive opportunities included the consideration of additional factors. The additional factors include interviews with the recipient's coaches or athletes; expressed student interest in the addition of a new team or elevation of an existing club team to varsity status; participation on club or intramural teams or elective physical education classes; sports offered by local and feeder high schools and community recreation leagues and participation rates in those sports; interviews with or surveys of local high school coaches and athletic directors; intercollegiate sports sanctioned by the recipient's athletic conference or other athletic associations or offered in the recipient's normal competitive region; and nationally emerging sports. Increasing levels of interest in sports in general, and increasing levels of interest and ability in particular sports.

Overall, we found that 28 teams were added irrespective of the assessment results and 42 were added as the result of assessments, resulting in a total of 70 teams added by the 54 institutions under consideration. However, recipients' decisions to add a new sports team differed little between surveys and assessments including the consideration of additional factors. In addition, the decisions to add teams, whether the result of a survey alone or of an assessment including the consideration of additional factors, appear to be more frequently attributable to the survey component of the assessment.

As demonstrated by the above analysis, utilization of various types of surveys as a method to measure student athletic interests under part three of the three-part test is not new. Based on NISS' analysis of OCR cases, there were a number of deficiencies in the design and implementation of the survey instruments during the period reviewed, including limited or selective distribution of surveys and low response rates. However, it is interesting to note that surveys, including those that were deficient, resulted in the addition of teams to the same extent as assessments that included the consideration of survey results and additional factors.

To address the inadequacies in the surveys, NCES developed the Model Survey and survey implementation procedures in the Additional Clarification to effectively measure student interest—with a survey—using an unbiased, standardized methodology. This self-assessment tool, which has been offered as a resource to schools, when implemented consistent with the guidance, has the potential to maximize the possibility of obtaining correct information and generating high response rates.

The Discussion:

1. Title IX, Sex Discrimination, and Intercollegiate Athletics: A Legal Overview, Updated April 28, 2005, CRS Report for Congress.
2. The Controversy over US Department of Education, Office for Civil Rights' Additional Clarification of Intercollegiate Athletics Policy, March 17, 2005
3. Advocating for the March 17, 2007 Additional Clarification
4. Opposing the March 17, 2007 Additional Clarification
5. Public Comments of the American Association of University Women

Title IX, Sex Discrimination, and Intercollegiate Athletics: A Legal Overview, Updated
April 28, 2005, CRS Report for Congress.

CRS Report for Congress

Received through the CRS Web

Title IX, Sex Discrimination, and Intercollegiate Athletics: A Legal Overview

Updated April 28, 2005

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Title IX, Sex Discrimination, and Intercollegiate Athletics: A Legal Overview

Summary

Enacted over three decades ago, Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in federally funded education programs or activities. Although the Title IX regulations bar recipients of federal financial assistance from discriminating on the basis of sex in a wide range of educational programs or activities, such as student admissions, scholarships, and access to courses, the statute is perhaps best known for prohibiting sex discrimination in intercollegiate athletics.

Indeed, the provisions regarding athletics have proved to be one of the more controversial aspects of Title IX. At the center of the debate is a three-part test that the Department of Education (ED) uses to determine whether institutions are providing nondiscriminatory athletic participation opportunities for both male and female students. Proponents of the existing regulations point to the dramatic increases in the number of female athletes in elementary and secondary school, college, and beyond as the ultimate indicator of the statute's success in breaking down barriers against women in sports. In contrast, opponents contend that the Title IX regulations unfairly impose quotas on collegiate sports and force universities to cut men's teams in order to remain in compliance. Critics further argue that the decline in certain men's sports, such as wrestling, is a direct result of Title IX's emphasis on proportionality in men's and women's college sports

The debate over Title IX has escalated recently, partly in response to ED's decision in 2002 to appoint a commission to study Title IX and to recommend whether or not the athletics provisions should be revised. The Commission on Opportunity in Athletics delivered its final report to the Secretary of Education in 2003. In response, ED issued new guidance in 2003 and 2005 that clarifies Title IX policy and the use of the three-part test.

This CRS report provides an overview of Title IX in general and the intercollegiate athletics regulations in particular, as well as a summary of the Commission's report and ED's response and a discussion of recent legal challenges to the regulations and to the three-part test. For related reports, see CRS Report RS20460, *Title IX and Gender Bias in Sports: Frequently Asked Questions*, and CRS Report RS20710, *Title IX and Sex Discrimination in Education: An Overview*.

Contents

I. Introduction	1
II. Title IX Background	2
The Title IX Statute	3
The Title IX Regulations	4
III. Intercollegiate Athletics and the Policy Guidance	6
The Three-Part Test	7
The Proportionality Test and the Current Controversy	8
ED's Interpretation of the Title IX Proportionality Test	10
The Title IX Review Commission	11
ED's Response to the Title IX Commission: The 2003 and 2005 Clarifications	13
IV. Title IX and the Courts	14
<i>Cohen v. Brown University</i>	15
The National Wrestling Coaches Association Lawsuit	17

Title IX, Sex Discrimination, and Intercollegiate Athletics: A Legal Overview

I. Introduction

Enacted over three decades ago, Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in federally funded education programs or activities.¹ Although the Title IX regulations bar recipients of federal financial assistance from discriminating on the basis of sex in a wide range of educational programs or activities, such as student admissions, scholarships, and access to courses, the statute is perhaps best known for prohibiting sex discrimination in intercollegiate athletics.

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¹ 20 U.S.C. §§ 1681 et seq.

² June Kronholz, *College Coaches Press Bush on Title IX*, *The Wall Street Journal*, Aug. 27, 2002, at A4.

³ Erik Brady, *Major Changes Debated for Title IX*, *USA Today*, Dec. 18, 2002, at A1.

⁴ The Secretary of Education's Commission on Opportunity in Athletics, "*Open to All*": *Title IX at Thirty*, Feb. 28, 2003, [<http://www.ed.gov/pubs/titleixat30/index.html>].

⁵ Department of Education, *Further Clarification of Intercollegiate Athletics Policy* (continued...)

This CRS report provides an overview of Title IX in general and the intercollegiate athletics regulations in particular, as well as a summary of the Commission's report and ED's response and a discussion of recent legal challenges to the regulations and to the three-part test. For related reports, see CRS Report RS20460, *Title IX and Gender Bias in Sports: Frequently Asked Questions*, and CRS Report RS20710, *Title IX and Sex Discrimination in Education: An Overview*.

II. Title IX Background

Enacted in response to a growing concern regarding disparities in the educational experiences of male and female students, Title IX is designed to eliminate sex discrimination in education. Although Title IX prohibits a broad range of discriminatory actions, such as sexual harassment in elementary and secondary schools or discrimination against women in graduate school admissions, Title IX is perhaps best known for its role in barring discrimination against women in college sports. Indeed, when the Department of Health, Education, and Welfare (HEW), which was the predecessor agency of the Department of Education, issued policy guidance regarding Title IX and athletics, the agency specifically noted that participation rates for women in college sports "are far below those of men" and that "on most campuses, the primary problem confronting female athletes is the absence of a fair and adequate level of resources, services, and benefits."⁶

Federal law regarding Title IX intercollegiate athletics consists of three basic components: (1) the Title IX statute, which was enacted in the Education Amendments of 1972 and amended in the Education Amendments of 1974;⁷ (2) the Department of Education regulations, which were originally issued in 1975 by HEW;⁸ and (3) ED's policy guidance regarding Title IX athletics. The athletics policy guidance is primarily comprised of two documents: (1) a 1979 Policy Interpretation that established the controversial three-part test,⁹ and (2) a 1996 Clarification of the three-part test, which reinvigorated enforcement of Title IX in intercollegiate athletics.¹⁰ In addition, ED issued further clarifications in 2003 and 2005.¹¹ Despite the public attention generated by the three-part test, it is important to note that the test

⁵ (...continued)

Guidance Regarding Title IX Compliance (July 11, 2003) (hereinafter 2003 Clarification); Department of Education, Additional Clarification on Intercollegiate Athletics Policy: Three-Part Test — Part Three (March 17, 2005) (hereinafter 2005 Clarification).

⁶ Title IX of the Education Amendments of 1972; A Policy Interpretation: Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71,413, 71,419 (Dec. 11, 1979) (hereinafter 1979 Policy Interpretation).

⁷ P.L. 93-380.

⁸ 34 CFR Part 106.

⁹ 1979 Policy Interpretation, *supra* note 6, at 71,413.

¹⁰ Department of Education, Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (Jan. 16, 1996) (hereinafter 1996 Clarification).

¹¹ 2003 Clarification, *supra* note 5; 2005 Clarification, *supra* note 5.

itself forms only a small part of the larger body of Title IX law. A general overview of the Title IX statute and regulations is provided below, while the athletics policy guidance and the legal debate surrounding Title IX and the three-part test are described in greater detail in subsequent sections.

In addition to this substantial body of Title IX law and policy, one other federal statute – the Equity in Athletics Disclosure Act¹² – also applies to intercollegiate athletics. Under this statute, colleges and universities are required to report statistical data, broken down by sex, on undergraduate enrollment and athletic participation and expenditures.

The Title IX Statute

Enacted over thirty years ago, the Title IX statute is designed to prevent sex discrimination by barring recipients of federal funds from discriminating in their education programs or activities. Specifically, the statute declares, “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,” subject to certain exceptions.¹³

The original Title IX legislation, which set forth the broad prohibition against sex discrimination but provided little detail about specific programs or activities, made no mention of college sports. However, the Education Amendments of 1974 directed HEW to issue Title IX implementing regulations “which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports.”¹⁴ This provision was added after Congress eliminated a section that would have made revenue-producing sports exempt from Title IX.¹⁵

It is important to note that, under Title IX, the receipt of any amount of federal financial assistance is sufficient to trigger the broad nondiscrimination obligation embodied in the statute. This nondiscrimination obligation extends institution-wide to *all* education programs or activities operated by the recipient of the federal funds, even if some of the education programs or activities themselves are not funded with federal dollars.¹⁶ For example, virtually all colleges and universities in the United States are recipients of federal financial assistance because they receive some form of federal aid, such as scientific research grants or student tuition financed by federal loans. Once a particular school is deemed a recipient of federal financial assistance,

¹² 20 U.S.C. § 1092(g).

¹³ *Id.* at § 1681(a). Exceptions include admissions to elementary and secondary schools, educational institutions of religious organizations with contrary religious tenets, military training institutions, educational institutions that are traditionally single-sex, fraternities and sororities, certain voluntary youth service organizations such as the Girl or Boy Scouts, father-son or mother-daughter activities at educational institutions, and beauty pageants. *Id.*

¹⁴ P.L. 93-380 § 844.

¹⁵ 1979 Policy Interpretation, *supra* note 6, at 71,413.

¹⁶ Department of Justice, Civil Rights Division, Title IX Legal Manual 51 (Jan. 11, 2001), available at [<http://www.usdoj.gov/crt/cor/coord/ixlegal.pdf>].

all of the education programs and activities that it operates are subject to Title IX. Thus, if a college or university receives federal assistance through its student financial aid program, its nondiscrimination obligation is not restricted solely to its student financial aid program, but rather the obligation extends to all of the education programs or activities conducted by the institution, including athletics and other programs that do not receive federal funds. The provision regarding receipt of federal funds, therefore, is the primary mechanism for compelling institutions to comply with Title IX in their athletic programs.¹⁷

The Title IX Regulations

Because Title IX's prohibition against sex discrimination extends to all education programs or activities operated by recipients of federal funds, the scope of Title IX is quite broad. While the statute lays out only the general prohibition against sex discrimination, the implementing regulations specify the wide range of education programs or activities affected. Indeed, the regulations bar recipients from discriminating on the basis of sex in: student admissions, recruitment, scholarship awards and tuition assistance, housing, access to courses and other academic offerings, counseling, financial assistance, employment assistance to students, health and insurance benefits and services, athletics, and all aspects of education-related employment, including recruitment, hiring, promotion, tenure, demotion, transfer, layoff, termination, compensation, benefits, job assignments and classifications, leave, and training.¹⁸

Despite the wide array of programs and activities subject to Title IX, it is the provisions on athletics that have generated the bulk of public attention and controversy in recent years. Under the Title IX regulations, recipients of federal financial assistance are prohibited from discriminating on the basis of sex in their sports programs. Specifically, the regulations declare, "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."¹⁹ In addition, recipients are barred from providing athletics separately on the basis of sex, except under certain circumstances, such as when team selection is based on

¹⁷ For a brief period from 1984 to 1988, Title IX enforcement in college athletics was suspended as a result of a Supreme Court ruling that Title IX was "program-specific," meaning that the statute's requirements applied only to education programs that received federal funds and not to an institution's programs as a whole. *Grove City College v. Bell*, 465 U.S. 555, 574 (1984). Because few university athletic programs receive federal dollars, college sports were essentially exempt from Title IX coverage after this decision. In the Civil Rights Restoration Act of 1987 (P.L. 100-259), however, Congress overrode the Supreme Court's interpretation of Title IX by passing legislation to clarify that Title IX's requirements apply institution-wide and are not program-specific, thus reinstating Title IX's coverage of athletics. 20 U.S.C. § 1687.

¹⁸ 34 CFR §§ 106.31-106.56.

¹⁹ *Id.* at § 106.41(a).

competitive skill or the activity is a contact sport.²⁰ Finally, the regulations require institutions that provide athletic scholarships to make such awards available in proportion to the numbers of male and female students participating in intercollegiate athletics.²¹

An important principle embodied in the Title IX regulations on athletics is the principle of equal opportunity. Under the regulations, recipients such as colleges and universities must “provide equal athletic opportunity for members of both sexes.”²² When evaluating whether equal opportunities are available, the Department of Education (ED) examines, among other factors, the provision of equipment and supplies, scheduling of games and practice time, travel and per diem allowance, opportunity to receive coaching and academic tutoring, assignment and compensation of coaches and tutors, provision of locker rooms and practice and competitive facilities, provision of medical training facilities and services, provision of housing and dining facilities and services, and publicity.²³ In addition, ED considers “whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes.”²⁴ In order to measure compliance with this last factor, ED established the three-part test that has been challenged by opponents of existing Title IX policy.

To clarify how to comply with the intercollegiate athletics requirements contained in the Title IX regulations, ED issued a Policy Interpretation in 1979²⁵ and a subsequent Clarification of this guidance in 1996.²⁶ Combined, these two documents form the substantive basis of the policy guidance on the three-part test, which has generated the bulk of the questions and concerns surrounding Title IX and intercollegiate athletics. ED also issued a further clarification in 2003, but this document made only minor alterations to the 1979 Policy Interpretation and the 1996 Clarification.²⁷ In addition, ED recently yet another clarification that established a new way in which colleges may demonstrate compliance with the interest test prong of the three-part test.²⁸ These guidance documents are discussed in greater detail in the section below.

²⁰ *Id.* at §106.41(b). Under the regulations, contact sports are defined to include boxing, wrestling, rugby, ice hockey, football, and basketball.

²¹ *Id.* at § 106.37(c).

²² *Id.* at § 106.41(c).

²³ *Id.*

²⁴ *Id.*

²⁵ 1979 Policy Interpretation, *supra* note 6.

²⁶ 1996 Clarification, *supra* note 10.

²⁷ 2003 Clarification, *supra* note 5.

²⁸ 2005 Clarification, *supra* note 5.

III. Intercollegiate Athletics and the Policy Guidance

As noted above, ED has set forth its interpretation of the intercollegiate athletics provisions of the Title IX statute and implementing regulations in two documents: the 1979 Policy Interpretation and the subsequent 1996 Clarification. These two documents, which remain in force, were designed to provide guidance to colleges and universities regarding how to achieve Title IX compliance by providing equal opportunity in their intercollegiate athletic programs. To that end, both of the guidance documents discuss the factors that ED considers when enforcing Title IX.²⁹

Under the 1979 Policy Interpretation, HEW established three different standards to ensure equal opportunity in intercollegiate athletics.³⁰ First, with regard to athletic scholarships, the compliance standard is that such aid “should be available on a substantially proportional basis to the number of male and female participants in the institution’s athletic program.”³¹ Second, HEW established a standard that male and female athletes should receive “equivalent treatment, benefits, and opportunities” in the following areas: equipment and supplies, games and practice times, travel and per diem, coaching and academic tutoring, assignment and compensation of coaches and tutors, locker rooms and practice and competitive facilities, medical and training facilities, housing and dining facilities, publicity, recruitment, and support services.³² Finally, in terms of meeting the regulatory requirement to address the interests and abilities of male and female students alike, the compliance standard is that such interests and abilities must be equally effectively accommodated.³³

In order to determine compliance with the latter accommodation standard, ED considers three additional factors: (1) the determination of athletic interests and abilities of students, (2) the selection of sports offered,³⁴ and (3) the levels of

²⁹ 1979 Policy Interpretation, *supra* note 6; 1996 Clarification, *supra* note 10.

³⁰ Although the Policy Interpretation focuses on formal intercollegiate athletic programs, its requirements also apply to club, intramural, and interscholastic athletics. 1979 Policy Interpretation, *supra* note 6.

³¹ *Id.* at 71,414. This requirement, however, does not mean that schools must provide a proportional number of scholarships or that all individual scholarships must be of equal value; the only requirement is that the overall amount spent on scholarship aid must be proportional. *Id.* at 71,415.

³² *Id.* Such benefits, opportunities, and treatment need not be identical, and even a finding of nonequivalence can be justified by a showing of legitimate nondiscriminatory factors. According to the Policy Interpretation, “some aspects of athletic programs may not be equivalent for men and women because of unique aspects of particular sports or athletic activities.” The Policy Interpretation specifically cites football as an example of such a sport. *Id.* at 71,415-16.

³³ *Id.* at 71,414.

³⁴ According to the Policy Interpretation, “the regulation does not require institutions to integrate their teams nor to provide exactly the same choice of sports to men and women. However, where an institution sponsors a team in a particular sport for members of one sex, it may be required either to permit the excluded sex to try out for the team or to sponsor a
(continued...)

competition available, including the opportunity for team competition.³⁵ It is the criteria used to assess this third and final factor that form the basis of the three-part test. The three-part test, the debate over the test and its proportionality requirement, ED's Title IX review commission, and ED's response to the Commission's report are discussed in detail below.

The Three-Part Test

Under the Policy Interpretation, in accommodating the interests and abilities of athletes of both sexes, institutions must provide the opportunity for male and female athletes to participate in competitive sports. ED measures an institution's compliance with this requirement through one of the following three methods:

- (1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
- (2) Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion, which is demonstrably responsive to the developing interest and abilities of the members of that sex; or
- (3) Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.³⁶

These three methods for determining whether institutions are complying with the Title IX requirement to provide nondiscriminatory participation opportunities for both male and female athletes have come to be referred to as the three-part test. In its 1996 Clarification, which addresses only the three-part test, ED provides additional guidance for institutions seeking to comply with Title IX.

According to the 1996 Clarification, an institution must meet only one part of the three-part test in order to prove its compliance with the nondiscrimination requirement.³⁷ Thus, institutions may prove compliance by meeting: (1) the proportionality test, which measures whether the ratio of male and female athletes is substantially proportional to the ratio of male and female students at the institution, (2) the expansion test, which measures whether an institution has a history and continuing practice of expanding athletic opportunities for the underrepresented sex, or (3) the interests test, which measures whether an institution is accommodating the athletic interests of the underrepresented sex.³⁸

³⁴ (...continued)

separate team for the previously excluded sex." *Id.* at 71,417-18.

³⁵ *Id.* at 71,417.

³⁶ *Id.* at 71,418.

³⁷ 1996 Clarification, *supra* note 10.

³⁸ Dear Colleague Letter from the Department of Education's Office for Civil Rights (continued...)

In addition, the 1996 Clarification reiterates that ED examines many other factors beyond those set forth in the three-part test when it evaluates an institution's Title IX athletics compliance.³⁹ The 1996 Clarification also provides a more detailed examination of the factors that ED considers under each of the three tests, as well as examples illustrating how the various factors affect a finding of compliance or noncompliance.⁴⁰

The 2003 Clarification and the 2005 Clarification, which provide additional guidance regarding the three-part test, are discussed separately below.

The Proportionality Test and the Current Controversy

The first prong of the three-part test – the proportionality test – is the most controversial. Indeed, critics contend that proportionality amounts to an unfair system of quotas. Because women's enrollment in postsecondary schools has increased dramatically in the decades since Title IX was enacted, rising 30 percent from 1981 to 1999,⁴¹ critics argue that proportionality results in reverse discrimination, forcing schools to cut existing men's teams in order to create new slots for women.⁴²

Proponents of proportionality respond that Title IX does not require quotas because schools that cannot demonstrate proportionality can still comply with Title IX if they pass one of the two remaining parts of the three-part test. Supporters also reject the notion that Title IX forces schools to eliminate men's teams, arguing that costly men's sports like football are to blame for cuts in less popular sports for both men and women. In addition, supporters note that instead of cutting men's sports, schools can achieve proportionality by adding women's teams.⁴³

Critics counter that even though the three-part test offers an alternative to the proportionality approach in theory, in reality, maintaining proportionality is the only sure way to avoid a lawsuit. Furthermore, say critics, even though schools can technically comply with the proportionality standard by adding women's teams, budget realities often force institutions to cut men's teams instead. Proponents, however, respond that the vast majority of schools that add women's teams do not eliminate men's teams. Changing the proportionality test, say proponents, would be

³⁸ (...continued)

regarding the Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (Jan. 16, 1996), *available at* [<http://www.ed.gov/offices/OCR/docs/clarific.html>] (hereinafter Dear Colleague Letter).

³⁹ 1996 Clarification, *supra* note 10.

⁴⁰ *Id.*

⁴¹ General Accounting Office, *Intercollegiate Athletics: Four-Year Colleges' Experiences Adding and Discontinuing Teams* 8 (March 2001).

⁴² Brady, *supra* note 3.

⁴³ *Id.*

tantamount to repealing a law that is widely credited for dramatically increasing women's interest, participation, and success in sports.⁴⁴

In 2001, the General Accounting Office (GAO) released a study of intercollegiate athletics. The GAO report included the following findings:

- “The number of women participating in intercollegiate athletics at 4-year colleges and universities increased substantially—from 90,000 to 163,000—between school years 1981-82 and 1998-99, while the number of men participating increased more modestly—from 220,000 to 232,000.”⁴⁵
- “Women’s athletic participation grew at more than twice the rate of their growth in undergraduate enrollment, while men’s participation more closely matched their growth in undergraduate enrollment.”⁴⁶
- “The total number of women’s teams increased from 5,595 to 9,479, a gain of 3,784 teams, compared to an increase from 9,113 to 9,149 teams for men, a gain of 36 teams.”⁴⁷
- “Several women’s sports and more than a dozen men’s sports experienced net decreases in the number of teams. For women, the largest net decreases in the number of teams occurred in gymnastics; for men, the largest decreases were in wrestling.”⁴⁸
- In men’s sports, “the greatest increase in numbers of participants occurred in football, with about 7,200 more players. Football also had the greatest number of participants—approximately 60,000, or about twice as many as the next largest sport. Wrestling experienced the largest decrease in participation—a drop of more than 2,600 participants.”⁴⁹
- “In all, 963 schools added teams and 307 discontinued teams since 1992-93. Most were able to add teams—usually women’s teams—without discontinuing any teams.”⁵⁰
- “Among the colleges and universities that added a women’s team, the two factors cited most often as greatly influencing the decision

⁴⁴ *Id.*

⁴⁵ General Accounting Office, *Intercollegiate Athletics: Four-Year Colleges’ Experiences Adding and Discontinuing Teams 4* (March 2001).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 10.

⁵⁰ *Id.* at 5.

were the need to address student interest in particular sports and the need to meet gender equity goals or requirements. Similarly, schools that discontinued a men's team cited a lack of student interest and gender equity concerns as the factors greatly influencing their decision, as well as the need to reallocate the athletic budget to other sports."⁵¹

ED's Interpretation of the Title IX Proportionality Test.

Until recently, when ED appointed a commission to study changes in Title IX athletics policy, the agency had historically favored the proportionality approach. Among the factors that ED considers under the proportionality test are the number of participation opportunities provided to athletes of both sexes. According to ED, "as a general rule, all athletes who are listed on a team's squad or eligibility list and are on the team as of the team's first competitive event are counted as participants."⁵² ED next determines whether these participation opportunities are substantially proportionate to the ratio of male and female students enrolled at the institution, but, for reasons of flexibility, ED does not require exact proportionality.⁵³

According to the 1996 Clarification, the proportionality test acts as a safe harbor. In other words, if an institution can demonstrate proportional athletic opportunities for women, then the institution will automatically be found to be in compliance.⁵⁴ If, however, an institution cannot prove proportionality, then the institution can still establish compliance by demonstrating that the imbalance does not reflect discrimination because the institution either (1) has a demonstrated history and continuing practice of expanding women's sports opportunities (prong two) or (2) has fully and effectively accommodated the athletic interests of women (prong three).

In its 2003 Clarification, ED specifically addressed the "safe harbor" language in the 1996 guidance. Noting that the "safe harbor" phrase had led many schools to believe erroneously that achieving compliance with Title IX could be guaranteed by meeting the proportionality test only, ED reiterated that "each of the three prongs of the test is an equally sufficient means of complying with Title IX, and no one prong is favored."⁵⁵

Finally, the 1996 Clarification explicitly declares that "nothing in the three-part test requires an institution to eliminate participation opportunities for men" and challenges the notion that the three-part test requires quotas.⁵⁶ Rather, the 1996 Clarification states that "the three-part test gives institutions flexibility and control

⁵¹ *Id.*

⁵² 1996 Clarification, *supra* note 10.

⁵³ *Id.*

⁵⁴ Dear Colleague Letter, *supra* note 38.

⁵⁵ 2003 Clarification, *supra* note 5.

⁵⁶ 1996 Clarification, *supra* note 10.

over their athletic programs.”⁵⁷ Furthermore, the 1996 Clarification notes that the Policy Interpretation in general and the three-part test in particular have been upheld by every court that has reviewed the guidance documents.⁵⁸

The Title IX Review Commission

Although ED has enforced its Title IX policy, including the three-part test and its proportionality standard, virtually unchanged since shortly after the statute was enacted three decades ago, the agency recently considered whether or not to alter its athletics policy. To that end, ED appointed the Commission on Opportunity in Athletics in June 2002 to review Title IX and to recommend changes if warranted. The commission, which held a series of meetings around the country to discuss problems with and improvements to Title IX, issued its final report containing findings and recommendations in February 2003.⁵⁹

In its report, the Commission noted that it “found strong and broad support for the original intent of Title IX, coupled with a great deal of debate over how the law should be enforced,” but that “more needs to be done to create opportunities for women and girls and retain opportunities for boys and men.”⁶⁰ Ultimately, the final report contained 23 recommendations for strengthening Title IX, including 15 recommendations that were adopted unanimously. When the Commission issued its final report, however, two dissenting members of the panel refused to sign the document and instead issued a minority report in which they withdrew their support for two of the unanimous recommendations and raised concerns about several other unanimous recommendations.⁶¹ The Secretary of Education indicated that he intended to consider changes only with respect to the unanimous recommendations of the Commission.

Among the unanimous recommendations of the Commission are suggestions that ED: (1) reaffirm its commitment to eliminating discrimination; (2) clarify its guidance and promote consistency in enforcement; (3) avoid making changes to Title IX that undermine enforcement; (4) clarify that cutting teams in order to achieve compliance is a disfavored practice; (5) enforce Title IX aggressively by implementing sanctions against violators; (6) promote student interest in athletics at elementary and secondary schools; (7) support amendments to the Equity in Athletics Disclosure Act that would improve athletic reporting requirements; (8) disseminate information on the criteria it uses to help schools determine whether activities that they offer qualify as athletic opportunities; (9) encourage the National Collegiate

⁵⁷ *Id.*

⁵⁸ Dear Colleague Letter, *supra* note 38. For a brief review of significant Title IX court decisions, as well as a discussion of a current legal challenge to Title IX by the National Wrestling Coaches Association, see the “Title IX and the Courts” section below.

⁵⁹ The Secretary of Education’s Commission on Opportunity in Athletics, “*Open to All*”: *Title IX at Thirty*, Feb. 28, 2003, [<http://www.ed.gov/pubs/titleixat30/index.html>].

⁶⁰ *Id.* at 4, 21.

⁶¹ Donna de Varona and Julie Foudy, *Minority Views on the Report of the Commission on Opportunity in Athletics*, Feb. 2003, [<http://www.nwlc.org/pdf/MinorityReportFeb26.pdf>].

Athletic Association to review its scholarship and other guidelines; (10) advise schools that walk-on opportunities are not limited for schools that comply with the second or third prong of the three-part test; (11) examine the prospect of allowing institutions to demonstrate compliance with the third prong of the three-part test by comparing the ratio of male and female athletic participation with the demonstrated interests and abilities shown by regional, state, or national youth or high school participation rates or by interest levels indicated in student surveys; (12) abandon the "safe harbor" designation for the proportionality test in favor of treating each of the three tests equally; and (13) consider revising the second prong of the three-part test, possibly by designating a point at which a school can no longer establish compliance through this part.⁶²

The Commission originally adopted an additional two recommendations unanimously, but the two dissenting members of the panel withdrew their support for these recommendations upon further opportunity for review of the final report. These contested recommendations suggest that ED: (1) clarify the meaning of "substantial proportionality" to allow for a reasonable variance in the ratio of men's and women's athletic participation; and (2) explore additional ways of demonstrating equity beyond the three-part test.⁶³

Other recommendations that the Commission adopted by a majority, but not unanimous, vote included suggestions that ED: (1) adopt any future changes to Title IX through the normal federal rulemaking process; (2) encourage the reduction of excessive expenditures in intercollegiate athletics, possibly by exploring an antitrust exemption for college sports; (3) inform universities about the current requirements governing private funding of certain sports; (4) reexamine its requirements governing private funding of certain sports to allow such funding of sports that would otherwise be cut; (5) allow schools to comply with the proportionality test by counting the available slots on sports teams rather than actual participants; (6) for purposes of the proportionality test, exclude from the participation count walk-on athletes, who are non-scholarship players that tend to be male; (7) allow schools to conduct interest surveys to demonstrate compliance with the three-part test; and (8) for purposes of the proportionality test, exclude nontraditional students, who tend to be female, from the count of enrolled students. In addition, the Commission was evenly divided on a recommendation that would allow schools to meet the proportionality test if athletic participation rates were 50 percent male and 50 percent female, with a variance of two to three percentage points allowed.⁶⁴

⁶² The Secretary of Education's Commission on Opportunity in Athletics, "*Open to All*": *Title IX at Thirty*, Feb. 28, 2003, 33-40, [<http://www.ed.gov/pubs/titleixat30/index.html>].

⁶³ Donna de Varona and Julie Foudy, *Minority Views on the Report of the Commission on Opportunity in Athletics*, Feb. 2003, [<http://www.nwlc.org/pdf/MinorityReportFeb26.pdf>].

⁶⁴ The Secretary of Education's Commission on Opportunity in Athletics, "*Open to All*": *Title IX at Thirty*, Feb. 28, 2003, 33-40, [<http://www.ed.gov/pubs/titleixat30/index.html>].

ED's Response to the Title IX Commission: The 2003 and 2005 Clarifications

In response to the Commission's report, ED indicated that it would study the recommendations and consider whether or not to revise its Title IX athletics policy.⁶⁵ Several months later, ED issued new guidance that essentially left the existing Title IX policy unchanged. In its 2003 Clarification, which provided further guidance regarding Title IX policy and the three-part test, ED reiterates that all three prongs of the three-part test have been and can be used to demonstrate compliance with Title IX, and the agency encourages schools to use the approach that best suits its needs. In addition, the 2003 Clarification declares that complying with Title IX does not require schools to cut teams and that eliminating teams is a disfavored practice. The 2003 Clarification also notes that ED expects both to provide technical assistance to schools and to aggressively enforce Title IX. Finally, the guidance indicates that ED will continue to allow private sponsorship of athletic teams.⁶⁶

In 2005, ED issued yet another clarification of the three-part test.⁶⁷ In the 2005 Clarification, ED provided additional guidance with respect to part three of the three-part test. Under that test, known as the interests test, an institution may demonstrate compliance with Title IX by establishing that it is accommodating the athletic interests of the underrepresented sex. The new guidance clarifies that one of the ways in which schools may demonstrate compliance with the interests test is by using an online survey to establish that the underrepresented sex has no unmet interests in athletic participation. Such a survey must be administered periodically to all students that are members of the underrepresented sex, and students must be informed that a failure to respond to the survey will be viewed as an indication of a lack of interest. As a result, the survey must be administered in a way designed to generate high response rates.

The 2005 Clarification emphasizes that schools have flexibility to demonstrate compliance under any one part of the three-part test and that schools who choose to demonstrate compliance through the interests test have the option to do so in several ways. Among the factors that ED considers when determining whether the school has accurately measured student interest are: surveys, requests for the addition of a varsity team, participation in club or intramural sports, participation rates in local high schools and athletic organizations, and intercollegiate participation rates in the school's region. Even if a school's population of the underrepresented sex is found to have an unmet interest in sports, the institution will not be found to have violated Title IX unless ED also finds that there is sufficient ability to sustain a team and a

⁶⁵ ED also recently proposed to amend the Title IX regulations in order to encourage single-sex classes and schools. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 69 Fed. Reg. 11,276 (March 9, 2004). See also, Single-Sex Classes and Schools: Guidelines on Title IX Requirements, 67 Fed. Reg. 31,102 (May 8, 2002); Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 67 Fed. Reg. 31,098 (May 8, 2002).

⁶⁶ 2003 Clarification, *supra* note 5.

⁶⁷ 2005 Clarification, *supra* note 5.

reasonable expectation of intercollegiate competition in the sport within the school's normal competitive region.⁶⁸

IV. Title IX and the Courts

Over the years, the Supreme Court has heard several cases pertaining to Title IX. Until a recent decision in 2005, none of these cases involved college or high school sports, but they did help to shape the legal landscape surrounding Title IX athletics policy. For example, in 1979, the Supreme Court held that Title IX includes a private right of action.⁶⁹ This decision strengthened Title IX enforcement because it means that an individual can sue in court for violations under the statute rather than wait for ED to pursue a complaint administratively. The Court further strengthened Title IX enforcement in 1992, when it ruled that individuals could sue for money damages in a Title IX lawsuit.⁷⁰ Finally, in a decision that was later overturned by Congress, the Court ruled that Title IX did not apply to an entire educational institution but rather applied only to the portion of the institution that received federal funds.⁷¹

In 2005, the Court handed down its decision in *Jackson v. Birmingham Board of Education*.⁷² In this case, which involved a girl's basketball coach who claimed that he was removed from his coaching position in retaliation for his complaints about unequal treatment of the girl's team, the Court held that Title IX not only encompasses retaliation claims, but also is available to individuals who complain about sex discrimination, even if such individuals themselves are not the direct victims of sex discrimination.⁷³ Reasoning that "Title IX's enforcement scheme would unravel" "if retaliation went unpunished,"⁷⁴ the Court concluded that "when a funding recipient retaliates against a person because he complains of sex discrimination, this constitutes intentional discrimination on the basis of sex in violation of Title IX."⁷⁵

Although the Supreme Court has decided only one case that directly involves Title IX athletics, the lower federal courts have heard multiple challenges to the statute and regulations. In fact, all of the federal courts of appeals that have considered the athletics Policy Interpretation, the three-part test, and the

⁶⁸ *Id.*

⁶⁹ *Cannon v. Univ. of Chicago*, 441 U.S. 677 (1979).

⁷⁰ *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992).

⁷¹ *Grove City College v. Bell*, 465 U.S. 555 (1984). *See also supra* notes 16-17 and accompanying text.

⁷² 125 S.Ct. 1497 (2005).

⁷³ *Id.* at 1502.

⁷⁴ *Id.* at 1508.

⁷⁵ *Id.* at 1504 [internal quotations omitted].

proportionality rule have upheld ED's Title IX regulations and policy.⁷⁶ In general, these courts have noted that the regulations and guidance represent a reasonable agency interpretation of Title IX, and they have ruled that the three-part test does not unfairly impose quotas because institutions may select from two other methods besides proportionality in order to comply with Title IX. Indeed, in 1993, the First Circuit reached this conclusion in *Cohen v. Brown University*, a landmark Title IX case that was the first federal appeals court decision regarding Title IX athletics.⁷⁷ This section provides a brief summary of the *Cohen* decision, as well as a description of the National Wrestling Coaches Association lawsuit, which was recently dismissed.

Cohen v. Brown University

In the *Cohen* case, female athletes at Brown University sued under Title IX when the school eliminated two women's sports – gymnastics and volleyball – and two male teams – golf and water polo – in a cost-cutting measure.⁷⁸ Although the cuts made far larger reductions in the women's athletic budget than in the men's, the cuts did not affect the ratio of male to female athletes, which remained roughly 63 percent male to 37 percent female, despite a student body that was approximately 52 percent male and 48 percent female.⁷⁹ In their lawsuit, the members of the women's gymnastics and volleyball teams “charged that Brown's athletic arrangements violated Title IX's ban on gender-based discrimination.”⁸⁰ When the district court ordered the university to reinstate the two women's team pending a full trial on the merits, Brown appealed by challenging the validity of both the Title IX guidance in general and the three-part test in particular. The First Circuit, however, affirmed the district court's decision in favor of the female athletes.⁸¹

In reaching its decision to uphold the validity of the three-part test, the First Circuit emphasized that ED's interpretation of Title IX warranted deference. According to the court, “the degree of deference is particularly high in Title IX cases because Congress explicitly delegated to the agency the task of prescribing standards

⁷⁶ See, e.g., *Chalenor v. Univ. of North Dakota*, 291 F.3d 1042 (8th Cir. 2002); *Pederson v. Louisiana State Univ.*, 213 F.3d 858 (5th Cir. 2000); *Neal v. Bd. of Trustees*, 198 F.3d 763 (9th Cir. 1999); *Horner v. Kentucky High Sch. Athletic Ass'n*, 43 F.3d 265 (6th Cir. 1994); *Kelley v. Bd. of Trustees*, 35 F.3d 265 (7th Cir. 1994), *cert. denied*, 513 U.S. 1128; *Williams v. Sch. Dist. of Bethlehem*, 998 F.2d 168 (3d Cir. 1993); *Roberts v. Colorado State Bd. of Agric.*, 998 F.2d 824 (10th Cir. 1993), *cert. denied*, 510 U.S. 1004; *Cohen v. Brown Univ.*, 991 F.2d 888 (1st Cir. 1993) (hereinafter *Cohen I*). In addition, in a second appeal on a separate issue in the *Cohen* case, the First Circuit strongly reiterated its previous ruling upholding Title IX. *Cohen v. Brown Univ.*, 101 F.3d 155 (1st Cir. 1996), *cert. denied*, 520 U.S. 1186 (hereinafter *Cohen II*).

⁷⁷ 991 F.2d 888, 891 (1st Cir. 1993).

⁷⁸ *Id.* at 892.

⁷⁹ *Id.*

⁸⁰ *Id.* at 893.

⁸¹ *Id.* at 891.

for athletic programs under Title IX.⁸² Thus, the court adopted ED's three-part test as an acceptable standard by which to measure an institution's compliance with Title IX, as have all other appeals courts to subsequently consider the issue.⁸³

Next, the court in *Cohen* turned to the question of whether the university had met any one part of the three-part test. Because there was a large disparity between the proportion of women at Brown who were students versus the proportion who were athletes and because the university had not demonstrated a history of expanding women's sports, the court focused its inquiry on whether or not Brown had met part three of the test by effectively accommodating student interest. The university argued that when measuring interest under this standard, the relative athletic interests of male and female students should be the proper point of comparison rather than the relative enrollment of male and female students.⁸⁴ In effect, Brown argued that its female students were less interested in sports than its male students and that its Title IX compliance should thus be measured by this standard.

Under ED's construction of the accommodation test, however, institutions must ensure participation opportunities where there is "sufficient interest and ability among the members of the excluded sex to sustain a viable team and a reasonable expectation of intercollegiate competition for that team."⁸⁵ Noting that this standard does not require institutions to provide additional athletic opportunities every time female students express interest, the court upheld the district court's finding that the existence and success of women's gymnastics and volleyball at Brown demonstrated that there was sufficient interest in and expectation of competition in those sports to rule in favor of the female athletes with regard to the third prong of the three-part test.⁸⁶ In a subsequent appeal in the *Cohen* case, the court explicitly noted that Brown's view of the accommodation test, which seems to assume that women are naturally less interested in sports than men, reflects invidious gender stereotypes and could potentially freeze in place any existing disparity in athletic participation.⁸⁷

⁸² *Id.* at 895.

⁸³ See, e.g., *Chalenor v. Univ. of North Dakota*, 291 F.3d 1042 (8th Cir. 2002); *Pederson v. Louisiana State Univ.*, 213 F.3d 858 (5th Cir. 2000); *Neal v. Bd. of Trustees*, 198 F.3d 763 (9th Cir. 1999); *Horner v. Kentucky High Sch. Athletic Ass'n*, 43 F.3d 265 (6th Cir. 1994); *Kelley v. Bd. of Trustees*, 35 F.3d 265 (7th Cir. 1994), *cert. denied*, 513 U.S. 1128; *Williams v. Sch. Dist. of Bethlehem*, 998 F.2d 168 (3^d Cir. 1993); *Roberts v. Colorado State Bd. of Agric.*, 998 F.2d 824 (10th Cir. 1993), *cert. denied*, 510 U.S. 1004; *Cohen v. Brown Univ.*, 991 F.2d 888 (1st Cir. 1993) (*Cohen I*). In addition, in a second appeal on a separate issue in the *Cohen* case, the First Circuit strongly reiterated its previous ruling upholding Title IX. *Cohen v. Brown Univ.*, 101 F.3d 155 (1st Cir. 1996), *cert. denied*, 520 U.S. 1186 (*Cohen II*).

⁸⁴ *Cohen I*, 991 F.2d at 899.

⁸⁵ 1979 Policy Interpretation, *supra* note 6, at 71,418.

⁸⁶ *Cohen I*, 991 F.2d at 904.

⁸⁷ *Cohen II*, 101 F.3d 155, 176.

Finally, the court rejected the university's constitutional challenge, ruling that Title IX does not violate the Equal Protection clause of the Fourteenth Amendment.⁸⁸ In a subsequent appeal in the *Cohen* case, the court emphasized this point:

No aspect of the Title IX regime at issue in this case – inclusive of the statute, the relevant regulation, and the pertinent agency documents – mandates gender-based preferences or quotas, or specific timetables for implementing numerical goals.... Race- and gender-conscious remedies are both appropriate and constitutionally permissible under a federal anti-discrimination regime, although such remedial measures are still subject to equal protection review.⁸⁹

The National Wrestling Coaches Association Lawsuit

Meanwhile, disturbed by the decline in the number of men's wrestling teams at colleges and universities across the country, the National Wrestling Coaches Association (NWCA), together with former wrestling teams at several institutions, filed a lawsuit against ED in 2002, arguing that the Title IX regulations were adopted illegally and that Title IX unfairly discriminates against men.⁹⁰ In the lawsuit, the NWCA argued (1) that ED's establishment of the Title IX regulations and policy guidance was procedurally defective, (2) that ED exceeded its authority under the Title IX statute when enacting those regulations and guidance, and (3) that ED's regulations and guidance discriminate against male athletes, thereby violating the Title IX statute and the Equal Protection clause of the Fourteenth Amendment.⁹¹

In response to the lawsuit, ED, backed by the Bush Administration, moved to dismiss the case on the grounds that (1) the plaintiffs lacked standing to bring the case; (2) judicial review was unauthorized under the circumstances of this particular case; and (3) the suit was barred by the statute of limitations.⁹² The National Women's Law Center (NWLC) filed an amicus brief in support of ED, arguing that the suit was improper because there was no guarantee that institutions would reinstate men's sports teams even if the Title IX regulations and policy were changed. The NWLC further observed that arguments similar to those made in the NWCA lawsuit had been rejected by every federal appeals court to consider the issue of Title IX.⁹³ Ultimately, the NWCA lawsuit was dismissed from federal court on the grounds that

⁸⁸ *Cohen I*, 991 F.2d at 900-01.

⁸⁹ *Cohen II*, 101 F.3d at 170, 172.

⁹⁰ Lori Nickel and Nahal Toosi, *Title IX is Taken To Task*, Milwaukee Journal Sentinel, Jan. 17, 2002 at C1.

⁹¹ Complaint for Declaratory and Injunctive Relief, Nat'l Wrestling Coaches Ass'n v. Dep't of Educ., Civil Action No. 1:02CV00072-EGS, available at [<http://www.nwcaonline.com>].

⁹² Defendant's Motion to Dismiss, Nat'l Wrestling Coaches Ass'n v. Dep't of Educ., Civil Action No. 1:02CV00072-EGS, available at [<http://www.ed.gov/PressReleases/05-2002/wrestling.dismiss.mem.fin.pdf>].

⁹³ Brief of Amici Curiae, Nat'l Wrestling Coaches Ass'n v. Dep't of Educ., Civil action No. 1:02CV00072-EGS, available at [<http://www.nwlc.org/pdf/amicusbrief.final.pdf>].

the plaintiffs lacked the proper standing to bring the case,⁹⁴ and the dismissal was recently affirmed by an appeals court.⁹⁵

Given the results in the NWCA case and in other Title IX cases brought before the federal courts of appeals, it seems likely that the courts will continue to defer to ED with regard to Title IX athletics policy in the near future. As noted above, ED has indicated that it intends to continue to use the three-part test to enforce Title IX. Although Congress could, if it disapproves of ED's Title IX athletics policy, respond with legislation to override the current regulations and guidance, it appears that congressional support for Title IX remains high. For example, before ED announced that it was not altering existing Title IX policy, at least four members of the 108th Congress introduced legislation anticipating changes in Title IX.⁹⁶ Given this evidence of congressional support for Title IX and absent action by the courts or ED, it appears likely that the Title IX athletics policy will remain unchanged for the near future.

⁹⁴ Nat'l Wrestling Coaches Ass'n v. Dep't of Educ., 263 F. Supp. 2d 82, at 129-30 (D.D.C. June 11, 2003).

⁹⁵ Nat'l Wrestling Coaches Ass'n v. Dep't of Educ., 361 U.S. App. D.C. 257 (D.C. Cir. May 14, 2004).

⁹⁶ See H. Res. 137, S. Res. 40, S. Res. 153, and S. 282. Currently, no legislation specifically relating to Title IX has been introduced in the 109th Congress.

The Controversy over the Additional Clarification

"New Policy Clarifies Title IX Rules for Colleges; Women's Group Objects," Welch Suggs, *Chronicle for Higher Education*, April 1, 2005

Athletics

<http://chronicle.com/weekly/v51/i30/30a04701.htm>

From the issue dated April 1, 2005

New Policy Clarifies Title IX Rules for Colleges; Women's Group Objects

By WELCH SUGGS

Washington

Title IX rules just got a little simpler for some college athletics departments, thanks to a policy clarification issued this month by the U.S. Department of Education. Whether the rules mean that colleges will not have to add more women's teams is being hotly debated.

Women's advocates are furious about the new document, a clarification of regulations issued under Title IX of the Education Amendments of 1972, the law banning sex discrimination at institutions receiving federal funds. It places the burden of proof on students and government investigators, rather than on a college, to show that women's athletics interests and abilities are not being accommodated. And it says that all colleges have to do to determine demand is to send out a survey by e-mail.

But the department insisted that the clarification was in line with previous statements of policy, and a Clinton-era department official agreed.

In athletics, colleges comply with Title IX by offering scholarships, program benefits like locker rooms and coaching, and opportunities to participate. Since 1979, the department has used a three-part test to determine whether women have enough opportunities to play sports.

Under that test, colleges may choose any one of these criteria to meet:

- Having the proportion of athletes who are women the same as the proportion of students who are women.
- Having a history and continuing practice of expanding programs for women.
- Being able to demonstrate that the women's sports program fully and effectively accommodates the interests of female students and potential students.

The third part of the test is in some ways the toughest to meet. In a 1993 decision in a case involving Brown University, a three-judge panel of the U.S. Court of Appeals for the First Circuit ruled that complying with the third option did not mean accommodating women's interests and ability to the same degree as men's. Rather, the court said, it meant completely accommodating them.

"If there is sufficient interest and ability among members of the statistically underrepresented gender, not slaked by existing programs, an institution necessarily fails this part of the test," wrote Judge Bruce M. Selya in the court's opinion, which Brown unsuccessfully appealed to the U.S. Supreme Court.

A 1996 policy clarification by the Education Department underscored the appeals court's ruling, noting

that if a college had women who were interested in a particular sport, talented enough to sustain a team in that sport, and had a reasonable expectation of competition, a college had to start a team if it wanted to comply with the third part of the test. The department said it would assess the interests of not only enrolled students but also of high-school students in the college's recruiting region, members of amateur-athletics associations, and community sports leagues.

Shifting the Burden

The new clarification flipped that measure around. An institution will be found in compliance, it said, unless a women's sport existed "for which all three of the following conditions are met: (1) unmet interest sufficient to sustain a varsity team in the sport(s); (2) sufficient ability to sustain an intercollegiate team in the sport(s); and (3) reasonable expectation of intercollegiate competition for a team in the sport(s) within the school's normal competitive region."

"In this analysis, the burden of proof is on [the department's Office for Civil Rights] or on students to show by a preponderance of the evidence that the institution is not in compliance with part three," according to the clarification.

Further, all a college has to do to judge demand for sports is to send a periodic survey to all its students, or at least to all female undergraduates. The department is offering a model survey on its Web site.

The National Women's Law Center strongly criticized the clarification, saying that it was a substantial rollback of the department's policy.

"The survey is inherently flawed because it presumes a survey alone can accurately measure student interests," the law center said in a written statement last week. "The guidance does not require schools to look at other factors they once had to consider, such as coaches' and administrators' opinions or women's participation in sports in surrounding high schools or recreational leagues."

Weakening Title IX

Neena K. Chaudhry, senior counsel for the law center, noted that the department had considered major revisions in Title IX proposed by the 2003 Secretary's Commission on Opportunity in Athletics. "We certainly see it as a further attempt to weaken Title IX," she said. "There were attempts to do that via the commission, and the administration pulled back because of the public outcry."

Susan M. Aspey, a spokeswoman for the department, said the clarification wasn't a big enough change from previous regulations to warrant sending it out for comment.

"One would be hard pressed to explain how providing additional information to help schools to provide equal opportunity for all is, to use their word, underhanded," she said, referring to the center's statement.

Institutions also can still use either of the other parts of the test, she said, but the department had no plans to issue further clarifications on those.

Arthur L. Coleman, who served as deputy assistant secretary for civil rights in the department under President Clinton and helped write the 1996 clarification, agreed with Ms. Aspey's assessment.

"Broadly speaking, this tracks precisely with what OCR put out in '96 in terms of its clarification," said Mr. Coleman, now a lawyer with the Washington office of Holland & Knight. "The material shift here is

less one about substantive legal standards than issues of evidence, and how OCR will address issues in the middle of an investigation."

While the new policy explicitly shifts the burden of proving discrimination to the civil-rights office or people who complain about it, said Mr. Coleman, that was always the way investigations worked. The new policy streamlines the process for assessing and proving compliance with the law, he said.

The policy points out that even if a survey does not find sufficient interest and ability in a sport to justify adding a team, "direct and persuasive interest" shown in other ways -- such as having a high-quality club team or intramural program in a sport -- could force a college to add a team.

Mr. Coleman also pointed out that the clarification says colleges ought to survey not just women, but also men. If a college could show that a demand existed for a men's sport, and it could prove that women's interests were being fully and effectively accommodated, then it would be free to add the men's sport.

Many colleges have cut back on men's sports to comply with the first part of the three-part test, and advocates of those sports said the policy clarification could stem the bleeding.

"This is a positive step forward," said Eric Pearson, executive director of the College Sports Council, a public-interest group that has sued for changes in the law. "It fills in some gaps in the third test. It was a little mushy before, but this gives more concrete example for universities to follow."

The new policy is on the Education Department's Web site (<http://www.ed.gov/about/offices/list/ocr/docs/title9guidanceadditional.html>).

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The Controversy over the Additional Clarification

"Women's Groups against Title IX Changes," Shannon Blosser, The John W. Pope Center for Higher Education, April 22, 2005

News



Women's groups against Title IX changes

Want Congress to act on clarification


By

April 22, 2005

CHAPEL HILL — A group of female college administrators has begun a grassroots effort to overturn a recent Title IX clarification that makes it easier for college and universities to comply with Title IX regulations regarding athletics.

According to *NCAA News*, the National Association of Collegiate Women's Athletics Administrators has sent an email to its members asking them to contact their congressmen and other political leaders to get the Department of Education's Office of Civil Rights decision overturned. The Women's Sports Foundation is also joining in the effort.

The March 17 clarification, signed by Assistant Secretary for Civil Rights James F. Manning, specifically deals with the "fully and effectively" test, the third of three prongs to determine whether a school is in compliance with the 1972 regulation that bans discrimination on the basis of sex from institutions that receive federal funding. The clarification was published on the Office of Civil Right's Web site.




By definition, the "fully and effectively" test judges to see whether a school is "accommodating the athletic interests and abilities of its students who are under-represented in its current varsity athletic program offerings," Manning wrote.

Other prongs look to see whether a school has a history and continued practice of providing athletic opportunities for women and a proportionality requirement, which states that the ratio among male and female athletes must be similar to the ratio of male and female students.

A school only has to be in compliance with one of the three tests for the Office of Civil Rights to consider that the institution is providing "nondiscriminatory" athletic opportunities to the undergraduate population.

In a letter on the Women's Sports Foundation's Web site, www.womenssportsfoundation.org, Executive Director Donna Lopiano writes that strengthening Title IX is not a partisan issue, because both Republicans and Democrats want their "daughters and sons treated equally by our educational institutions."

"Why are we asking you to do this?" Lopiano writes. "On March 17, without any notice or public input, the Department of Education (DOE), issues a new guiding principle that would significantly weaken Title IX in the area of athletics and represents a significant policy change at odds with previous DOE policy and all court cases to date."



Lopiano claims that the survey requirement would allow schools to focus differing amounts of attention on male and female athletes, because male athletes are typically recruited to a school.

However, while Lopiano's Women's Sports Foundation and the National Association Collegiate Women's Athletics Administrators are fighting against the clarification, other sports organizations are heralding the

decision.

Eric Pearson, executive director of the College Sports Council, wrote on the organization's Web site, www.collegesportscouncil.org, that the clarification is worthy of praise.

"This clarification now gives schools a viable, common-sense alternative to the gender quota that has wreaked havoc on college athletics," Pearson said. "There is still work to be done toward restoring Title IX to its original intent, fairness for all student athletes. Schools will no longer feel bound to proportionality and forced to eliminate sports opportunities for male athletes now that they can accurately measure and meet interest for male and female student athletes."

Title IX regulations have been used to increase the number of women's sports on college campuses across the country. However, opponents claim the administration of Title IX regulations are to blame for colleges discontinuing several men's programs, including wrestling and track and field.

The fully and effectively test has long been considered the hardest of the three prongs for schools to comply with.

According to Manning's clarification, school administrators would only have to survey its population to determine whether there is interest in the creation of a sport for the underrepresented gender. A school would be considered in compliance with the new guidelines unless there is unmet interest sufficient to sustain a varsity team, a sufficient ability to sustain an intercollegiate team in the sport, and there is a reasonable expectation of intercollegiate competition for a team in the sport within the school's normal competitive region.

The burden of proof to determine whether a school is not in compliance would fall on the Office of Civil Rights through its investigation or on individual students through school-based Title IX complaints.


A presumption of compliance would exist if survey results show an insufficient level of interest to support an additional varsity team for women, according to the letter.

"The presumption of compliance can only be overcome if OCR finds direct and very persuasive evidence of unmet interest sufficient to sustain a varsity team, such as the recent elimination of a viable team for the under-represented sex or a recent, broad-based petition from an existing club team for elevation to varsity status," Manning wrote. "Where the Model Survey shows insufficient interest to field a varsity team, OCR will not exercise its discretion to conduct a compliance review of that institution's implementation of the three-part test."

Manning said schools were already using student surveys to determine if it is meeting the athletic needs of under-represented sexes. When results show that there is insufficient support for the creation of a sport, the school would be considered in compliance.

The survey would be sent to all undergraduate students or to all students of the under-represented sex, Manning said. Along with the clarification, the Office of Civil Rights gave college officials information regarding a survey and how to administer it on campus through a "User Guide and Technical Manual."

"Where the Model Survey shows insufficient interest to field a varsity team, OCR will not exercise its



discretion to conduct a compliance review of that institution's implementation of the three-part test," Manning said.


While the clarification centers on the third prong of the three-part test, Manning writes that schools should not overlook the importance of the other two prongs when attempting to be in compliance of Title IX regulations.

"Despite the focus on part three, OCR strongly reiterates that each part of the three-part test is an equally sufficient and separate method of complying with the Title IX regulatory requirement to provide nondiscriminatory athletic participation opportunities," Manning wrote. "In essence, each part of the three-part test is a safe harbor."

According to NCAA statistics, in the past 15 years cross-country programs have seen the majority of cuts by schools wanting to be compliant with Title IX regulations. A total of 183 programs have been cut in the time. Indoor track, golf, tennis, rowing, outdoor track, swimming, and wrestling have also seen significant cuts in the number of men's programs due to Title IX regulations.

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Women's groups, OCR spar over Title IX surveys

By Erik Brady, USA TODAY

WASHINGTON — The culture wars over Title IX are raging again. The rhetoric is familiar, but the particulars are new and the stakes high.

In mid-March, the Bush administration embraced surveys that can be distributed by e-mail as a way for schools to show their sports programs meet the interest and abilities of their female students. Schools that say they find no interest in adding new sports are presumed to comply with the law.

Women's groups cried foul. They accused the U.S. Department of Education of providing schools a loophole to get around Title IX, which bans sex discrimination at schools receiving federal funds.

Education Department officials say the model survey is not a loophole — and may well result in new women's teams.

The culture wars last raged in 2002 and 2003 when a commission named by the administration debated changes to Title IX policy. But all had been mostly quiet since July 2003, when the administration, in effect, rejected commission recommendations, including some on surveys, and reaffirmed longstanding policies on the law's participation requirements.

Then, two months ago, the Education Department's Office for Civil Rights provided schools with a blueprint on how interest surveys alone can earn a presumption of compliance.

At its core, the chasm between the OCR and its critics is one of philosophy. Women's groups say opportunity leads to interest and surveys freeze discrimination in place. The OCR says there is no fairer way to measure interest than to ask directly. The courts will decide which side is right if a case comes to trial in the years ahead.

Fundamental disagreement

Courts consistently have backed the position of women's groups in Title IX cases. But in those, courts gave deference to OCR rules. Here women's groups would for the first time argue against OCR regulations. How a court might rule is anybody's guess.

In the meantime, it is too early to know if schools will choose to use the model survey in great numbers. The NCAA Executive Council passed a resolution last month urging schools not to use it.

Sheldon Steinbach, general counsel at the American Council on Education, a group representing colleges, says it is wrong to suggest schools are looking for loopholes. "The spirit of Title IX permeates every college in America," he says. "They want to do the right thing."

Neena Chaudhry, senior counsel for the National Women's Law Center, wants to believe that's true. "But our experience is if you give schools an easy way out, they're likely to take it," she says.

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The government and the law center can't even agree on what the OCR's letter is. Chaudhry calls it a fundamental change in Title IX policy. OCR calls it technical assistance to existing policy.

James Manning, who heads the OCR, signed the March 17 clarification letter that began the current controversy. Manning says he loves the law. His daughter walked on the rowing team at Clemson and competed for four years. "She had an opportunity only because of Title IX," he says.

Manning's critics think of surveys as a way to deny interest. He believes surveys often will find it. He says that is because tiny percentages of women or girls who say they have interest in playing a sport can obligate a school to take steps toward adding a team.

For example, he says, a school with several thousand female students might have to look into adding volleyball even if only two dozen or so say on a survey they are interested in playing it.

The raw number needed for sports with smaller rosters, such as golf, would be even less, perhaps only a dozen or so.

"What we're hoping for," Manning says, is "that schools will use (the model survey) as a vehicle to find out whether they're meeting the interest of their students. That's their obligation and I'm quite confident there will be schools that use the survey that will find there is unmet need and they will have to respond."

Manning gives a hypothetical example of a school with 1,000 female students where just 200 respond to an interest survey and just 25 say they want to play volleyball. The school would have an obligation to take further steps, such as organizational meetings and tryouts, which could lead to a new varsity team even if only a dozen or so had the ability to play. Members of a club team might well run an organized campaign to make sure dozens of students express interest. "That's natural," Manning says. "We expect those types of dynamics will be in play."

On the other hand, Manning says, some schools that use the survey "will see that they are providing sufficient opportunities and there is no additional requirement" for them to do more.

Which is just the trouble, according to Jocelyn Samuels, a vice president of the National Women's Law Center. She argues use of interest surveys, absent other criteria, will underestimate women's interest.

"Students who have an interest in playing a certain sport won't go to a school that doesn't have it," Samuels says. "If you do a survey of the students who do come, the common-sense reality is you're not likely to find interest. It is a self-limiting principle."

Interpretations at odds

Title IX became law in 1972. Its underlying policies, including its three-part test of participation requirements that is at issue here, were codified in 1979. Courts have upheld the policies in a series of cases over the years.

The OCR's letter to schools addresses the third part of the test — and, depending on whom you believe, desecrates it or provides guidance on one way to meet it. A school must pass only one part of the three-part test:

•Prong 1: A school's male and female athletes are substantially proportionate to enrollment. (That means if a school is 54% female, about the national average, then about 54% of its athletes should be female.)


•Prong 2: A school has a history and continuing practice of expanding opportunities for female students. (That means if a school has added teams for women or girls recently and over the years, it is probably in compliance, though only for a time.)

•Prong 3: A school can demonstrate that the interests and abilities of the underrepresented sex have been fully and effectively accommodated by the present program. (About two-thirds of 130 schools investigated by the OCR over a decade used this method.)

"The requirement is to fully and effectively meet the interests and abilities of the underrepresented sex. That's Prong 3 in a nutshell," OCR attorney David Black says. "There is no better way of doing that than putting the question directly to every one of your students and giving them the opportunity to express their interest."

Samuels says there is a better way — the way it has been done in the past. She says schools have long been required to look at a range of factors under the third prong, which could include interest surveys, but which also could include what club sports are played by women on a college

campus and what sports are played by girls in high schools from which a college draws.



Black says schools are "only responsible for fully and effectively meeting the interest on campus at the time." Chaudhry says that ignores the reality that varsity athletes are typically recruited, not drawn from the student body.

Schools that choose to use the model survey are required to give it to all female undergraduate students. Eric Pearson, executive director of the College Sports Council, an advocacy group for men's sports, says schools should also be required to survey all male students; the clarification only recommends that. "We're pleased with the clarification" otherwise, he says. "We hope it leads to schools having greater flexibility" to meet the interest of both sexes.

If a survey shows female interest is fully accommodated and male interest is not, schools could add teams for men and still comply under the third prong. "That's a possibility," Manning says. "Yes, indeed."


Court question looms

The OCR's letter tells schools a presumption of compliance can only be overcome by "direct and very persuasive evidence" of unmet interest. Chaudhry says that unfairly shifts the onus from schools to students.

Black says there is no shift — the burden has always been on students or on the OCR. Arthur Coleman, an attorney in Washington who worked for the OCR in the Clinton administration, agrees investigations have long worked that way.

Valerie Bonnette, who once worked at the OCR, runs Good Sports, a consulting firm on Title IX issues. She says she will advise clients not to use the model survey because she does not believe it will hold up if challenged in court.

"The clarification did not go through any level of review outside the agency," she says, "which means it is less persuasive as a legal document."



Black says there was no requirement it be made available for review. He also says he is confident the document "will withstand scrutiny." But he adds, "What a court will or will not do is anyone's best guess."

Gerald Reynolds, former head of the OCR, said at a commission hearing if the OCR instituted "a reasonable survey instrument, then I think a court would bless it."

School choice

Pam Bernard, general counsel of the University of Florida, says her school will continue to employ the broader approach to Prong 3 it uses now.

Manning says he expects many schools to continue with the approach they already feel comfortable using. But, he adds, "We do think this survey is an attractive option for schools to consider."

Jim McCarthy is a policy and public affairs adviser to the College Sports Council, which maintains that Prong 1 is a quota system that hurts male athletes. McCarthy thinks use of the model survey will become widespread among colleges. "We think even if college administrators say they don't want to use it, their legal departments will tell them they should," he says. "It is an additional shield against litigation. We think schools will come to see surveys as the safe side of the street."


Some athletics directors complained at Title IX commission hearings that Prongs 2 and 3 are subjective compared to the by-the-numbers approach of Prong 1. Iowa athletics director Bob Bowlsby, who served on the commission, says he assumes the idea of the clarification is to give schools a more objective way to meet Prong 3. "And I'm in favor of that," he says.

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"Schools Not Using Latest Title IX Tool," Erik Brady, *USA Today*, March 14, 2006



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Schools not using latest Title IX tool

By Erik Brady, USA TODAY

The Department of Education offered e-mail surveys a year ago as a new way for schools to prove compliance with Title IX. So far, no college has publicly embraced the approach. But a law journal article published last week urges schools at least to consider it.

The department's Office of Civil Rights (OCR) issued a clarification letter last March, though what it means is less than clear, as is often the case with Title IX, the law that bans sex discrimination at schools receiving federal funds.

John J. Almond and Daniel J. Cohen, attorneys with the Atlanta firm of Rogers & Hardin, argue in their article in the *Vanderbilt Journal of Entertainment and Technology Law* that OCR offered schools a "new safe harbor" — a by-the-numbers way to prove they have met the athletic interests of their female students.

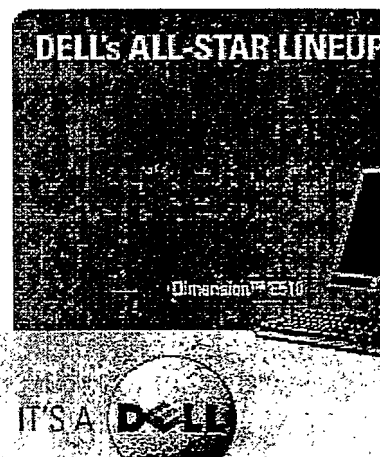
"It is kind of mysterious to us that it's sitting there unused," Almond says.

To meet the participation requirements of Title IX, a school must pass one part of a three-part test:

- Test 1. A school's male and female athletes are proportionate to enrollment.
- Test 2. A school has a history and continuing practice of expanding opportunities for female students.
- Test 3. A school can demonstrate that the interests and abilities of female students are fully and effectively accommodated.

OCR said a year ago that schools could use e-mail

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interest surveys alone as a means of showing compliance under the third test. Critics complained it allowed schools to consider non-response as evidence of non-interest. The NCAA Executive Council quickly passed a resolution urging schools not to use the model survey.

NCAA spokesman Bob Williams said Tuesday that the NCAA sticks by its position.

"The NCAA is a powerful body, and its name does mean something," Cohen says. "The position it took could have had an impact on schools. We suspect it did."

Almond and Cohen say they have no stake in whether the guidance provided by OCR is fair. They say only that OCR makes the rules and schools that use the third test would be foolish not to consider the model survey, which OCR says will receive deference if properly administered.

Women's groups say female athletes interested in playing a particular sport won't go to a school that doesn't have it, so it is unfair to survey absent other criteria.

"That may be a good criticism, but it isn't really relevant to what I'm advising the client," Almond says. "Which is: If that's a bad mechanism, it was put in place by the OCR and you can benefit from it."

Colleges were allowed to use interest surveys before last March but also had to consider other factors. The article advises schools that criticism of the model survey "can be deflected" by considering those other factors, such as monitoring participation in club and intramural sports and tracking athletic trends in high schools a college draws from.

Monmouth athletics director Marilyn McNeil, who has used surveys in the past, says she has not decided if Monmouth will use the model survey. "If we did, we would only use it in combination with other factors," she says. "An e-mail survey by itself would be terribly unfair."

Eric Pearson, executive director of the College Sports Council, an advocacy group for men's sports, says he thinks the NCAA's advice "not to use the survey will be overridden by general counsels who want to reduce the liability at their schools."

Jocelyn Samuels, a vice president of the National Women's Law Center, says schools are wise to stay away from the model survey because she believes it ultimately will be struck down in the courts: "One can hope schools are recognizing it is in their legal interest and their female students' interest" not to use the year-old clarification.

Department of Education spokesperson Susan Aspey declined comment on the article: "The model survey is simply another option for schools to use — if they choose."

The department is expected to give Congress a report on its year-old advice on surveys by Friday, as requested by the Senate Appropriations Committee.

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The Controversy over the Additional Clarification

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March 20, 2006

No Retreat on Title IX

Pressure from the U.S. Senate notwithstanding, the U.S. Education Department appears to be sticking by guidance it issued a year ago that gave colleges more latitude to use e-mail surveys of students to prove that they are not discriminating against female athletes.

On Friday, the department's Office for Civil Rights responded to a 2005 directive from the Senate Appropriations Committee to produce a report showing whether institutions that use surveys of student opinion to prove that they are complying with under Title IX of the Education Amendments of 1972 also "gather and consider other sources of information for assessing student interest." The request was included in a 2005 Senate spending bill that included language challenging the wisdom of the department's approach.

The report, which the department faxed to the committee at 8:30 p.m. Friday — just barely meeting the March 17 deadline — asserts that institutions that were allowed to use student surveys alone to show their compliance with Title IX were as likely to add teams as were colleges that used "additional factors" to show they were meeting the interests and abilities of their students.

"Decisions to add a new sports team differed little between surveys and assessments including the consideration of additional factors," the report says. "In addition, the decisions to add teams, whether the result of a survey alone or of an assessment including the consideration of additional factors, appear to be more frequently attributable to the survey component of the assessment."

The report, which was prepared by Stephanie Monroe, assistant secretary of education for civil rights, concludes that the survey tool "has the potential to maximize the possibility of obtaining correct information and generating high response rates."

The department's report was immediately criticized as flawed by supporters of women's sports who have urged the Bush administration to abandon its year-old guidance on Title IX, which forbids sex discrimination at educational institutions that receive federal funds.

Donna A. Lopiano, chief executive officer of the Women's Sports Foundation, said Sunday that the OCR report does "nothing to modify or clarify" the 2005 guidance about the e-mail surveys, which Lopiano called a "legal and research instrument embarrassment." She added: "We should expect more from the United States Department of Education."

The department has taken its lumps since March 17, 2005, when, in a letter posted on its Web site, the Office for Civil Rights informed institutions, among other things, that they can gauge student interest in

athletic participation using e-mail surveys, where non-responses count as an answer of “no interest.”

If an institution can demonstrate that it is accommodating the “interests and abilities” of students and potential students for women’s sports — known as “prong three” of the three-part test for gauging compliance with Title IX’s participation requirement — it can comply with the law without having a ratio of male to female athletes similar to that of its student body, which is the more common way for colleges to demonstrate compliance.

Department officials and supporters of the guidance — including advocates for men’s teams who believe colleges have used Title IX to justify cutbacks in sports like wrestling and track — asserted that the guidance did not make new policy, but rather clarified existing opportunities for colleges to use surveys of students to prove that they are meeting the needs of female students.

But critics, including the National Collegiate Athletic Association, complained that the guidance was inconsistent with longstanding federal law and regulations, by giving colleges a “model survey” they could use to make that case, and by allowing them to survey students via e-mail, which they view as unreliable.

A vocal minority of Congressional lawmakers has made that case, too. Senators have condemned the department with critical comments at hearings, for instance, and last summer, the Senate Appropriations Committee included language in a spending bill for education and health programs that expressed “concerned that confusion has been created” by the guidance. (The language had been softened from more-critical language that urged the department to withdraw the guidance.)


The committee believed, it said, that “survey results are not sufficient to demonstrate compliance if other evidence exists, such as requests for athletic teams, that contradicts the conclusions drawn from the survey.” It urged the department to make clear that colleges must make “good faith efforts to explore” such alternative evidence, and asked the department to prepare a report that examines whether institutions that seek to comply with Title IX by using such surveys also “gather and consider other sources of information for assessing student interest.”

In the report Friday, the Office for Civil Rights noted that it had been unable to honor the committee’s request that it conduct random reviews of colleges that had used interest surveys to prove their compliance with Title IX, which it described as impractical “in the limited time available.” Instead, the office said it had reviewed its files from October 1992 to January 2006 and identified 54 cases (excluding those that were still active) in which institutions had sought to comply with the third prong of Title IX’s participation requirement by surveying their students.

Of the 63 “assessments” by the colleges in those cases that included a student survey, 34 considered other factors as well as the surveys, including such things as interviews with the colleges’ current coaches or athletes, expressions of interest by club teams in upgrading to varsity status, and interviews with athletes or athletics officials in local high schools.

Twenty-eight of the 63 assessments resulted in the addition of new teams — 42 teams in all. The department said its review had found that institutions that used other factors in addition to student surveys were “slightly more likely” to find sufficient student interest in adding teams than were those colleges that used surveys alone. But there was little difference between the two approaches in how often they resulted in the actual addition of teams, the department said.

The department’s report also said that it had found “almost no actual conflicts” between the findings of



the two approaches — in other words, in most cases, the surveys and the other methods of gauging students' interest almost always reached the same conclusion about whether there was sufficient interest among students in adding teams.

While the department's report provides evidence about how surveys have been used in the past, and suggests that their use may not have diminished the likelihood of adding women's teams, it says nothing about one key objection raised by critics: that allowing such surveys to be delivered via e-mail will make them unreliable.

“The report did not change the 2005 clarification instructions that e-mail survey non-responses would be interpreted as lack of interest, a patently absurd contention that would be refuted by any researcher,” said Lopiano. “A non-response is simply that, and no meaning can be conferred to anyone's failure to respond to a survey.”

— Doug Lederman

*The original story and user comments can be viewed online at
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"Education Dept. Affirms Use of E-Mail Surveys in Title IX Compliance," Brad Wolverson, *Chronicle for Higher Education*, March 31, 2006

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From the issue dated March 31, 2006

Education Dept. Affirms Use of E-Mail Surveys in Title IX Compliance

By BRAD WOLVERTON

The U.S. Department of Education said this month that colleges could continue to rely on e-mail surveys of their students to prove that female athletes have enough opportunities to take part in sports — and that the institutions are thereby complying with a key federal gender-equity law.

But critics, including women's groups, said that such surveys were inadequate and that the department's position was disappointing.

In a report delivered to Congress, department officials affirmed a change the department made last year allowing a college or university to use results from a single e-mail survey to measure demand for women's sports. Previously the department required colleges to meet stricter guidelines to prove they were complying with the law, Title IX of the Education Amendments of 1972.

Title IX bars sex discrimination at institutions that receive federal funds and requires, among other things, that men and women have equal opportunities to play college sports.

Last year the U.S. Senate Committee on Appropriations asked the department to rescind the guideline allowing colleges to rely solely on electronic surveys to determine interest in women's athletics. The committee said that colleges should seek additional evidence when determining whether they needed to add more women's sports.

The committee also asked the Education Department to prepare a report outlining how colleges typically gauge female students' athletic interests.

It said colleges and universities considered many factors when assessing whether they were providing enough opportunities for women, including levels of participation on intramural teams. It also said that colleges that relied on student surveys to prove they were in compliance with federal law were just as likely to add teams as colleges that used other means to show they were providing enough opportunities for female athletes.

A 'Dangerous Change'

Women's-rights advocates criticized the report's findings. A college, they said, could misinterpret a low response to an e-mail survey, which critics say is common, as meaning that students did not seek additional women's sports. That could lead colleges to add fewer such sports than they would have otherwise, the critics said.

Judith M. Sweet, the National Collegiate Athletic Association's senior vice president for championships

and education services, said in an e-mail message on Monday that she found the department's response to the Senate committee request, as well as the department's suggested methodology for measuring interest in women's sports, to be "both disappointing and unsatisfactory."

The NCAA has asked colleges not to rely exclusively on electronic surveys when measuring interest in women's sports.

In a statement, the National Women's Law Center said the Education Department's report suggested a "dangerous change in policy that allows schools to skirt their responsibility to provide equal athletic opportunities for young women."

In an interview, Neena Chaudhry, a lawyer for the center, said an e-mail survey was a "fine tool" for colleges to use in combination with other ways of assessing demand for women's sports. "But alone it's not reliable enough," she said.

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Section: Athletics

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Advocating for the Additional Clarification

"Navigating into the New 'Safe Harbor'—Model Surveys as a New Tool for Title IX Compliance Programs," John J. Almond and Daniel A. Cohen, *Vanderbilt Journal of Entertainment and Technology Law*, Volume 8, Number 1, Winter 2005

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Navigating into the New “Safe Harbor” – Model Interest Surveys as a New Tool for Title IX Compliance Programs

*By John J. Almond and Daniel A. Cohen**

I.	HISTORY OF THE INTERPRETATION AND APPLICATION OF PRONG THREE	5
	A. <i>The Three Prongs</i>	5
	B. <i>Judicial Interpretation of Prong Three</i>	8
	C. <i>The 1996 Clarification</i>	10
	D. <i>The Paige Commission and the 2003 Further Clarification</i>	11
II.	THE 2005 ADDITIONAL CLARIFICATION	13
	A. <i>Exploring Prong Three’s Test</i>	15
	1. Step One: Unmet Interest Sufficient to Sustain a Varsity Team in a Sport	16
	a. <i>How the Model Survey Works</i>	17

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b. *Administering the Model Survey to Ensure the OCR's Deference*..... 18

 i. "Periodically" Administering the Model Survey ... 19

 ii. Administering the Model Survey to all Undergraduates..... 20

 iii. Administering the Model Survey in a Manner Designed to Generate High Response Rates..... 21

 iv. Include all Sports in the Model Survey 24

 v. Alternative Approaches to Interest Survey Administration 24

c. *Objectively Determining Whether Unmet Interest has been Demonstrated* 25

2. Step Two: Sufficient Ability to Sustain an Intercollegiate Team in a Sport..... 27

3. Step Three: Reasonable Expectation of Intercollegiate Competition for a Team in the Sport within the School's Normal Competitive Region 31

B. *Implementation*..... 31

III. FACTORS TO CONSIDER IN DECIDING WHETHER TO IMPLEMENT THE MODEL SURVEY 32

A. *Considerations that Favor Using the Model Survey* 32

 1. OCR's Deference 33

 2. Certainty of the "Safe Harbor" 35

 3. Identifying Trends in Students' Interests in Athletics... 35

B. *Considerations that Disfavor Using the Model Survey*..... 36

 1. Costs of Implementation 36

 2. Possible Catalyst Effect..... 37

 3. Negative Publicity 38

 4. Legality of the Additional Clarification 40

IV. IMPLEMENTATION AND RECOMMENDATIONS 40

V. CONCLUSION 43

Whether a college's administrators agree or disagree with the policies behind the "Additional Clarification"¹ published by the Office for Civil Rights (OCR) of the U.S. Department of Education (DOE) last spring, it would be a serious mistake for them to overlook its potential utility as a component of the school's Title IX² compliance efforts.

1. OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., ADDITIONAL CLARIFICATION OF INTERCOLLEGIATE ATHLETICS POLICY: THREE-PART TEST – PART THREE (2005), available at <http://www.ed.gov/about/offices/list/ocr/docs/title9guidanceadditional.pdf> [hereinafter ADDITIONAL CLARIFICATION].

2. Title IX of the Education Amendments of 1972 (Title IX) is an antidiscrimination statute which prohibits discrimination on the basis of sex in education programs or

In the Additional Clarification, the OCR provides colleges and universities an objective path to proving compliance with Title IX under Prong Three of the so-called "Three-Prong Test."³ Prong Three provides that a college or university⁴ will be deemed in compliance with the gender equity participation requirements of Title IX as it relates to intercollegiate athletics if the institution can demonstrate "that the [athletic] interests and abilities of the members of [the underrepresented] sex have been fully and effectively accommodated by the present program [of intercollegiate athletics offered at the school]."⁵ To assist schools in gauging students' interests in participating in intercollegiate athletics, the Additional Clarification provides schools a model survey to use in connection with their Prong Three compliance efforts.

The Additional Clarification brings a measure of objectivity to the otherwise subjective process of determining Title IX compliance under Prong Three. The OCR has declared that compliance with any part of the Three-Prong Test provides a school a "safe harbor" from OCR sanctions,⁶ but, before the publication of the Additional

activities by recipients of federal financial assistance. *See* 20 U.S.C. § 1681 (2000). Title IX 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 . . ." *Id.* § 1681(a). The Department of Education's regulation implementing Title IX's provisions regarding equality in athletic programs, 34 C.F.R. § 106.41 (2004), requires schools to "provide equal athletic opportunity for members of both sexes." *Id.* § 106.41(c). The OCR enforces Title IX in connection with the federal funding programs implemented by the Department of Education. 20 U.S.C. §§ 1682, 3413(a), 3441(a)(3). Since 1979, the OCR and its parent agencies have periodically published administrative regulations, "interpretations," and "clarifications" to explain Title IX and provide guidance to schools regarding what they would deem to comply with Title IX.

3. *See* Intercollegiate Athletics Policy Interpretation, 44 Fed. Reg. 71,413-23 (December 11, 1979) [hereinafter 1979 Policy Interpretation] (published by the U.S. Department of Health, Education, and Welfare, precursor to the DOE). The 1979 Policy Interpretation is credited with creating the "Three-Prong Test" (also known as the "Three-Part Test") for determining Title IX compliance, as discussed further herein.

4. The Additional Clarification "is designed specifically for intercollegiate athletics. However, [its] general principles will often apply to club, intramural, and interscholastic athletic programs, which are also covered by the Title IX implementing regulation." ADDITIONAL CLARIFICATION, *supra* note 1, at 3.

5. *Id.*

6. *See, e.g.,* OFFICE FOR CIVIL RIGHTS, U.S. DEPT OF EDUC., CLARIFICATION OF INTERCOLLEGIATE ATHLETICS POLICY GUIDANCE: THE THREE-PART TEST I (1996), available at <http://www.ed.gov/about/offices/list/ocr/docs/clarific.html#two> [hereinafter 1996 CLARIFICATION] ("[i]f an institution has met any part of the three-part test, OCR will determine that the institution is meeting this requirement" and, thus, is in compliance with Title IX); OFFICE FOR CIVIL RIGHTS, U.S. DEPT OF EDUC., FURTHER CLARIFICATION OF INTERCOLLEGIATE ATHLETICS POLICY GUIDANCE REGARDING TITLE IX COMPLIANCE I (2003), available at <http://www.ed.gov/about/offices/list/ocr/title9guidanceFinal.html>

Clarification, Prong One of the Three-Prong Test (the provision of athletic opportunities “substantially proportional” to the composition of the student body) had been the only objectively measurable – and therefore the only true – “safe harbor.” Through the Additional Clarification, however, the OCR has established a second measurable “safe harbor” under the Three-Prong Test.

For those schools not currently satisfying Prong One, which therefore need to protect themselves legally by demonstrating compliance with Title IX by some other means, the Additional Clarification provides guidance for determining whether they have effectively accommodated the athletic interests and abilities of their students under Prong Three. The OCR’s so-called “Model Survey” is the *only* interest measurement tool that the OCR will presume to provide an accurate measurement of Prong Three “interest” – or lack of “interest.” If the results of the Model Survey show insufficient “unmet interest” among students of the underrepresented gender, the school will have attained a “safe harbor.” If the Survey, to the contrary, shows the existence of sufficient interest, several additional criteria relating to athletic ability levels and sustainability of interest would remain to be proven before the school would find itself in the position of having to start a new varsity sport.

Even those schools currently in compliance with Prong One of Title IX are at risk that, with each new school year, the ever-changing demographics of undergraduate populations could throw their varsity athletic programs out of gender proportionality. Thus, even schools now within the “safe harbor” of Prong One should consider the potential benefits and minimal risks that implementing the Survey presents for those in a position of current compliance.

The principal publicity regarding the issuance of the Additional Clarification has not addressed its potential importance to colleges’ Title IX compliance efforts, but has consisted, rather, of criticism or praise from parties involved in the public policy debate surrounding Title IX enforcement.⁷ That policy debate has little relevance to the

[hereinafter 2003 FURTHER CLARIFICATION] (“each of the three prongs of the test is an equally sufficient means of complying with Title IX, and no one prong is favored”).

7. Certain groups have criticized the Additional Clarification, contending, among other things, that it improperly institutionalizes the past discrimination reflected in women’s current athletic interests. See, e.g., Alison Sawyer, *The Women’s Sports Foundation Calls for Withdrawal of New Title IX Policy*, Women’s Sports Foundation (2005), <http://womenssportsfoundation.org/cgi-bin/iowa/about/media/press.html?record=123>; Jamie Schuman, *House Democrats Urge the Bush Administration to Rescind New Guideline on Title IX Compliance*, CHRON. HIGHER EDUC., June 23, 2005, <http://chronicle.com/daily/2005/06/2005062303n.htm>; Marek Fuchs, *For Women’s Athletics, A Tempest Over a Survey*, N.Y. TIMES, July 31, 2005, at 14WC; Erik Brady, *Women’s*

practical concern of achieving provable Title IX compliance. The Additional Clarification – whether it is regarded as wise or unwise in policy – can help schools achieve compliance and thereby avoid OCR investigations or private legal challenges. The policy debate and the divergent views expressed in the mainstream media have provided little practical advice regarding the Additional Clarification or the Model Survey to the well-intentioned academic institution seeking to comply with Title IX in a cost-effective manner.

This Article is intended to be a source of such practical advice. This Article discusses the Additional Clarification from the perspective of the academic institution and seeks to help it evaluate whether to implement the OCR's recommendations, including the Model Survey, as part of its Title IX compliance program. The Article does not engage in the policy debate regarding the Additional Clarification or Title IX enforcement policy generally.

Section I of this Article discusses Prong Three from a historical perspective, to place the Additional Clarification in context. Section II summarizes the contributions of the Additional Clarification to the Title IX compliance landscape and explains the OCR's recommendations for using the Model Survey. Section III discusses possible advantages and disadvantages of using the Model Survey. Section IV suggests an approach to using the Model Survey as an ongoing component of a Title IX compliance monitoring program.

I. HISTORY OF THE INTERPRETATION AND APPLICATION OF PRONG THREE

A. *The Three Prongs*

The 1979 "Policy Interpretation" published by the Department of Health, Education, and Welfare (HEW)⁸ provides colleges and

Groups, *OCR Spar Over Title IX Surveys*, USA TODAY, May 16, 2005, at http://www.usatoday.com/sports/2005-05-16-title-ix_x.htm.

Other groups have praised the Additional Clarification for, among other things, breathing life into an alternative for Title IX compliance to Prong One, which they contend had led to the widespread elimination of men's teams. See, e.g., Jen Brown, *New Title IX Debate: Will Women's Sports Suffer or Men's Sports Be Saved?*, ABC NEWS, June 22, 2005, <http://abcnews.go.com/Sports/story?id=868060&page=1>; Carrie Lukas, *Happy Birthday, Title IX: the Bush Administration has Provided a Real Reason to Celebrate*, NAT'L R. ONLINE, June 24, 2005, <http://www.nationalreview.com/script/printpage.p?ref=/comment/lukas200506240757.asp>; Kathryn Jean Lopez, *Interest Surveys Will Let Secret Out on Title IX Women's Sports*, PASADENA STAR-NEWS, Mar. 28, 2005.

8. In 1980, Congress subdivided HEW into the current Department of Health and Human Services and the Department of Education. Department of Education Organization

universities three alternate ways of demonstrating compliance with Title IX in the context of intercollegiate athletic participation.⁹ The three alternative tests have commonly been referred to as the “Three Prongs” of Title IX and should be familiar to most athletic administrators:

1. *Proportionality*: A school complies with Title IX if it provides athletic participation opportunities for male and female students in numbers substantially proportionate to their respective enrollments. For example, if a school has fifty-one percent women in its student body, approximately fifty-one percent of its varsity athletes must be women.¹⁰

2. *Program Expansion*: A school at which members of one gender have been and are underrepresented among intercollegiate athletes complies with Title IX if it demonstrates a history and continuing practice of program expansion demonstrably responsive to the developing athletic interests and abilities of its underrepresented students.¹¹

3. *Interest*: A school complies with Title IX if it demonstrates that the interests and abilities of the members of the underrepresented gender are fully and effectively accommodated by the present athletic program.¹²

The OCR has often implied that each part of the Three-Prong Test is a “safe harbor,”¹³ meaning that the school is insulated from liability if it can demonstrate its compliance with any one of the test’s three parts. Prongs Two and Three, however, have not afforded true safe harbors, as they have not incorporated objective criteria. The Second Prong is inherently vague. Moreover, its usefulness has diminished due to the substantial progress made over the last thirty

Act, Pub. L. No. 96-88, 93 Stat. 668 (1979) (codified in scattered sections of 20 U.S.C.). The Department of Education inherited most of the programs under which HEW provided educational funding. See 20 U.S.C. §§ 3441(a)(2), 3508(b) (2000).

9. See 1979 Policy Interpretation, *supra* note 3.

10. *Id.*

11. *Id.*

12. *Id.*

13. Compare ADDITIONAL CLARIFICATION, *supra* note 1, at 1 (expressly declaring that each Prong “is a safe harbor”) with Letter from Norma V. Cantú, Assistant Secretary for Civil Rights, Office for Civil Rights, accompanying 1996 CLARIFICATION, *supra* note 6, available at <http://www.ed.gov/about/offices/list/ocr/docs/clarific.html> [hereinafter 1996 Cantú Letter] (expressly referring only to Prong One as a “safe harbor” but implying such security also exists under Prongs Two and Three by stating: “If an institution has met any part of the three-part test, OCR will determine that the institution is meeting this [Title IX’s] requirement”). The 2003 Further Clarification put an end to speculation that the 1996 Cantú Letter implicitly eliminated safe harbor protection under Prongs Two and Three, definitively declaring that “[e]ach of the three prongs is thus a valid, alternative way for schools to comply with Title IX.” 2003 FURTHER CLARIFICATION, *supra* note 6.

years of Title IX enforcement. Depending on the demographics of its student populations, a school may find it difficult to persuade an investigator that it is sufficient at this late date merely to show that it is "making progress" towards expanding athletic programs for the underrepresented gender. Nor could a school feel secure in relying upon the Third Prong because of the difficulty of determining whether it had "fully and effectively accommodated"¹⁴ the athletic interests of its female students (usually, the underrepresented gender). Thus, for some years now, proportionality has been the only objective safe harbor that institutions have been able to rely on.¹⁵

For budgetary and other reasons, schools have often struggled, however, to meet proportionality goals under Prong One. Without the legal protection of the measurable Prong One safe harbor, such schools were exposed to the possibility of costly OCR investigations and litigation as to their compliance with the subjective Prongs Two or Three – with little assurance that even their good faith attempts at compliance thereunder would be considered sufficient by OCR investigators or courts. According to the data supplied by the OCR to the National Center for Education Statistics in connection with the development of the Additional Clarification, between 1992 and 2002, the OCR investigated 130 schools for Title IX compliance, of which only thirty-six schools were able to demonstrate compliance with Prong One and a mere eight with Prong Two.¹⁶ Thus, approximately two-thirds of the schools investigated (86 out of 130) sought to demonstrate their compliance with Title IX under Prong Three, many by means of student interest surveys.¹⁷

Until the Additional Clarification, clear official guidance was lacking on how a school could validly measure the athletic interests and abilities of its underrepresented athletes and achieve the

14. ADDITIONAL CLARIFICATION, *supra* note 1, at 3.

15. SEC'Y OF EDUC.'S COMMISSION ON OPPORTUNITY IN ATHLETICS, U.S. DEPT OF EDUC.; OPEN TO ALL: TITLE IX AT THIRTY 23-24 (2005) [hereinafter 2003 COMMISSION REPORT]; see also *Hearing before the Sec'y of Educ.'s Comm'n on Opportunity in Athletics 78* (Oct. 22, 2002) (Statement of Rick Taylor, Athletic Director, Northwestern Univ.) [hereinafter Rick Taylor Statement] ("[I]n 1997, we were faced with an OCR complaint regarding water polo. In dealing with OCR we found out a great deal about the application of Title IX. Proportionality is the only safe harbor. Continuing expansion and meeting interests have no end point except to move you closer to prong one, proportionality, and in this context, proportionality is a quota. When is program expansion enough? When proportionality has been met.")

16. NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEPT OF EDUC., USER'S GUIDE TO DEVELOPING STUDENT INTEREST SURVEYS UNDER TITLE IX 3 (2005), available at <http://165.224.221/98/pubs2005/2055173.pdf> [hereinafter USER'S GUIDE].

17. *Id.*

theoretical safe harbor under Prong Three.¹⁸ Indeed, any definitive guidelines originally would have been seen as contrary to the OCR's stated goal of preserving institutions' "discretion and flexibility in choosing the nondiscriminatory methods to determine the athletic interests and abilities of the underrepresented sex."¹⁹ To this end, the 1979 Policy Interpretation²⁰ offered as guidance only a description of factors it would consider:

Institutions may determine the athletic interests and abilities of students [under Prong Three] by nondiscriminatory methods of their choosing provided:

- a. The processes take into account the nationally increasing levels of women's interests and abilities;
- b. The methods of determining interest and ability do not disadvantage the members of an underrepresented sex;
- c. The methods of determining ability take into account team performance records; and
- d. The methods are responsive to the expressed interests of students capable of intercollegiate competition who are members of an underrepresented sex.²¹

Although these factors and others listed in the 1979 Policy Interpretation provided schools some guidance, they still left unclear what actions by a school would be deemed sufficient to assure compliance. This left schools vulnerable to the possibility of varying interpretations of the Prong Three requirements any time the OCR or private litigants questioned their compliance efforts.

B. Judicial Interpretation of Prong Three

This uncertainty was heightened by court cases that held schools liable notwithstanding their attempts at compliance under Prongs Two and Three.²² The most significant of these cases was

18. 2003 COMMISSION REPORT, *supra* note 15, at 26.

19. ADDITIONAL CLARIFICATION, *supra* note 1, at 5.

20. The original 1979 Policy Interpretation, which established the Three-Prong Test, was itself drafted in large part in response to college administrators' complaints that the law was ambiguous and that they needed guidance on how to comply with the statute. *See* 1979 Policy Interpretation, *supra* note 3, at 71,414.

21. 1979 Policy Interpretation, *supra* note 3, at Pt. VII.C.

22. In 1979, the U.S. Supreme Court ruled that an individual has the right under Title IX to sue a school directly if he or she is affected by a violation of Title IX. *See generally* Cannon v. Univ. of Chicago, 441 U.S. 677 (1979) (allowing a woman to bring suit under Title IX after she was denied admission to two medical schools at two private universities). The Court further expanded the reach of Title IX enforcement in 1992, when it held that a party could collect monetary damages for proving that an institution violated Title IX if this violation affected him or her. *See* Franklin v. Gwinnett County Pub. Sch.,

Cohen v. Brown University.²³ In that case, female athletes challenged a Brown University decision to eliminate its funding of two women's teams, volleyball and gymnastics, due to financial pressures (two men's teams, water polo and golf, were contemporaneously eliminated).²⁴ Brown University argued that, although it had not provided proportional opportunities for its male and female athletes, it had complied under the Third Prong of Title IX.²⁵ Brown University argued that, based on the student interest surveys it had conducted, women did not express the same interests in athletics as men for purposes of its Prong Three analysis.²⁶ Brown University submitted the following evidence in support of its compliance:

i) [A]dmissions data showing greater athletic interest among male applicants than female applicants; ii) college board data showing greater athletic interest and prior participation rates by prospective male applicants than female applicants; iii) data from the Cooperative Institutional Research Program at UCLA indicating greater athletic interest among men than women; iv) an independent telephone survey of 500 randomly selected Brown undergraduates that revealed that Brown offers women participation opportunities in excess of their representation in the pool of interested, qualified students; v) intramural and club participation rates that demonstrate higher participation rates among men than women; vi) walk-on and try-out numbers that reflect a greater interest among men than women; vi) [sic] high school participation rates that show a much lower rate of participation among females than among males; (viii) the NCAA Gender Equity Committee data showing that women across the country participate in athletics at a lower rate than men.²⁷

The First Circuit Court of Appeals held that Brown University failed to comply with Prong Three by failing to fully and effectively accommodate the interests and abilities of women at the university because the sustained existence of the women's gymnastics and volleyball teams before their elimination showed that Brown University women *had* the interest and ability to sustain them.²⁸ The majority opinion rejected Brown University's contention that Title IX (and hence Prong Three) requires a school to equally accommodate the relative interests of male and female students and held as irrelevant

503 U.S. 60, 77 (1992) (finding sexual harassment and discrimination by a male coach-teacher). Prevailing Title IX plaintiffs also qualify for attorneys fees under 42 U.S.C. § 1988(b), which often dwarf damages awards. *See, e.g., Mercer v. Duke Univ.*, 401 F.3d 199, 211 (4th Cir. 2005) (approving an attorney fee award of \$350,000 in addition to nominal compensatory damages of \$1).

23. 991 F.2d 888 (1st Cir. 1993), *aff'd in part and rev'd in part*, 101 F.3d 155 (1st Cir. 1996).

24. *Id.* at 892.

25. *Id.* at 899.

26. *See Cohen*, 101 F.3d at 198 n.30 (Torruella, C.J., dissenting).

27. *Id.*

28. *Cohen*, 991 F.2d at 904.

evidence showing that men had greater interest in college athletics than did women. The Court instead focused entirely on the interests of female students at Brown University.²⁹

In its Prong Three analysis, the court reiterated and deferred to the formulation of the Prong Three test articulated in the 1979 Policy Interpretation:

[T]he mere fact that there are some female students interested in a sport does not ipso facto require the school to provide a varsity team in order to comply with the third benchmark. Rather, the institution can satisfy the third benchmark by ensuring participatory opportunities at the intercollegiate level when, and to the extent that, there is "sufficient interest and ability among the members of the excluded sex to sustain a viable team and a reasonable expectation of intercollegiate competition for that team"³⁰

In recent years, the federal appellate courts that have examined Prong Three or the Three-Prong Test generally have continued to apply and follow the above-quoted formulation, citing the principle that courts should defer to reasonable regulations of an administrative agency.³¹ Indeed, the standard set forth in 1979 continues to play a major role today in the Additional Clarification.³²

C. The 1996 Clarification

The OCR published a "Clarification"³³ of the Three-Prong Test in 1996 in response to numerous requests from schools seeking further explanation of what the OCR would deem to constitute compliance with its requirements. "[T]he objective of the [1996] Clarification is to respond to requests for specific guidance about the existing standards

29. *Cohen*, 101 F.3d at 198 (Torruella, C.J., dissenting).

30. *Cohen*, 991 F.2d at 898 (quoting 1979 Policy Interpretation, *supra* note 3, at 71,418).

31. See 2003 COMMISSION REPORT, *supra* note 15, at 16 (citing *Chalenor v. Univ. of N. Dakota*, 291 F.3d 1042, 1046-47 (8th Cir. 2002); *Pederson v. Louisiana State Univ.*, 213 F.3d 858, 879 (5th Cir. 2000); *Neal v. Bd. Of Trs. of the California State Univs.*, 198 F.3d 763, 770 (9th Cir. 1999); *Cohen*, 101 F.3d at 173; *Horner v. Kentucky High Sch. Athletic Assoc.*, 43 F.3d 265, 275 (6th Cir. 1994); *Kelley v. Bd. Of Trs.*, 35 F.3d 265, 270 (7th Cir. 1994); *Roberts v. Colorado State Bd. of Agric.*, 998 F.2d 824, 828 (10th Cir. 1993); *Williams v. Sch. Dist. of Bethlehem*, 998 F.2d 168, 171 (3rd Cir. 1993)).

32. As discussed further below, these same factors cited by the court from the 1979 Policy Interpretation mirror the factors outlined by the OCR in the 2005 Additional Clarification: "(a) unmet interest sufficient to sustain a varsity team in the sport(s); (b) sufficient ability to sustain an intercollegiate team in the sport(s); and (c) reasonable expectation of intercollegiate competition for a team in the sport(s) within the school's normal competitive region." ADDITIONAL CLARIFICATION, *supra* note 1, at 4.

33. See generally, 1996 CLARIFICATION, *supra* note 6.

that have guided the enforcement of Title IX in the area of intercollegiate athletics."³⁴

With respect to Prong Three, the 1996 Clarification emphasized three factors originally listed in the 1979 Policy Interpretation that the OCR would consider while assessing a school's compliance:

In making this determination [of compliance with Prong Three], OCR will consider whether there is (a) unmet interest in a particular sport; (b) sufficient ability to sustain a team in the sport; and (c) a reasonable expectation of competition for the team. If all three conditions are present OCR will find that an institution has not fully and effectively accommodated the interests and abilities of the underrepresented sex.³⁵

Yet, the OCR also emphasized its traditional policy of permitting schools the discretion and flexibility "to which they are entitled when deciding how best to comply with the law."³⁶ Recognizing that the 1996 Clarification, with its lack of definitive guidance, still left schools somewhat unclear about what efforts would be sufficient to comply under Prong Three, the OCR also offered to provide more guidance in the future:

[S]everal parties suggested that OCR provide more information regarding the specific elements of an appropriate assessment of student interest and ability We recognize . . . that it might be useful to share ideas on good assessment strategies. Accordingly, OCR will work to identify, and encourage institutions to share, good strategies that institutions have developed, as well as to facilitate discussions among institutions regarding potential assessment techniques.³⁷

D. The Paige Commission and the 2003 Further Clarification

On the thirtieth anniversary of Title IX's enactment, the DOE renewed public interest in the law by studying its significance and ways to improve enforcement.³⁸ In June 2002, the U.S. Secretary of Education, Rod Paige, established the Secretary of Education's Commission on Opportunity in Athletics (the Commission), the first federal advisory panel created to study Title IX and to determine the effects of Title IX in the context of intercollegiate athletics over the last thirty years.³⁹ The findings and recommendations from the Commission were published in February 2003. The recommendations "not only speak to compliance, they also speak to the need for greater

34. See 1996 Cantú Letter, *supra* note 13.

35. 1996 CLARIFICATION, *supra* note 6, at Pt. Three.

36. 1996 Cantú Letter, *supra* note 13.

37. *Id.*

38. See 2003 COMMISSION REPORT, *supra* note 15, at 46-47.

39. *Id.* at 2.

clarity and education from the Office for Civil Rights to the nation's sports administrators, educators, coaches, athletes, and parents . . ."⁴⁰

The Commission observed that many college administrators felt that the OCR still failed to provide them with clear guidance on compliance and policy interpretations.⁴¹ The Commission addressed the need for the OCR to educate colleges regarding the OCR's expectations so they could better plan athletic programs that would effectively meet the needs and interests of their students while complying with Title IX.⁴² The Commission Report included the recommendation that:

The Office for Civil Rights should allow institutions to conduct continuous interest surveys on a regular basis as a way of (1) demonstrating compliance with the three-part test, (2) allowing schools to accurately predict and reflect men's and women's interest in athletics over time, and (3) stimulating student interest in varsity sports. The Office should specify the criteria necessary for conducting such a survey in a way that is clear and understandable.⁴³

The Commission also recommended that: "The Office for Civil Rights should study the possibility of allowing institutions to demonstrate that they are in compliance with the third part of the three-part test . . . by the interest levels indicated in surveys of prospective or enrolled students at that institution."⁴⁴

The Commission had heard numerous complaints from college administrators about the Three-Prong Test. Many administrators told the Commission that because the guidance concerning Prongs Two and Three was so ambiguous, the proportionality prong was the only meaningful test.⁴⁵ Indeed, witnesses testified to the Commission that

40. *Id.* at 1.

41. *Id.* at 3.

42. *Id.*

43. *Id.* at 38 (emphasis omitted) (Recommendation 18). Recommendation 18 was not adopted unanimously by the Commission. *Id.* at 59. It was adopted by an 8-5 vote (the closest vote of all the Commission's recommendations). *Id.*

Those Commissioners opposed to this recommendation believe that allowing interest surveys may prevent future progress in providing opportunities for women because offering opportunities regardless of interest may encourage participation even where none currently exists. They felt that any use of interest surveys should be limited to demonstrating compliance with the third part of the three-part test. They also faulted the recommendation for not taking into consideration the effect of historical patterns of discrimination on women's interest in athletics.

Id. at 38. Consistent with their dissenting votes, some of the Commissioners have stated their opposition to use of the Model Survey. See Erik Brady, *Ex-members of Title IX Panel Urge Against Use of Surveys*, USA TODAY, Oct. 17, 2005, available at http://www.usatoday.com/sports/college/other/2005-10-17-title-ix_x.htm.

44. 2003 COMMISSION REPORT, *supra* note 15, at 39 (Recommendation 19). Recommendation 19 was adopted unanimously by the Commission. *Id.* at 59.

45. *Id.* at 23.

attorneys and consultants had told them that "the only safe way to demonstrate compliance with Title IX's participation requirement is to show that they meet the proportionality requirement [in Prong One] of the three-part test."⁴⁶ The Commission concluded that:

There should be an additional effort to designate [Prongs] two and three as safe harbors along with [Prong] one. For attorneys and consultants, the easily quantifiable nature of the proportionality test, requiring as it does simple data and a clear mathematical formula, may make it more likely to be favored as a means of establishing compliance.⁴⁷

In the 2003 "Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance," issued by the OCR in July 2003 following its review of the Commission Report,⁴⁸ the OCR foreshadowed the issuance of the Additional Clarification, noting:

In order to ensure that schools have a clear understanding of their options for compliance with Title IX, OCR will undertake an education campaign to help educational institutions appreciate the flexibility of the law to explain that each prong of the test is a viable and separate means of compliance, to give practical examples of the ways in which schools can comply, and to provide schools with technical assistance as they try to comply with Title IX.⁴⁹

II. THE 2005 ADDITIONAL CLARIFICATION

On March 17, 2005, the OCR sought to clarify the matter of compliance with Prong Three by publishing an "Additional Clarification."⁵⁰ Most notably, this publication describes a model interest survey, which the OCR refers to as the "Model Survey," that can be administered to an undergraduate student population in order to determine the existence or non-existence of students' "unmet interest" in participating in intercollegiate athletics, one component of the Prong Three determination under Title IX. Further, the Additional Clarification states that the "OCR will presume that [the data collected from] the Model Survey is an accurate measure of student interest, absent other direct and very persuasive evidence of unmet interest sufficient to sustain a varsity team,"⁵¹ if it is administered in accordance with the OCR's recommendations. The

46. *Id.*

47. *Id.* at 24.

48. See 2003 FURTHER CLARIFICATION, *supra* note 6.

49. *Id.*

50. The Additional Clarification was published along with a "User's Guide" that further explains the Model Survey and a "Technical Manual" that provides the statistical analysis that is the basis for the Model Survey and the User's Guide. See ADDITIONAL CLARIFICATION, *supra* note 1, at 3.

51. *Id.* at 6.

Additional Clarification also provides that, if the Model Survey is properly administered, a student's failure to respond to it can be considered evidence that he or she actually lacks "interest" as contemplated by Prong Three. Thus, if Model Survey results demonstrate a lack of student interest in additional athletic offerings – including through nonresponses to the Survey – the school will be considered by the OCR to be within a demonstrable Prong Three "safe harbor."⁵²

The Model Survey and the OCR's deference to its results appear to be the most important developments offered by the OCR in the Additional Clarification. With the Model Survey as its centerpiece, however, the Additional Clarification also reorganizes and focuses the OCR's pre-existing and vague Prong Three guidance to create a concise and practical roadmap to compliance with each element of Prong Three that schools can follow with confidence.⁵³

The Additional Clarification is intended to address, in part, the long-standing concerns that institutions have voiced to the Commission and others⁵⁴ about the lack of guidance as to how to comply with Prong Three.⁵⁵ To this end, the OCR restates in the Additional Clarification that:

[A]n institution will be found in compliance with [Prong Three] unless there exists a sport(s) for the underrepresented sex for which *all* three of the following conditions are met:

- a. Unmet interest sufficient to sustain a varsity team in the sport(s);
- b. Sufficient ability to sustain an intercollegiate team in the sport(s); and
- c. Reasonable expectation of intercollegiate competition for a team in the sport(s) within the school's normal competitive region.

....

... When one or more of these conditions is absent, a school is in compliance with [Prong] three. It follows that schools are not required to accommodate the interests and abilities of all their students of the underrepresented sex or to fulfill

52. *Id.* at 7.

53. *Id.* at 3.

54. *Id.* at 2; 2003 COMMISSION REPORT, *supra* note 15, at 38-39.

55. According to the Additional Clarification, "[b]ased on the OCR's experience investigating the three-part test and the fact that the OCR has not investigated the vast majority of recipient institutions, OCR believes that institutions may be uncertain [prior to the Additional Clarification] about the factors OCR considers" under the Third Prong. ADDITIONAL CLARIFICATION, *supra* note 1, at 2.

every request for additions of new varsity teams or elevations of particular club sports to varsity status[, unless all three conditions are present for a given sport].⁵⁶

A. Exploring Prong Three's Test

To measure compliance with this test (and as explained in greater detail throughout the sub-parts to this Section II.A.), the OCR will first look to see whether there is demonstrable interest among students of the underrepresented gender capable of competing at the intercollegiate level in a sport that the school does not presently offer. The burden of proof is on the OCR to demonstrate this unmet interest.⁵⁷ This is where the Model Survey can be dispositive – if the Model Survey responses demonstrate insufficient unmet interest, the OCR will not conduct a compliance review of the school.

If unmet interest is demonstrated in a given sport, however, the school must then take steps to determine whether the interested students actually have the ability to compete at the collegiate level and whether such interest and ability is sustainable over time, presumably over a number of years. This second-step analysis is subjective, but it is a necessary step in determining whether a school is Prong Three compliant once unmet interest is demonstrated.

If this second-step analysis suggests sufficient interest and ability among student-athletes of the underrepresented gender to sustain a team, the OCR will look at competitive opportunities in the school's geographic region to see whether implementation of a new team is practical.

The importance of this three-step procedure is that, if the OCR's relatively clear guidance is followed – specifically, use of the Model Survey to determine interest and use of the Additional Clarification's guidance to evaluate the two additional Prong Three elements in good faith – a school can largely monitor its own compliance efforts with assurance that the OCR will defer to the school's decisions, absent direct and very persuasive evidence contrary to the school's determinations.

56. ADDITIONAL CLARIFICATION, *supra* note 1, at 4. Note that this test is not new; these same factors appeared in the 1979 Policy Interpretation, *supra* note 3, the 1996 CLARIFICATION, *supra* note 6, and were cited by the 1993 *Cohen* court in its Prong Three analysis, *see Cohen v. Brown Univ.*, 991 F.2d 888 (1st Cir. 1993), *aff'd in part and rev'd in part*, 101 F.3d 155 (1st Cir. 1996).

57. ADDITIONAL CLARIFICATION, *supra* note 1, at 4. The burden of proof has always been on the government since the 1979 Policy Interpretation. "The Department would [have] the burden of demonstrating that the institution was actually engaged in unlawful discrimination." 1979 Policy Interpretation, *supra* note 3, at 71,414.

1. Step One: Unmet Interest Sufficient to Sustain a Varsity Team in a Sport

The Model Survey was designed specifically to measure whether sufficient unmet interest exists among the underrepresented gender to sustain a varsity team.⁵⁸

Student interest surveys have always been part of the Title IX compliance landscape. Nearly two-thirds of the schools investigated by the OCR between 1992 and 2002 (86 out of 130) sought to demonstrate their compliance with Title IX under Prong Three.⁵⁹ Of these, approximately three-fourths of the institutions (67 out of 86) did so by means of a student interest survey.⁶⁰ These surveys varied widely in substance and technique, but they were often helpful and sometimes persuasive in demonstrating a school's compliance with Title IX.⁶¹

The OCR charged the National Center for Education Statistics (NCES)⁶² and the National Institute of Statistical Sciences (NISS)⁶³ with conducting a historical analysis of the use of surveys in its case files and designing a streamlined, model survey based on the best practices and collective learning of the various schools over the last decade of Title IX enforcement.⁶⁴ NCES and NISS then drafted the User's Guide and Technical Manual, respectively, to "discuss the effective and problematic elements of [the] survey instruments" used

58. ADDITIONAL CLARIFICATION, *supra* note 1, at 5.

59. USER'S GUIDE, *supra* note 16, at 3.

60. *Id.*

61. The contents of these various survey instruments are discussed and analyzed at length in the so-called "Technical Manual" published by individuals working for the National Institute of Statistical Sciences. See ALAN F. KARR & ASHISH P. SANIL, TITLE IX DATA COLLECTION: TECHNICAL MANUAL FOR DEVELOPING THE USER'S GUIDE (Nat'l Inst. of Statistical Sciences, 2005) [hereinafter TECHNICAL MANUAL].

62. The User's Guide describes the NCES as:

[T]he primary federal entity for collecting, analyzing, and reporting data related to education in the United States and other nations. It fulfills a congressional mandate to collect, collate, analyze, and report full and complete statistics on the condition of education in the United States; conduct and publish reports and specialized analyses of the meaning and significance of such statistics; assist state and local education agencies in improving their statistical systems; and review and report on education activities in foreign countries.

USER'S GUIDE, *supra* note 16, at ii.

63. "NISS was established in 1991 by the national statistics societies and the Research Triangle universities and organizations, with the mission to identify, catalyze and foster high-impact, cross-disciplinary research involving the statistical sciences." NISS Home Page, <http://www.niss.org> (last updated Nov. 22, 2005).

64. USER'S GUIDE, *supra* note 16, at 2.

by the schools.⁶⁵ According to the OCR, as published in the Additional Clarification:

NCES's expert statisticians carefully designed the web-based Model Survey, after extensive analysis of the 57 survey instruments, to effectively measure student interest in a simple, straightforward manner. The Model Survey is an unbiased, standardized methodology that maximizes the possibilities of obtaining correct information and facilitating responses. It effectively captures information on interest, experience, and self-assessment of ability across multiple sports, while not unnecessarily complicating responses with superfluous or confusing questions.⁶⁶

a. How the Model Survey Works

The OCR's representation that the Model Survey measures student interest in a "simple, straightforward manner" seems to be accurate. The computer-based Model Survey consists of only eight screens, and not all respondents need to proceed through all eight screens. As described by the NCES:

Screen 1 introduces the survey and informs respondents of the purposes of the census, provides an explicit confidentiality statement, and provides an explanation of the structure of the instrument.

Screen 2 requests four items of demographic information—age, year in school, gender, and whether the student is full-time. The dropdown boxes and radio buttons constrain responses to those allowed by the institution conducting the census.

Screen 3 explains the next set of questions—on athletic experience, participation, and ability. It allows respondents with no interest in future participation in athletics to so indicate and complete the instrument without having to view any of the other screens.

Screen 4 of the proposed instrument is reached only by respondents who wish to enter information concerning athletic experience, interests, and abilities. It lists the responses that will be allowed when the information is requested (on screen 6), and contains a neutral statement of the burdens and benefits associated with participation in intercollegiate athletics

Screen 5 allows respondents who wish to enter information concerning athletic experience, interests, and abilities to *select the sports for which they wish to provide information*. The purpose of this is to reduce the size and complexity of screen 6, on which the information is actually entered. Only those sports selected on screen 5 are listed on screen 6

65. ADDITIONAL CLARIFICATION, *supra* note 1, at 3.

66. *Id.* at 5. As stated above, sixty-seven institutions demonstrated their compliance under Prong Three by means of a student interest survey between 1992 and 2002. "Detailed data were available on three-fourths of these [student interest] surveys (52 of the 67)." USER'S GUIDE, *supra* note 16, at 6. The OCR-commissioned analysts reviewed the fifty-two survey instruments used in OCR cases plus five additional survey instruments used by other institutions for a total of fifty-seven survey instruments. See ADDITIONAL CLARIFICATION, *supra* note 1, at 3; USER'S GUIDE, *supra* note 16, at 8.

Screen 6 is where actual information regarding experience, current participation, interest in future participation, and self-assessed ability is entered . . . The allowable responses, which are constrained by radio buttons that also prevent multiple responses, are as follows:

For experience at the high school level, "Recreational," "Intramural," "Club," "Junior Varsity" and "Varsity."

For current participation, "Recreational," "Intramural," "Club" and "Varsity."

For interest in future participation at the institution: "Recreational," "Intramural," "Club" and "Varsity."

For ability: "Yes, I have the ability" and "No, I would need to develop the ability."

The reason for inclusion of four separate categories is that a determination of interest and ability is related to the pattern of response across these categories. For example, to determine the number of students of the underrepresented sex with interest and ability in a varsity sport, the students to be counted could be those who express an interest in future participation at the varsity level, indicate that they have the ability to do so, and have current or high school experience beyond the recreational level

Screen 7 offers respondents the opportunity for comments or other feedback, asks them to click a button to record their responses, and thanks them for participating.

Screen 8 is a pop-up screen that appears only for full-time students of the underrepresented sex who have expressed an interest and ability to participate at a higher level. It lists the sport(s) in which the student has indicated an ability and interest in future participation, and asks the student to provide contact information if the student wishes to be contacted by the athletics department or some other organization in the university with respect to her interests. The student can exit this screen without providing the requested information by indicating that she does not wish to be contacted.⁶⁷

b. Administering the Model Survey to Ensure the OCR's Deference

The OCR offers institutions using the Model Survey significant procedural advantages if – but only if – they administer the Model Survey consistently with the OCR's recommendations.

The burden of proof is on OCR (in the case of an OCR investigation or compliance review), or on students (in the case of a complaint filed with the school under its Title IX grievance procedures), to show by a preponderance of the evidence that the institution is not in compliance with [Prong] three.⁶⁸

67. USER'S GUIDE, *supra* note 16, at 13-14; *see also id.* at 15-22. Respondents selecting the "no interest" option on Screen 3 are deemed to have no interest in participating in college athletics for purposes of Prong Three analysis. ADDITIONAL CLARIFICATION, *supra* note 1, at 5.

68. ADDITIONAL CLARIFICATION, *supra* note 1, at 4; *see also supra* note 57.

If the Additional Clarification is diligently followed, the OCR "will presume that Model Survey results indicating lack of interest sufficient to sustain a varsity team are evidence of such actual lack of interest, and an institution will therefore be determined to be in compliance with" Prong Three, so long as the Model Survey is properly administered.⁶⁹ Further,

[S]chools may assume that nonresponse to the census indicates an actual lack of interest *if* all students have been given an easy opportunity to respond to the census, the purpose of the census has been made clear, and students have been informed that the school will take nonresponse as an indication of lack of interest.⁷⁰

The presumption that responses from a properly-administered Model Survey accurately measure student interest – or lack of interest – can only be overcome "if OCR finds direct and very persuasive evidence of unmet interest sufficient to sustain a varsity team, such as . . . a recent, broad-based petition from an existing club team for elevation to varsity status."⁷¹ "Where the Model Survey shows insufficient interest to field a varsity team, OCR will not conduct a compliance review" of that institution's Title IX compliance efforts,⁷² although OCR is required to investigate any complaint of discrimination brought to its attention.⁷³

Proper administration, according to the OCR, includes: (i) administering the Model Survey "periodically to permit schools to identify developing interests;" (ii) "ideally" providing it to "all full-time undergraduates;" (iii) administering it "in a manner that is designed to generate high response rates;" and (iv) "include in the census at least the full list of sports recommended in the Model Survey."⁷⁴

i. "Periodically" Administering the Model Survey

The Additional Clarification does not specify how often the Model Survey should be administered, other than to suggest that it

69. ADDITIONAL CLARIFICATION, *supra* note 1, at 7.

70. *Id.* at 6 (emphasis added); *see also id.* at 7; USER'S GUIDE, *supra* note 16, at 12.

71. ADDITIONAL CLARIFICATION, *supra* note 1, at 7. As discussed below in Section III.B.2., the creation of such a petition is always a viable option for a group seeking to compel a school to start a new sports team. Since these petitions may be created with or without the impetus of a survey, they should not be seen as a deterrent to administering the Model Survey.

72. *Id.* at 7-8.

73. *Id.* at 8 n.14; *see also* 1979 Policy Interpretation, *supra* note 3 (citing 45 C.F.R. § 80.7(b) (2004)).

74. ADDITIONAL CLARIFICATION, *supra* note 1, at 6-7; *see also* USER'S GUIDE, *supra* note 16, at 12.

occur "periodically."⁷⁵ As no definition of "periodically" is provided, it is likely that administration biannually is sufficient.⁷⁶ Indeed, the User's Guide suggests that less frequent surveying may be appropriate for certain schools:

A survey of the entire undergraduate student body that generates high response rates and demonstrates that the interests of the underrepresented sex are fully accommodated might serve for several years if the demographics of the undergraduate population at the institution are stable and if there are no complaints from the underrepresented sex with regard to a lack of athletic opportunities.⁷⁷

ii. Administering the Model Survey to all Undergraduates

The OCR recommends administering the Model Survey as "a census whereby the Model Survey is provided to all full-time undergraduates,"⁷⁸ rather than to a sample of students. As discussed further below, the OCR determines the existence of sufficient Prong Three interest based on the absolute number of Model Survey responses indicating athletic interest, rather than on the relationship that the number of such responses bears to the number of students surveyed. The ability to accurately extrapolate sample survey data to determine the number of interested students with precision would be compromised by "issues associated with sample surveys: selection of the sampling mechanism, selection of the sample size, and calculation of sampling error."⁷⁹

Although the OCR does not permit a school flexibility to survey only a sample of students, if the school wishes to have the benefit of OCR deference to the school's Model Survey results,⁸⁰ the Additional Clarification does give schools the option of only surveying all students of the underrepresented gender.⁸¹ Such an approach, however, would seem more difficult to administer, as the school would need to segregate its list of enrolled students based on gender to restrict access to the survey to a subset of the undergraduate student body. Further, such an approach might project an indifference to the

75. ADDITIONAL CLARIFICATION, *supra* note 1, at 6.

76. *Id.* By its use of the word "periodically" rather than "annually", the OCR likely intended to convey that annual administration of the Model Survey is not required. A school may elect, however, to survey its students annually in order to have more timely information on developing student interest.

77. USER'S GUIDE, *supra* note 16, at 11.

78. ADDITIONAL CLARIFICATION, *supra* note 1, at 6.

79. USER'S GUIDE, *supra* note 16, at 10.

80. ADDITIONAL CLARIFICATION, *supra* note 1, at 7.

81. *Id.* at 6.

interests of the overrepresented gender⁸² and would forego the opportunity to collect potentially useful data that could help an athletic department track students' athletic interests and, thereby, allocate its resources more efficiently.

The OCR does not approve colleges administering the Model Survey to high school students as a way of determining interest. Such an application would inherently involve sampling, because the relevant high school student population served by a given institution is almost impossible to determine.⁸³ It should be noted, however, that "[w]hen determining whether an institution is fully and effectively accommodating the interests and abilities of its students of the underrepresented sex, OCR considers the interests and abilities of currently enrolled students, *as well as students who have been admitted.*"⁸⁴ The OCR also does not require the surveying of part-time students.⁸⁵

iii. Administering the Model Survey in a Manner Designed to Generate High Response Rates

The OCR requires that the Model Survey be administered "in a manner that is designed to generate high response rates."⁸⁶ The OCR will assume that nonresponses to the Model Survey are indicative of lack of interest only "if all students have been given an easy opportunity to respond to the census, the purpose of the census has been made clear, and students have been informed that the school will take nonresponse as an indication of lack of interest."⁸⁷

The Additional Clarification provides two examples of Model Survey distribution methods that are designed to generate high response rates. First, the OCR suggests that the Model Survey may be administered "as part of the registration process whereby students

82. See, e.g., USER'S GUIDE, *supra* note 16, at 10-11.

83. *Id.* at 10.

84. ADDITIONAL CLARIFICATION, *supra* note 1, at 3 n.6 (emphasis added).

85. *Id.* at 6 n.11. Theoretically, only those students eligible to compete at the intercollegiate level, as determined by the governing athletic association, would need to be surveyed, as ineligible students would lack the ability to compete. Isolating ineligible students out of the survey population, however, may be difficult administratively, especially if such an exercise delves into analyses of students' academic standing. See TECHNICAL MANUAL, *supra* note 61, at 49.

86. ADDITIONAL CLARIFICATION, *supra* note 1, at 7; see also USER'S GUIDE, *supra* note 16, at 12.

87. ADDITIONAL CLARIFICATION, *supra* note 1, at 6. Presumably, the OCR's description of the Model Survey, provided in the User's Guide in connection with Screen 1 of the Model Survey, is sufficient. USER'S GUIDE, *supra* note 16, at 15.

must complete or actively bypass the Model Survey to register for courses.”⁸⁸

The Additional Clarification also acknowledges that a school may administer the Model Survey to its students by “send[ing] an email to the entire target population that includes a link to the Model Survey.”⁸⁹ If this method is used, however, the OCR requires that “the school [have] accurate email addresses, [that] students have access to email, and [that] the school [take] reasonable steps to follow-up with students who do not respond.”⁹⁰ The Additional Clarification does not give further guidance about what follow-up efforts would satisfy the OCR’s requirement that the Model Survey be administered in a manner to generate high response rates.⁹¹ The OCR does not require that a properly-administered Model Survey actually generate any minimum response rate: “[a]lthough rates of nonresponse may be high with the email procedure, under these conditions [of proper Survey administration, including some level of follow-up], OCR will interpret such nonresponse as a lack of interest.”⁹²

88. *Id.* at 7.

89. *Id.*

90. *Id.*

91. *Id.*; see also USER’S GUIDE, *supra* note 16, at 12. The reasonable follow-up requirement is imprecise. A school that wishes to avoid any questions about the adequacy of its follow-up efforts might affirmatively contact (beyond the initial email) any students it might expect to be interested in competing intercollegiately in a sport not presently offered at the varsity level, such as those presently participating on the school’s preexisting club or intramural teams. A school can easily publicize the existence of the Model Survey among such already cohesive units by sending follow-up email(s) to the students on such teams or by contacting their teams’ coaches or administrators. Schools should strive, though, to be even-handed in their follow-up efforts. Disparate treatment may lay the case for a statutory Title IX violation or a constitutional violation for public schools subject to the Fourteenth Amendment’s equal protection clause. The Additional Clarification does not purport to provide safe harbor status to constitutional or state-law violations. ADDITIONAL CLARIFICATION, *supra* note 1, at 1 n.1. Thus, a school may instead opt to send follow-up email(s) to all students.

92. ADDITIONAL CLARIFICATION, *supra* note 1, at 7. A low response rate does not, *per se*, raise Title IX concerns. A small gross number of positive Model Survey responses – perhaps ten to fifteen students for a sport with a limited roster like basketball among thousands of students within the Survey population – will obligate a school to take steps to further explore whether it needs to add the desired sport. See discussion *infra* Section II.A.1.c. The responses (or nonresponses) of the overwhelming majority of Survey-takers who lack the ability or the interest to compete at the intercollegiate level are not relevant under a strict Title IX analysis, as a school could not be required to establish an intercollegiate team for their benefit. See, e.g., ADDITIONAL CLARIFICATION, *supra* note 1, at 4, 10-11. Indeed, this has been the case since the original 1979 Policy Interpretation: “As explained in the Policy Interpretation, OCR requires that the assessment of students’ interests and abilities use ‘methods [which] are responsive to the expressed interests of students capable of intercollegiate competitions who are members of an underrepresented sex.’” *Id.* at 4-5 (emphasis added) (citing 1979 Policy Interpretation, *supra* note 3, at 71,417). Further, the “survey nonresponse bias” suggests that those most likely to benefit

Critics of the Additional Clarification – including the NCAA – have expressed skepticism about the reliability of the Model Survey to determine athletic interest if it is distributed via email, contending that participation in email surveys is inevitably spotty, leading to unreliable results.⁹³ Such critics fear that low response rates, when accepted as an indication of lack of interest, will be construed as an apparent – and misleading – lack of interest in sports by women, which the OCR will nevertheless accept as conclusive evidence that a school does not need to further accommodate their athletic interests.⁹⁴

OCR's premise, however, appears to be that if students have access to and are properly informed about the Model Survey – including the purpose of the Survey and the fact that the school will interpret a nonresponse as an indication of lack of interest⁹⁵ – then it is appropriate to conclude that a potential student-athlete not interested enough to respond to a survey would not be interested in making the significant commitment needed to compete in an intercollegiate varsity sport.⁹⁶ If a school employing the email method fails to properly publicize the Model Survey, fails to make it readily available, or fails to take "reasonable steps to follow-up" with those

from a survey are the ones most likely to respond to it. *See, e.g.*, TECHNICAL MANUAL, *supra* note 61, at Ch. 5. The Model Survey serves as a direct conduit for varsity-caliber athletes to be heard about their athletic interests, giving them the self-interest to want to respond.

93. *See, e.g.*, Press Release, NCAA, Statement from NCAA President Myles Brand Regarding Department of Education Title IX Clarification Mar. 22, 2005, available at http://www2.ncaa.org/media_and_events/press_room/2005/march/20050322_brand_stmtnt_titleix_survey.html.

94. *See, e.g.*, National Women's Law Center, Bush Administration Covertly Attacks Title IX by Weakening Athletics Policies, Apr. 5, 2005, <http://www.nwlc.org/details.cfm?id=2211§ion=infocenter>; Womenssportsfoundation.org, *Department of Education Creates Huge Title IX Compliance Loophole: The Foundation Position*, June 16, 2005, <http://www.womenssportsfoundation.org/cgi-bin/iowa/issues/rights/article.html?record=1009>; Save Title IX, Questions and Answers on the Department of Education's "Clarification" of Title IX Policy, <http://www.savetitleix.com/questions.html> (last visited Dec. 29, 2005).

95. ADDITIONAL CLARIFICATION, *supra* note 1, at 6.

96. *See, e.g.*, USER'S GUIDE, *supra* note 16, at 18 ("[I]ntercollegiate athletics usually requires [sic.] athletes to devote 20 hours of practice each week during the season, as well as individual regimens of training during the off-season. Athletes are required to travel and occasionally miss classes."). Critics contend, however, that email survey response rates are consistently low, thus ensuring that even interest among female athletes will not be accurately measured. *See generally*, Feminist Majority Foundation Online, *Feminist Daily News Wire, Dept. of Education Weakens Title IX Compliance Standards for College Athletics*, Mar. 23, 2005, <http://www.feminist.org/news/newsbyte/printnews.asp?id=8964>; Save Title IX, *supra* note 94; Womenssportsfoundation.org, *Loophole*, *supra* note 94.

who do not respond, however, the OCR will not presume that the Survey responses are an accurate measure of interest.⁹⁷

If a mandatory response method is used (i.e., students are required to complete or actively bypass the Survey), the school will not be confronted with the nonresponse concerns and the follow-up obligations that surround the non-mandatory email approach. Accordingly, the mandatory method may be viewed by schools as the preferred method of administration.

iv. Include all Sports in the Model Survey

The Model Survey must be administered so as to give students an opportunity to express interest in “all varsity sports, including ‘emerging sports,’ currently recognized by the three national intercollegiate athletic associations to which most schools belong.”⁹⁸ In addition to recognizing twenty-three championship sports, the NCAA “recognizes 7 ‘emerging sports’ that are intended to provide additional athletics opportunities to female student-athletes.”⁹⁹ The current list of NCAA sports is provided in the User’s Guide in connection with Screen 5 of the Model Survey.¹⁰⁰

v. Alternative Approaches to Interest Survey Administration

Of course, a school is not obligated to implement the Model Survey – much less to follow the above procedures for implementation – even if it seeks to comply with Title IX through the Third Prong.¹⁰¹ The Additional Clarification seeks to preserve schools’ discretion to run their athletic departments in any non-discriminatory manner that they choose.¹⁰² But failure to use the Model Survey as part of an effort to demonstrate compliance with the Third Prong of Title IX has additional risk because student interest would then have to be gauged by some other method that does not enjoy the benefit of the OCR’s deference. For example, if a school uses a census other than the Model

97. ADDITIONAL CLARIFICATION, *supra* note 1, at 6.

98. *Id.* at 7. The national intercollegiate athletic associations referred to are the National Collegiate Athletic Association (NCAA), the National Association of Intercollegiate Athletics (NAIA), and the National Junior College Athletic Association (NJCAA). See, e.g., THE OFFICIAL NCAA WEBSITE, <http://www.ncaa.org/about/champs.html> (explaining that the NCAA administers eighty-eight championships in twenty-three sports for its member institutions).

99. USER’S GUIDE, *supra* note 16, at 13.

100. *Id.* at 19.

101. See ADDITIONAL CLARIFICATION, *supra* note 1, at 8 (stating that “surveys of this kind are only one method by which a school may obtain data on its students’ interests”).

102. *Id.*

Survey, the OCR will need to evaluate such census for reliability equivalent to the Model Survey and for compliance with the four factors for proper Model Survey administration discussed above.¹⁰³ Further, if a school does not use the Model Survey or an equivalent census, the results of any other survey tool will not be considered by the OCR as adequate to measure student interest. "Instead, OCR will look to a broader range of factors drawn from previous OCR guidance on the three-part test in determining whether the school has accurately measured student interest."¹⁰⁴

Thus, use of any survey tool other than the Model Survey appears to forego the benefit of OCR deference and the presumption of accuracy that use of the Model Survey provides.

c. Objectively Determining Whether Unmet Interest has been Demonstrated

After the Model Survey is administered, the school must determine whether the gross number of positive responses collected from the Model Survey for a given sport exceeds the level of requisite interest that the school has determined to be necessary for a new varsity team.¹⁰⁵ Unlike many components of Prong Three, this component involves a relatively objective exercise.

The number of positive responses that would comprise requisite unmet interest should not be difficult for a school to establish.¹⁰⁶ The User's Guide offers the following example:

An operational formulation of the problem is as follows: There are a minimal number of team members necessary to "field" a team in the given sport. The institution must specify this number. It depends on the sport and possibly contextual factors. For instance, a basketball team cannot play with fewer than five players, but this is not the minimal number of players needed for basketball. Instead, the minimal number is presumably in the range 10-15. NCAA or other association rules may provide other bounds for the number of players, but prevailing values in the conference to which the institution belongs are also relevant.¹⁰⁷

103. *Id.*

104. *Id.* at 9 (punctuation omitted).

105. The Additional Clarification does not mandate that a school determine the number of athletes necessary to field a team prior to conducting the Model Survey, although this would seem preferable from the standpoint of establishing the credibility of the school's compliance processes. See discussion *infra* Section II.A.2, for a discussion of how the OCR is more likely to defer to a school's decisions if they are made pursuant to a predetermined process designed to maximize the chances of achieving neutrality in the results.

106. USER'S GUIDE, *supra* note 16, at 24.

107. *Id.* at 9.

The OCR recognizes that practical factors involving particular sports may change the calculation of the minimum number of participants needed.¹⁰⁸ When evaluating the minimum number of athletes needed, the OCR "may consider factors such as: rate of substitutions, caused by factors such as intensity of play or injury; variety of skill sets required for competition; and effective practices for skill development."¹⁰⁹ Further, the OCR will defer to athletic administrators' decisions as to the minimum number of positive Model Survey responses that will be deemed to show requisite interest for each sport:

Athletic directors and coaches for a particular sport will generally have the experience with the mechanics and realities of operating a team to determine the impact of these factors and decide the number of students needed to establish teams by sport. In general, OCR defers to decisions of the athletic directors and coaches.¹¹⁰

Once a school sets its minimum number of participants for each sport, then it simply counts the number of positive responses to determine whether the Model Survey indicates sufficient unmet interest.¹¹¹ Unless a student selects on Screen 6 that her "interest in future participation at the institution" is at the "Varsity" level,¹¹² her survey response will not count towards the requisite number of positive responses. The Model Survey also requires students to provide a self-assessment of their level of ability. Here, too, the OCR will defer to the Model Survey's results: "OCR will presume that a student's self-assessment of lack of ability to compete at the intercollegiate varsity level in a particular sport is evidence of actual lack of ability."¹¹³

108. ADDITIONAL CLARIFICATION, *supra* note 1, at 11.

109. *Id.* (punctuation omitted); *see also id.* at 11-12 (discussing further the factors used to determine the minimum number of athletes).

110. *Id.* at 11. Although not mandated by the OCR, this requisite number should be selected by the school ahead of time to avoid any inference that it was influenced by the survey results.

111. *See, e.g.,* USER'S GUIDE, *supra* note 16, at 24.

112. *See id.* at 14.

113. ADDITIONAL CLARIFICATION, *supra* note 1, at 10. This is a somewhat surprising declaration of deference considering the OCR's suggested phraseology about ability in the Model Survey. Screen 6 of the Model Survey does not give students an option to honestly declare that they lack the ability to compete at the collegiate level. Rather, the only options with regard to ability are "Yes, I have the ability" and "No, I would need to develop the ability." USER'S GUIDE, *supra* note 16, at 20. The OCR expressly contemplates that athletes may be able to develop the ability to compete at the collegiate level:

[A] lack of experience or limited experience in a particular sport does not necessarily indicate the inability to compete in a particular sport at the intercollegiate level. For example, a student may have athletic skills, gained

Only if the properly-administered Model Survey results evidence that sufficient varsity-level interest exists among those in the underrepresented gender with the self-declared ability to compete intercollegiately in a sport not currently offered by the school must the school then take additional steps under the second part of the Prong Three analysis.

2. Step Two: Sufficient Ability to Sustain an Intercollegiate Team in a Sport

Conducting the Model Survey is the first, and potentially dispositive, step under the OCR's recommended approach to Prong Three compliance. If, after proper administration of the Model Survey to the entire student body, requisite interest is not demonstrated in any sport not currently offered to the underrepresented gender, then the school can have a high degree of comfort that it is in compliance with Title IX under Prong Three.¹¹⁴

If, however, requisite interest is demonstrated in a given sport, that, without more, does not mean that the sport must be instituted on a varsity level. Upon finding such requisite interest, the school would then proceed to the second step of the Prong Three test to assess whether those with interest in fact have sufficient ability to sustain an intercollegiate team.¹¹⁵ The Additional Clarification makes clear that this "assessment process" is a separate and independent

from experience in other sports, which are fundamental to the particular sport in which the student has expressed an interest.

ADDITIONAL CLARIFICATION, *supra* note 1, at 10. Yet, the OCR will apparently allow Survey results falling into this category to evidence lack of ability for purposes of analyzing Model Survey data at this stage.

While changing Screen 6 to allow a third option for self-assessment of ability might be helpful (such as "No, I do not have the ability"), such change might run the risk of drawing the OCR's review and losing the OCR's deference to the Survey's results, perversely for the same reasons outlined above. If a student lacks experience in a sport but has sufficient athleticism to compete intercollegiately, she may presume that she lacks ability and select such option on a Survey. By allowing a student to substitute her experience as a proxy for her ability, the OCR may see such a third option on Screen 6 as creating a certain bias in the results.

In any event, students' self-appraisals of ability become secondary to the opinions of coaches during the "assessment process" of measuring ability under the Prong Three analysis, as discussed further in the next section, *see also id.* at 9-11; USER'S GUIDE, *supra* note 16, at 24, so the benefits of altering the Model Survey may not be worth the major, but remote, risk of losing the OCR's deference.

114. ADDITIONAL CLARIFICATION, *supra* note 1, at 7-8. Such deference, of course, is in the absence of "other direct and very persuasive evidence of unmet interest sufficient to sustain a varsity team," *id.* at 6, such as "[a] recent broad-based petition from an existing club team for elevation to varsity status," *id.* at 6 n.10.

115. *See, e.g., id.* at 4.

step in a Prong Three analysis. "Schools are not required to create a varsity team or elevate a club team to intercollegiate varsity status unless there are a sufficient number of interested students *that have the ability to sustain an intercollegiate varsity team.*"¹¹⁶

Students' self-appraisals of ability in their responses to the Model Survey serve only to begin the analysis relating to ability.¹¹⁷ Although the Model Survey "effectively captures information on interest, experience, and self-assessment of ability,"¹¹⁸ the Additional Clarification ultimately leaves to the school the qualitative determinations related to whether such ability reaches the level necessary for intercollegiate competition and whether such interest and ability is sustainable over a period of time.¹¹⁹

The opinions of coaches play a crucial role in determining whether interested students in fact possess the ability needed to play on the intercollegiate level. Further, the Additional Clarification provides that "[b]ecause athletic directors and coaches have unique expertise when assessing athletic ability, *their assessments will be presumed to be valid*, provided the methods used to assess ability are adequate and evaluate whether the students have sufficient ability to sustain an intercollegiate varsity team."¹²⁰

A school's assessment process under the second part of the Prong Three test may not differ significantly from the processes that would have been appropriate as part of a pre-Model Survey effort to demonstrate compliance with Prong Three.¹²¹ The User's Guide suggests the following process by which a school may further assess

116. *Id.* at 10 (emphasis added).

117. *Id.* Students' self-appraisals are of limited utility because they are confidential by default under the Model Survey. *See, e.g.,* USER'S GUIDE, *supra* note 16, at 11, 15. Thus, a coach cannot connect a self-assessment to a given student unless that student opts to be contacted on Screens 7 and 8. *See, e.g., id.* at 21-22.

118. ADDITIONAL CLARIFICATION, *supra* note 1, at 5. Further, the Model Survey cannot adequately measure sustainability of an intercollegiate sport in a given year. It serves no role in this part of the analysis until its cumulative results can be analyzed after a school has administered it over a number of years.

119. *See id.* at 9-11.

120. *Id.* at 9 (emphasis added). Preserving the benefit of this presumption will be important to a school's success in any OCR investigation. Although loss of this presumption, if the OCR were to determine that a school's assessment methods were not "adequate" or unbiased, should not, in theory, shift the burden of proof in an investigation from the OCR to the school, *id.* at 4, the burden would effectively shift since the OCR would not be equipped to prove that the assessed players *are* sufficiently talented and/or that their interest and ability *is* sustainable. Thus, a loss of the presumption would also effectively shift the burden to the school to prove that its assessment (which, in this hypothetical, would have already been deemed biased by the OCR) was nonetheless accurate. This would be a heavy burden that no school would wish to take on.

121. *See, e.g., id.* at 9-11; 1996 CLARIFICATION, *supra* note 6, Pt. Three(b).

the "ability to sustain" a new varsity team – including assessing whether the interest is sustainable and evaluating the abilities of the interested student-athletes – after a Model Survey evidences unmet interest:

[A] next step might be for the institution to call a meeting of women students to see if there is enough interest to field a team. A desirable practice in obtaining attendance at the meeting would involve both direct contact with those women who had self-identified and provided contact information through the survey, as well as advertising the meeting through flyers or announcements in the campus paper. Given sufficient turnout, coaches could then conduct tryouts to evaluate the ability of prospective athletes. An evaluation of ability through a tryout would take precedence over a student's self-appraisal of ability on a survey.¹²²

During the tryouts, a school will likely want to maximize the transparency of its approach to assessing ability, in order to ensure that its impartiality cannot be questioned and to preserve the OCR's presumption of validity. For example, the school could make clear before the tryouts what it will consider to be "varsity-level" ability.¹²³ The school also could, for example, consult multiple individuals with experience coaching the sport to evaluate players' talents, rather than entrust this discretionary decision to a single coach. Although the assessments of ability will necessarily be subjective, these measures (or others) should be considered "adequate" so as to improve the chances that the assessments will be respected by the OCR.¹²⁴

Recognizing the difficulty of assessing ability levels – let alone of determining whether a showing of requisite ability level among interested students is sustainable over the course of several years – the OCR also allows for interim steps short of creating a new varsity team if a school suspects such a team *might* be required:

Because OCR considers participation in club and intramural sports to be an important indicator of interest and ability, schools that are unsure whether the interests and abilities they have measured will be sufficient to sustain a new

122. USER'S GUIDE, *supra* note 16, at 24. A school that, out of an abundance of caution, wishes to avoid any questions about whether the meeting was adequately publicized might separately provide notice of the meeting to members of any existing club or intramural team in the sport.

123. Perhaps an athletic department mission statement could declare that it aspires to be competitive within its conference in every sport. Such a school may seek to assess its potential student-athletes by reference to the abilities and credentials of student-athletes participating in that particular sport at other schools within the region or conference (with an allowance made for the fact that a start-up team may not be competitive in its first few seasons). Alternatively, an athletic department may seek to define "varsity-level" ability by reference to the relative abilities and credentials of its existing varsity athletes competing in other varsity programs, as compared to high school student-athletes (e.g., a college's varsity athletes are generally among the top ten percent of all high school athletes in the sport).

124. See ADDITIONAL CLARIFICATION, *supra* note 1, at 9.

varsity team are permitted – though not required – to create a club or intramural team to further assess those interests and abilities. . . . Just as an institution might conduct tryouts or hold organizational meetings after a survey or other initial assessment shows the potential interest and ability to create a new varsity team, an institution has the option to field a club or intramural team for a reasonable period of time to further assess the depth and breadth of the interests and abilities of the participating athletes. However, this option must be exercised as only a part of the assessment process, using standards that apply equally to male and female athletes. Once a school completes the assessment process by concluding that there is sufficient interest and ability to support a new varsity team, the school is under an obligation to create a varsity team within a reasonable period of time.¹²⁵

This express endorsement of starting a club or intramural sport provides schools a way to verify the existence on campus of sustainable interest and ability. By monitoring the interest and ability levels of club or intramural participants, the school will be able to observe whether the requisite levels are sustainable over time. Wide fluctuations in these levels would likely provide a school a safe harbor if it decides against implementing a varsity team on the basis of a lack of sustainability.

If the OCR's recommendations are followed, the OCR should, in an investigation, defer to the school's determinations. If deference is for some reason not indulged, however, the OCR will consider multiple factors in addition to the coaches' assessments:

When OCR is required to make this determination, it may consider such factors as the following —:

- the athletic experience and achievement — in interscholastic, club or intramural competition — of underrepresented students interested in playing the sport;
- participation in other sports, intercollegiate or otherwise, that may demonstrate skills or abilities that are fundamental to the particular sport being considered;
- self-assessment of ability to compete in a particular interscholastic varsity sport;
- if the team has previously competed at the club or intramural level, whether the competitive experience of the team indicates that it has the potential to sustain an intercollegiate team;
- tryouts in the particular sport in which there is an interest;
- other direct observations of participation in the particular sport being considered; and
- opinions of coaches, administrators, and athletes at the institution regarding whether interested students have the potential to sustain a varsity team.¹²⁶

125. *Id.* at 10-11. Note, however, what constitutes a "reasonable amount of time," *id.*, is not defined.

126. *Id.* at 10.

3. Step Three: Reasonable Expectation of Intercollegiate Competition for a Team in the Sport within the School's Normal Competitive Region

The third step of the Prong Three test – whether intercollegiate competition exists within the school's normal competitive region – is perhaps the easiest of the steps to assess. The school's other varsity athletic programs will provide guidance as to the school's normal competitive region, and information is readily available about the existence of other intercollegiate teams within any region. The OCR explains in the Additional Clarification that it "will look at available competitive opportunities in the geographic area in which the institution's athletes primarily compete."¹²⁷ Further, "if an institution's normal competitive region includes an area outside its own geographic area, OCR will not require the creation of a particular sport if, due to climate or topography, it would not be possible as a practical matter for students at the institution to practice that sport," such as a skiing program for a Big 12 school located outside of the Rocky Mountain area.¹²⁸ Schools ordinarily will have no obligation beyond the above, but if the OCR investigates a school for Title IX compliance and finds it to be in violation, "institutions may be required by the Title IX regulation to encourage the development of such competition as part of a resolution agreement or remedy."¹²⁹

B. Implementation

When a school has students of the underrepresented gender with "sufficient unmet interest and ability" to sustain an intercollegiate team in a sport that has sufficient intercollegiate competition within the school's normal region of competition, "the school is under *an obligation* to create a varsity team in that sport or elevate the club team to varsity status," if it has not otherwise proven compliance by means of Prongs One or Two.¹³⁰

This implementation, however, can take place gradually according to the Additional Clarification:

OCR recognizes that, for practical and financial reasons, a school may be unable to immediately create a new varsity team or elevate a team to varsity status. When determining whether the period of time to create or upgrade a team is reasonable, OCR will account for the steps necessary to establish the varsity

127. *Id.* at 12.

128. *Id.*

129. *Id.*

130. *Id.* (emphasis added).

team, which will vary by sport and by school and may include obtaining necessary approval and funding to establish the team, building or upgrading facilities, obtaining varsity level coach(es), and acquiring necessary equipment and supplies.¹³¹

Although it is unlikely that use of the Model Survey approach to Title IX compliance will result in a school having to start a new varsity sport that it would not otherwise have to start, that is one risk that administrators should nevertheless take into account in determining whether to follow the Additional Clarification. The following section will discuss this and other considerations that administrators should evaluate in deciding whether to use the Model Survey.

III. FACTORS TO CONSIDER IN DECIDING WHETHER TO IMPLEMENT THE MODEL SURVEY

Institutions have flexibility to demonstrate compliance by means of any one (or all) of the three prongs of Title IX, and each prong provides a sufficient basis to demonstrate compliance.¹³² Further, an institution need not make an election to comply with one particular prong. From the standpoint of defending a school against potential Title IX liability, therefore, it would seem advantageous for a school to be in a position to defend its athletic program on the basis of multiple prongs.

Institutions that seek to demonstrate Prong Three compliance (either of necessity or due to uncertainty about their ability to comply under Prongs One or Two) have always been obligated to evaluate the athletic interests and abilities of the underrepresented gender. Now that the OCR has delineated a method under Prong Three for reaching a safe harbor – and gaining the OCR's deference that it has, indeed, been reached – there are compelling reasons for such schools to avail themselves of this safe harbor.

The Model Survey approach, however, may not be appropriate for every school, as there are certain costs and risks associated with its implementation that may outweigh its potential benefits to a given school.

A. Considerations that Favor Using the Model Survey

The Model Survey need not be the only basis for evaluating interest under Prong Three. Because it is expressly sanctioned by the

131. *Id.* at 13.

132. *Id.* at 1.

OCR and is intended to help institutions achieve the Prong Three safe harbor, however, a good case can be made for using it as one method of measuring interest.

1. OCR's Deference

Although the OCR will accept several indicators of interest for purposes of Prong Three compliance efforts, none of them are expressly given the presumption of accuracy that the OCR has given the Model Survey.¹³³ Although the OCR professes to have the burden of proof to show that an institution is not in compliance with Prong Three,¹³⁴ this conflicts somewhat with the discussion in the Additional Clarification regarding non-Model Survey approaches to Prong Three compliance efforts.¹³⁵ For example, the Additional Clarification warns that when a school does not implement the Model Survey and administer it as recommended, "OCR will not presume that survey results (if any) alone are adequate to measure student interest under [Prong] three."¹³⁶ In other words, a school is not required to use the Model Survey, but any other tool it uses to measure student interest levels will not receive the benefit of the OCR's deference during an OCR investigation, effectively imposing on the school the burden of proving that the tool was equivalent to the Model Survey.¹³⁷ Unless such equivalence can be demonstrated, any evidence of the presence or absence of "unmet interest" generated by methods other than the Model Survey will not be presumed to be accurate but, rather, will be scrutinized subjectively with a number of other factors.¹³⁸ Schools that use such methods thus might find themselves subjected to a potentially burdensome OCR investigation

133. *Id.* at 8-9.

134. *Id.* at 4. The burden of proof has always been on the government since the 1979 Policy Interpretation. "The Department would [have] the burden of demonstrating that the institution was actually engaged in unlawful discrimination." 1979 Policy Interpretation, *supra* note 3, at 71,414.

135. The OCR has been careless in the past in discussing the burden of proof. Compare 1996 Cantú Letter, *supra* note 13 (stating that "if an institution believes that its female students are less interested and able to play intercollegiate sports, that institution may continue to provide more athletic opportunities to men than to women, or even to add opportunities for men, as long as the recipient can show that its female students are not being denied opportunities, i.e., that women's interests and abilities are fully and effectively accommodated") (emphasis added) with 1996 CLARIFICATION, *supra* note 6, at Pt. Three (explaining that "[u]nder part three of the three-part test (part three) OCR determines whether an institution is fully and effectively accommodating the interests and abilities of its students who are members of the underrepresented sex") (emphasis added).

136. ADDITIONAL CLARIFICATION, *supra* note 1, at 9.

137. *Id.* at 8-9.

138. *Id.* at 9.

of their compliance methods,¹³⁹ and might ultimately be regarded by the OCR as out of compliance, notwithstanding their good faith efforts to comply.¹⁴⁰

What seems to be clear, however, is that, so long as the Model Survey is implemented and properly administered in accordance with the procedures explored in Section II.A.1.b., the OCR will defer to its results and will not conduct a compliance review if the results do not show sufficient unmet interest to sustain a new varsity team.¹⁴¹ Non-proportional schools – those not in compliance with Prong One – *must* measure and fully accommodate the athletic interests of the underrepresented gender to comply with Prong Three, unless they are confident that they can persuade a court or OCR investigator that they satisfy the vague and uncertain requirements of Prong Two. For these schools, failing to conduct the Model Survey expressly sanctioned by the OCR – or failing to administer it in the manner suggested by the OCR – foregoes important legal safeguards and an opportunity to demonstrate *with certainty* the absence of unmet interest for purposes of Prong Three.

Aside from the Model Survey, the Additional Clarification also outlines methods that schools may follow to gauge interested students' *abilities*.¹⁴² If those methods are properly followed, the OCR will defer to schools' assessments of students' abilities.¹⁴³ If those methods are not followed, however, the OCR will not defer but, as with the determination as to unmet interest, will consider multiple factors, an approach that may yield unpredictable results.¹⁴⁴

139. According to certain schools that have been investigated by the OCR, investigators can burden schools with voluminous and intrusive requests. *E.g.*, Letter from Estelle A. Fishbein, General Counsel, Johns Hopkins Univ., to Norma Cantú, Assistant Secretary, and Judith Winston, General Counsel, U.S. Dep't of Educ., at 2-3 (Dec. 8, 1994) (complaining that the OCR questioned the university on irrelevant issues, including the funding of a sports museum not affiliated with the university and the smaller size of women's basketballs compared to men's basketballs notwithstanding that NCAA and Olympic regulations set the official sizes); Letter from Estelle A. Fishbein, General Counsel, Johns Hopkins Univ., to Dr. Robert Smallwood, Regional Director, Office for Civil Rights, U.S. Dep't of Educ., at 2 (Dec. 8, 1994) ("[f]rom the beginning, OCR's investigation carried all the stigmata of a fishing expedition"); *id.* (counting athletic supporters, sports bras, and socks; contrary to OCR policy against analyzing information on undergarments) (quoting OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., TITLE IX ATHLETICS INVESTIGATOR'S MANUAL 29 (1990)).

140. See ADDITIONAL CLARIFICATION, *supra* note 1, at 8-9.

141. *Id.* at 7.

142. See *id.* at 9-11.

143. *Id.* at 9.

144. *Id.* at 10.

2. Certainty of the "Safe Harbor"

Before the OCR issued the Additional Clarification, Prong Three was theoretically considered a safe harbor,¹⁴⁵ but schools faced uncertainty as to whether they had navigated into it. Schools did not know what methods of measuring unmet interest would be seen as valid in the OCR's eyes, or at what point evidence of unmet interest warranted further assessment or accommodation.¹⁴⁶ A principal purpose of the Additional Clarification is to encourage schools to consider reliance on Prong Three a viable compliance option by mapping a route into a more clearly defined safe harbor.¹⁴⁷ A school can now feel confident that it has complied with its Title IX obligations in connection with its athletic program if the Model Survey does not reveal requisite levels of unmet interest.

3. Identifying Trends in Students' Interests in Athletics

Responses to the Model Survey can help a school identify trends in undergraduate athletic interests as they emerge. The compilation of survey data should permit an athletic department to make more informed plans and decisions at an earlier stage.

Interest in a new sport seldom materializes overnight. Use of the Model Survey on a periodic basis can help a school identify nascent interest as it develops and evaluate whether such interest is sustainable, fleeting, or fluctuating. The school can then take steps to address such interest and monitor the abilities of the interested students, such as forming club or intramural teams or implementing other controlled measures. If data compiled over a few years shows that interest in a sport is not sustainable, the school will not be required to endorse a varsity team.

In addition, evidence as to the relative interests and abilities of members of both genders might have relevance to future determinations of Title IX compliance or of liability under a lawsuit brought by a private litigant (i.e., the absence or presence of actual discrimination).¹⁴⁸

145. See 1996 CLARIFICATION, *supra* note 6, at 1; 2003 FURTHER CLARIFICATION, *supra* note 6.

146. 2003 COMMISSION REPORT, *supra* note 15, at 23-24.

147. See ADDITIONAL CLARIFICATION, *supra* note 1, at 3-4.

148. See *id.* at 5-6; see also *id.* at 1 n.1. Although *Cohen v. Brown Univ.*, 101 F.3d 155 (1st Cir. 1996), held that the interests of the overrepresented gender were irrelevant to its Prong Three analysis, data showing the relative interests in athletics of both genders might prove persuasive, depending on the nature of the case, to a future jury, court or investigator.

Further, if the Model Survey results show significant interest in a sport among the *overrepresented* gender, a school may consider addressing such interest by offering club or intramural teams. Indeed, if a school is in compliance with Prong Three, it is then free to add popular *varsity* sports for either gender, even if doing so would result in the school becoming non-proportional.¹⁴⁹ This flexibility could be viewed as a benefit by athletic administrators who have felt compelled to maintain proportionality by limiting men's sports or participation levels.

B. Considerations that Disfavor Using the Model Survey

1. Costs of Implementation

All schools have concerns about costs. Use of the Model Survey will involve cost outlays, as it must be properly administered and the results analyzed. Then, if sufficient unmet interest is demonstrated, the school may be required to hold meetings and tryouts, which will also involve costs. Unless a school already meets the proportionality test of Prong One, however, many of these steps and expenses will also be required under any non-Model Survey effort to comply with Prong Two or Prong Three.

Although schools could, for financial reasons, forego the methods recommended in the Additional Clarification, such a decision may be shortsighted. Unless they satisfy the Prong One test of proportionality, schools will need to monitor the athletic interest and ability levels of the underrepresented gender in any event. Although non-Model Survey methods of monitoring may be less expensive at the outset, an OCR investigation, wherein the school's decisions will not receive deference from the OCR, will doubtless be much more costly. The certainty of knowing that a school is within the Prong Three safe harbor may be well worth the costs of implementing the processes suggested in the Additional Clarification, including the Model Survey. Furthermore, conducting the Model Survey should not involve a significant cost for most schools with in-house IT resources.

To save money, a school could employ only some, but not all, of the measures recommended in the Additional Clarification. For example, a school certainly could consider not surveying the *overrepresented* gender, if that approach, indeed, would be more cost-effective. It also could consider administering the Model Survey less

149. ADDITIONAL CLARIFICATION, *supra* note 1, at 5.

frequently,¹⁵⁰ although that might increase the risk of losing the OCR's approval.

Even if sufficient unmet interest and ability are demonstrated as to a given sport, a school need not start a varsity team immediately. The OCR permits a school to implement the sport at a club or intramural level as a means to verify whether sufficient interest and ability are sustainable.¹⁵¹ This interim measure would reduce the risk that a school would incur the expense of starting a new varsity sport in which sustained interest and ability levels are lacking. The OCR also will permit a school up to four years to fund the scholarship costs once a new varsity team is formed.¹⁵²

2. Possible Catalyst Effect

Under Prong Three, a school theoretically can avoid discovering unmet interest in athletics among its current students by not affirmatively trying to assess its existence. It may be argued that conducting the Model Survey might provide the catalyst for a group of students interested in a given sport to present the school with evidence of interest that might not otherwise have surfaced. Any results evidencing requisite unmet interest, in turn, would require the school to spend money to take the next steps to assess the prospects of forming a new team.

Even if this "catalyst effect" is real,¹⁵³ schools are better advised to be proactive in assessing interest. If use of the Model Survey proves to have some kind of catalyst effect, that would only show that schools that fail to adequately monitor the interests of their students are vulnerable. Existing, but latent, interest could surface at any time. Petitions by groups of athletes of the underrepresented gender have been part of the Title IX landscape for years. At any time, a group of athletes could organize and present the institution with a request to start a new varsity team. A school that does not use the Model Survey, but merely assumes that unmet interest does not

150. See USER'S GUIDE, *supra* note 16, at 11; see also discussion *supra*, Section II.A.1.b.i. (providing an example of a situation that may lend itself to less frequent surveying).

151. ADDITIONAL CLARIFICATION, *supra* note 1, at 10.

152. *Id.* at 12 n.15.

153. See 2003 COMMISSION REPORT, *supra* note 15, at 38 (recommending "interest surveys on a regular basis as a way of . . . stimulating student interest in varsity sports"). Also, "[t]he Department of Education says schools that use the surveys correctly may well find they have an obligation to add sports for women under Title IX." Erik Brady, *supra* note 43. At this point, however, any potential catalyst effect of the Model Survey cannot be measured.

exist on its campus, may have difficulty defending itself if faced with a student petition for that sport.

The catalyst effect concern, moreover, may be misplaced. A core of interested students likely already exists in an organized fashion in many schools' club or intramural sports programs. Athletes assembled on such a team would be more likely to petition the school for a varsity team than a group of previously non-organized individuals whose interest was piqued by responding to a survey. Further, students already competing on a club or intramural team are those that are most likely to have the interest and ability to participate at a varsity level. Thus, although use of the Model Survey could uncover unmet interest, it seems unlikely that a school, using the Model Survey, would ultimately be required to implement a new team, after the assessment process, that would not have been required but for the Model Survey.

Even under the Additional Clarification, the OCR will give consideration to a student petition notwithstanding Model Survey results demonstrating a lack of interest.¹⁵⁴ The OCR will consider "[a] recent broad-based petition from an existing club team for elevation to varsity status [to be] direct evidence of interest in that sport by students on the club team."¹⁵⁵ The burden of proof in such a situation will remain on the OCR or the petitioning students, however, to show that such direct evidence is sufficient to overcome the Model Survey results.¹⁵⁶

If a school is presented with a student petition and has not implemented the Model Survey, the school will have foregone an opportunity to establish its reputation for compliance and will have no *recognized* form of evidence to overcome the students' "direct evidence of interest." The institution will then face an uphill legal battle to avoid a finding of noncompliance and OCR sanctions.

3. Negative Publicity

The OCR's Model Survey has been widely criticized by certain Title IX activists and others in the ongoing policy debate.¹⁵⁷ It is possible that some in this group may target a school that decides to

154. ADDITIONAL CLARIFICATION, *supra* note 1, at 6 n.10.

155. *Id.*

156. *Id.* at 4.

157. *See, e.g.*, sources cited *supra* notes 7, 94.

use the Model Survey with a policy-based media campaign attacking the school's gender equity compliance efforts.¹⁵⁸

Making affirmative efforts to gauge students' interests in athletics, however, has always been a valid – and lawful – method of complying with Title IX,¹⁵⁹ and the use of interest surveys is a well-established technique for doing so.¹⁶⁰ The OCR adopted only the best practices from the various survey instruments created by individual schools "to develop suggestions for an improved process for conducting [the Model Survey]."¹⁶¹ Thus, the Model Survey tries to improve upon and make more accurate an already-valid method of complying with Title IX.

Furthermore, unless the Model Survey is the exclusive approach used by a school to comply with Title IX, the primary criticism of the Additional Clarification can be deflected by focusing the public (and the media) on the school's other compliance efforts.¹⁶² For example, a school that uses the Model Survey but also monitors participation in club and intramural sports, solicits views from coaches, tracks trends in local high school participation, or uses other factors to gauge interest should be able to point to these other compliance efforts to rebut any criticisms relating to its use of the Model Survey, including the criticism that students' failure to respond to the Model Survey was dispositive in the school's analysis.¹⁶³

158. Although, the same type of publicity campaign could be launched with or without Model Survey data.

159. See 1979 Policy Interpretation, *supra* note 3, at 71,414. Eighty-six out of 130 schools investigated by the OCR between 1992 and 2002 demonstrated their compliance with Title IX under Prong Three. USER'S GUIDE, *supra* note 16, at 3.

160. Indeed, sixty-seven out of eighty-six schools that demonstrated their compliance with Title IX under Prong Three between 1992 and 2002 employed some form of survey instrument. *Id.* at 3.

161. *Id.*

162. While administration of the Model Survey could help a school feel confident that it is meeting the athletic *interests* of its student body, it also could create discoverable evidence suggesting that a school is not. As long as a school is in compliance with the law, however, it should be able to rebut any such criticism.

163. See also discussion *supra* Section II.A.1.b.iii. (discussing that schools may desire to make the Model Survey mandatory, such as by requiring students to complete it or actively bypass it as part of the registration process, in order to avoid the criticisms associated with potential low response rates).

4. Legality of the Additional Clarification

Certain critics have intimated that schools might expose themselves to liability merely by following the Additional Clarification.¹⁶⁴ Such a result is highly unlikely.

In regard to an OCR investigation, a federal agency such as the OCR generally must follow its own regulations, procedures, and precedents until it amends or revokes them.¹⁶⁵ Although the OCR could change its procedures and disavow the Model Survey in the future, it is doubtful that a school could suffer negative inferences in the eyes of the OCR for following its current guidance.¹⁶⁶

A school should also be largely insulated from liability from any legal challenge by a third party to the Model Survey's accuracy or neutrality so long as the school follows the OCR's guidance. Although the Additional Clarification will likely be considered by a court to lack the binding force or effect of law, courts generally give deference to an agency's interpretation of its own regulations.¹⁶⁷

IV. IMPLEMENTATION AND RECOMMENDATIONS

Each school will face its own unique set of considerations in deciding whether to implement the Model Survey. For some schools, the question will turn on how confident their athletic departments are of their present Title IX compliance efforts. For other schools, it may

164. See, e.g., *Save Title IX*, *supra* note 94 ("Because the new Clarification authorizes an approach to providing equal opportunity for female athletes that falls far short of Title IX requirements, schools that choose to use the survey authorized by the Clarification as their sole means of evaluating compliance with the law could be vulnerable to legal challenges by students denied access to participation opportunities as a result. If those challenges are successful, students could be entitled to monetary relief, among other remedies.").

165. See 2 AM. JUR. 2D *Administrative Law* § 236 (2004).

166. But see Rick Taylor Statement, *supra* note 15, at 79 (testifying that the OCR refused to acknowledge Northwestern's efforts since 1987 to expand its women's programs under Prong Two because Northwestern cut women's sports between 1984 and 1987 when Title IX did not apply under the decision of *Grove City College v. Bell*, 465 U.S. 555 (1984)).

167. See, e.g., *Martin v. Occupational Safety and Health Review Comm'n*, 499 U.S. 144, 150 (1991) (quoting *Lyng v. Payne*, 476 U.S. 926, 939 (1986) and citing *Udall v. Tallman*, 380 U.S. 1, 16-17 (1965)); see also *Chalenor v. Univ. of N.D.*, 291 F.3d 1042, 1046-47 (8th Cir. 2002); *Neal v. Bd. of Trs. of the Cal. State Univs.*, 198 F.3d 763, 770 (9th Cir. 1999); *Cohen v. Brown Univ.*, 101 F.3d 155, 173 (1st Cir. 1996); *Kelley v. Bd. Of Trs., Univ. of Ill.*, 35 F.3d 265, 270 (7th Cir. 1994); *Horner v. Ky. High Sch. Athletic Assn.*, 43 F.3d 265, 274-275 (6th Cir. 1994); *Williams v. Sch. Dist. of Bethlehem*, 998 F.2d 168, 171 (3rd Cir. 1993); *Roberts v. Colo. State Bd. of Agric.*, 998 F.2d 824, 828 (10th Cir. 1993). Note, however, that a school might be required to pay a prevailing plaintiff's attorneys' fees if she successfully attacks the school's use of the Model Survey. See, e.g., *Mercer v. Duke Univ.*, 401 F.3d 199, 212 (4th Cir. 2005).

depend on budgetary factors. For yet others, concerns about public relations or their views of the Model Survey in the context of the ongoing Title IX policy debate may assume greater importance. Factors that lead one school to use the Model Survey might not be very relevant to another institution's decision.

There are legal risks, however, for all schools – even those meeting the proportionality requirements of Prong One – that do not seek to measure and respond to the interests of their potential student-athletes.

Thus, most schools should seriously consider implementing the procedures recommended in the Additional Clarification, including the Model Survey, to gain certainty and the benefit of legal presumptions in a regulatory environment that is vague and subjective in many respects. The Additional Clarification's recommendations may be implemented as part of a multi-faceted Title IX compliance program – used in addition to, rather than as a substitute for, a school's existing Title IX compliance efforts. Such a proactive approach to compliance should enable a school to remain in the good graces of the OCR and should help avoid negative publicity from interest groups that oppose the Model Survey.

This recommendation applies especially to schools that are unable to comply with Prong One, as they should already be monitoring the interests and abilities of their students in any event in order to show compliance under either Prong Two or Prong Three. The opportunity offered by the Additional Clarification for such institutions to put themselves in a position to reap the benefit of the OCR's deference in this area seems too valuable to forego.

Furthermore, even those schools that currently comply with Title IX under Prong One cannot be assured of future Title IX compliance under Prong One as student demographics continue to change. Women became a majority of college students in the 1980s and today comprise roughly fifty-seven percent of all college students.¹⁶⁸ This changing population target makes sustaining proportionality under Prong One difficult. A one or two percent fluctuation in undergraduate population in any given school year could throw a school's athletic department out of the safe harbor of Prong One and expose it to civil litigation or an OCR investigation if it has not taken other steps to comply under Prong Three. Indeed, if a Prong One school at any point in the future attempts to rely on Prong

168. Karen Blumenthal, *Title IX's Next Hurdle; Three Decades After Its Passage, Rule That Leveled Field For Girls Faces Test From Administration*, WALL ST. J., Jul. 6, 2005, at B1.

Three in defending itself against an investigation, litigation, or a negative media campaign, it will be helpful if it can show that it has historically been cognizant of and responsive to the interests of the underrepresented gender, as demonstrated by its use of the Model Survey.

For a proportional school planning to maintain compliance under Prong One despite any change in demographics, the results of the Model Survey also will help it make the most informed allocation of departmental resources to preserve its proportionality. By continually monitoring its students' athletic interests, for example, a school will be able to assess which women's team would be most popular to add (and most successful if added). Further, if a school can rely on Prong Three's safe harbor, Title IX would not provide any reason for the school to eliminate a men's sport or to impose a "roster cap" on any men's team – steps disfavored by the OCR that schools sometimes take in an effort to achieve Prong One proportionality.¹⁶⁹

If a school now within Prong One's safe harbor chooses to implement the Model Survey for any of the reasons mentioned above, it will retain complete control over how to respond to Model Survey results demonstrating unmet interest. A proportional school need not even engage in an assessment of its interested students' abilities, much less implement any new varsity team in response to Model Survey interest, while using the Survey to collect valuable data for analysis and use when its student demographics change.

Any school that decides to implement the OCR's suggestions from the Additional Clarification, as part of a multi-faceted Title IX compliance program or alone, should do so with the goal of maintaining the credibility of its compliance program, which will help eliminate criticism and improve the school's prospects in the event of litigation. Further, the Additional Clarification seems to imply that the OCR will give more deference to a school conducting a proactive compliance program than to a school that simply reacts to requests to add new programs if and when they arise. Ways to maximize the transparency of a Prong Three compliance program, as discussed more fully throughout this Article, might include the following:

- Administer the Model Survey periodically.
- Survey all undergraduate students (male and female).
- Make sure that the Survey is administered in a manner designed to generate high response rates (such as making it a mandatory part of the registration process) and is adequately explained.

169. ADDITIONAL CLARIFICATION, *supra* note 1, at 5.

- Predetermine, for each sport, the level of requisite interest from Model Survey responses that will trigger proceeding to the assessment process.
- Predetermine the process for assessing ability for each sport, which will likely include well-publicized meetings and tryouts.
- Outline, for each sport, expectations for the prospective team's talent level, such as with an athletic department mission statement.
- During the assessment process, avoid consolidating the decisions about requisite ability level in the hands of a single coach, who could later be attacked (fairly or unfairly) for having an agenda. Instead, select a panel with varying vantage points, including disinterested third parties, to make the assessments.

V. CONCLUSION

The current debate surrounding Title IX and the Additional Clarification is policy-focused. Administrators of institutions seeking to comply with Title IX, however, need to focus not on the policy issues, but on protecting their institutions from OCR or third-party challenges to their Title IX compliance. The Model Survey is a tool that should not be ignored.

Use of the Model Survey as one component of an ongoing and comprehensive Title IX compliance program would likely be beneficial to most institutions. Indeed, if a non-proportional school chooses not to use the Model Survey, it will nevertheless need to employ some other tool to gauge its students' interests and abilities – the results of which would not receive the OCR's deference. The results of the Model Survey, on the other hand, can be objectively assessed within the framework suggested in the Additional Clarification, and can give the school assurance as to whether it has successfully navigated into the OCR's Prong Three safe harbor. Even if unmet interest is demonstrated by the Model Survey, a school can largely direct the manner in which it carries out its assessment process to evaluate the other Prong Three components – and receive the OCR's deference thereto – so long as it follows the OCR's procedural guidance.

Title IX compliance officers should seriously consider whether, by failing to implement the Model Survey, they are leaving their institution vulnerable to an OCR or third-party Title IX challenge – a challenge against which Model Survey results could provide a legal safe harbor.

Advocating for the Additional Clarification

"Model Surveys as a Title IX Compliance Tool—Legal Counsel's Perspective," John J. Almond and Daniel A. Cohen, <<http://www.rh-law.com/TitleIX/model.htm>>



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Model Interest Surveys as a Title IX Compliance Tool – Legal Counsel’s Perspective

By **John J. Almond** and **Daniel A. Cohen**

It has been one year since the Office for Civil Rights of the Department of Education issued its “Additional Clarification” and its “Model Survey” to provide guidance for measuring student interest in varsity-level sports programs for colleges and universities seeking to comply with Prong Three of Title IX.

The Additional Clarification and the Model Survey have been controversial. They have received strong criticism from some quarters and strong praise from others. For a university that has the goal of ensuring that it is in compliance with Title IX, though, the policy-based controversy should have limited relevance. Rather, a school that is deciding whether to employ the Model Survey as part of its Title IX compliance program should focus primarily on whether the Model Survey can help it achieve or maintain Title IX compliance.

Accordingly, schools need to gain a more detailed understanding of the Additional Clarification than media sound bites can provide, and then they must evaluate the benefits and risks of adding the Model Survey to their compliance programs. A failure to implement the Model Survey may forego an opportunity for a school to be considered in a legal “safe harbor,” which would protect the school from OCR sanctions or costly private litigation. This type of legal protection is currently available only to schools that are proportional under Prong One – all other schools are potentially exposed.

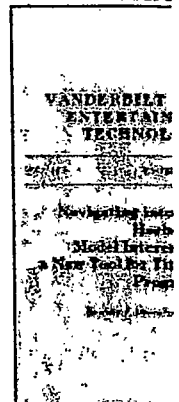
Background

Since 1979, schools have followed the “Three-Prong Test” in their attempts to demonstrate compliance with Title IX in the context of intercollegiate athletics. The Three-Prong Test gives institutions three alternative ways of showing compliance. The first of these, or Prong One, is the test of proportionality: Having male and female students participate in varsity athletics in numbers substantially proportionate to their respective enrollments. Prong Two gives schools the opportunity to show compliance by demonstrating a history and continuing practice of program expansion demonstrably responsive to female students’ athletic interests. Under Prong Three, compliance can be achieved by showing that a school’s athletic program fully and effectively accommodates the interests and abilities of the members of the underrepresented sex.

The OCR has referred to each of the three prongs as a “safe harbor” – if the requirements of any of the three prongs are met, the school will be insulated from OCR enforcement action. Before the issuance of the Additional Clarification, however, the only objective Title IX safe harbor was Prong One, the proportionality test. Prongs Two and Three lacked any objective criteria for determining whether those tests had been satisfied and, thus, Prongs Two and Three were not viewed as safe harbors in practice.

The Additional Clarification is intended to make Prong Three a true safe harbor and, therefore, an alternative to Prong One. It does this by setting forth an OCR-endorsed method for measuring student interest through administration of the Model Survey, which generates data that can be analyzed in a relatively objective fashion. The Additional Clarification states that, if the Model Survey is administered in accordance with the OCR’s

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recommendations, then "OCR will presume that the Model Survey is an accurate measure of student interest, absent other direct and very persuasive evidence of unmet interest sufficient to sustain a varsity team." Thus, if the Model Survey results do not show a minimum level of interest necessary to sustain a varsity team in any intercollegiate sport that is not already sponsored by the school, the OCR ordinarily will defer to the Survey results and will consider the school to be in compliance with Prong Three.

If requisite interest is demonstrated by the Model Survey, the Additional Clarification outlines procedures for determining whether the interested students in fact have the ability to sustain a varsity team. Without evidence of requisite interest and ability, a school will not be required to start a new varsity team and will be considered in compliance with Title IX.

From a Legal Standpoint, the Model Survey Could be an Important Addition to Existing Compliance Programs


The principal objectives of a university's Title IX compliance program include: (1) to provide equal opportunities for participation in academic and extracurricular activities (including intercollegiate athletics) to male and female students alike; (2) to assure compliance with Title IX; and (3) to avoid (or to successfully defend against) costly OCR enforcement proceedings and other legal challenges relating to Title IX compliance.

Every school should evaluate whether using the Model Survey as a part of its Title IX compliance program could help it accomplish those objectives and others. The Model Survey can provide vital legal protections for schools, because the OCR ordinarily will defer to its results if it is properly administered and any private legal challenge to the school's program will be forced to overcome its presumably accurate data. Other approaches to measuring student interest – which measurement is required if the school intends to comply with Prongs Two or Three – do not have the benefit of this OCR deference. If schools merely assume that such interest does not exist on campus or attempt to measure it in some way not endorsed by the OCR, they will be vulnerable to an OCR or other legal challenge.

Even if the Model Survey reveals unmet interest in a particular sport, the Additional Clarification contemplates several further steps before the school must add that sport at a varsity level. There is no legal obligation to add a varsity sport for the underrepresented sex unless there is sufficient varsity-quality athletic ability among those expressing interest and a likelihood that such a varsity sport can be sustained in the appropriate geographical region. To this end, the Additional Clarification says that if a Model Survey indicates sufficient unmet interest in a particular varsity sport, the school then should take steps to confirm that interest, assess whether the requisite ability is present, and determine the sustainability of a varsity program in that particular sport. This approach may include the self-assessments of athletic ability by Survey respondents, organizational meetings and telephonic follow-up to confirm interest and gather further information as to the respondents' background and ability, and tryout sessions to analyze athletic ability.

If the Model Survey results and the further steps noted above leave the school with some uncertainty as to whether it is satisfying Prong Three, it may elect to organize a program in the particular sport on an intramural or club level to determine the sport's sustainability before instituting it as an intercollegiate sport. If, at the end of this process, there is sufficient interest, ability, sustainability and competition in the region, then, but only then, must the school add a new varsity sport.

Even if a school's athletic program satisfies the proportionality test of Prong One, there are reasons to consider using the Model Survey. The demographics of college student populations continue to change, with women approaching a sixty-percent majority on many campuses. As a result, schools that are proportional today might find themselves




falling out of Prong One compliance in the near future. Schools that employ the Model Survey and can demonstrate compliance by way of Prong Three in addition to Prong One gain the additional assurance that changing demographics will not cause them to fall out of compliance. These schools would also gain flexibility to avoid the need to implement "roster caps" or to impose other limitations on men's athletic programs.

Further, for schools that currently meet Prong One, use of the Model Survey carries no risk of creating any affirmative obligation on the part of the school to consider instituting any new varsity sport, even if the Survey identifies significant unmet interest.

Common Criticisms of the Model Survey Can Be Avoided

The NCAA has asked the Department of Education to repeal the Additional Clarification because the NCAA contends that it is inconsistent with Title IX and earlier OCR guidance, in that it permits schools to use the Model Survey as the sole basis for measuring student interest. Schools, however, need not look solely at the Model Survey results to evaluate unmet interest. Schools are free to consider other indicators of interests, such as petitions, the level of interest in intramural or club sports, and the like. The Model Survey can simply provide additional data as to student interest.




The Additional Clarification has also been criticized based on the fact that the Model Survey may be distributed via email, which may be overlooked by students who have the interest and ability to compete intercollegiately. Although the OCR has approved distributing the Model Survey via email, a school has the option of administering the Survey as a part of the class registration process or via another mandatory procedure in which students must respond to or actively bypass the Survey. By administering the Model Survey in this way, a school will ensure a higher response rate and more accurate results, thus blunting this common criticism of the Additional Clarification methodology.

The use of surveys has long been an accepted method of determining the existence of unmet interest for purposes of analyzing Title IX compliance. The Model Survey has the added benefit of producing data that the OCR will view as reliable for Title IX compliance purposes. Furthermore, administering the Model Survey periodically will allow schools to develop additional sources of data as to students' interests and abilities, which can benefit them in their proactive efforts to comply with Title IX.

In view of the material legal benefits achievable through the Model Survey, schools should give serious consideration to whether the Model Survey should be implemented as part of their Title IX compliance programs. If other factors suggest that the Model Survey should not be employed, those factors should be weighed against the potential legal benefits of developing the Survey data.

The decision whether or not to use the Model Survey has significant consequences and requires a fuller understanding than the policy debate's talking points can provide.



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Advocating for the Additional Clarification

"The New Interpretation of Title IX," Ted Witulski, NCEP Manager, USA Wrestling,
<<http://www.savefreshowrestling.com/titleix.html>>

10/18/2005
USA TODAY

The New Interpretation of Title IX

Ted Witulski
NCEP Manager
USA Wrestling

In March of 2005 supporters of Olympic sports received a glimmer of hope from the Department of Education. Though it wasn't the hoped for total elimination of proportionality as a "test" that many in the wrestling community have worked for, the new interpretation clearly stated that schools could use surveys to prove that they were meeting the needs and interests of the under-represented gender.

This was clearly stated deviation from Norma Cantu's interpretation of Title IX that decreed proportionality was the only "safe harbor" for schools, and later that schools had to meet strict proportionality—staying within in 1% of proportion of enrollment to athlete participation.

Now if colleges survey the school's students and the survey shows that the under-represented gender does not have as strong an interest in athletic participation than the school can use that as evidence that it meets the requirements of Title IX.

So, there is a glimmer of hope. Could we return wrestling back to Syracuse? What about Kansas State or Colorado or even Washington at the Division One level? Or, dare to dream actually getting a new program started at the Division One level in Texas?

Schools must be encouraged to use surveys to protect against a wrong-headed interpretation of Title IX. As a coach, being educated and actively involved in this issue is important. Right now, there are many young wrestlers at the high school level that aren't receiving scholarships to get an education because Title IX's misinterpretation nearly destroyed wrestling along with other Olympic sports.

We have a glimmer of hope. We can get these programs back and start new ones, but your involvement is absolutely necessary. Teach your team about Title IX. Let others now how to get involved and lead by example on this issue.

<http://www.savefresnowrestling.com/titleix.html>

Advocating for the Additional Clarification

"Coaches Praise New Title IX Reform," March 22, 2005

<http://www.savingsports.org/newsroom/display_release.cfm?id=2>

Coaches Praise New Title IX Reform

College Sports Council Says Interest Survey Solution is "Breakthrough Alternative to Gender Quota"

March 22, 2005

WASHINGTON, D.C. - March 22, 2005 - The College Sports Council, a national coalition of coaches, parents and athletes is praising action taken by the Department of Education to reform the way Title IX is being enforced.

"This clarification now gives schools a viable, common-sense alternative to the gender quota that has wreaked havoc on college athletics," said Eric Pearson, CSC Executive Director. "There is still work to be done but this is a positive step toward restoring Title IX to its original intent, fairness for all student athletes. Schools will no longer feel bound to proportionality and forced to eliminate sports opportunities for male athletes now that they can accurately measure and meet interest for male and female student athletes."

On March 17 the Department of Education issued a clarification of Title IX's three-part compliance test. The CSC sees this announcement as a significant reform breakthrough since, for the first time, there is now specific, straightforward guidance that enables schools to comply with the interest and abilities requirement of Title IX's regulations.

"For years now, athletes, parents, coaches and supporters have been pressing a heartfelt case that athletic teams were being sized down and eliminated all over the country," said Pearson. "At long last, the Department of Education has heard those voices and we are now passing an important milestone toward protecting athletes from the ravages of the artificial quota system called 'proportionality.'"

Additional Background and Sources: www.collegesportsCouncil.org

Advocating for the Additional Clarification

"Is the Title Clarification Your Path to Compliance with the Law?," *College Athletics and the Law*, Volume 3, Issue 1, April 2006, pp. 7-8

NCAA - National Collegiate Athletic Association

Advocacy group urges Executive Committee to use Title IX survey

August 30, 2006

The College Sports Council, a coalition of national sports organizations that has challenged the application of Title IX, urged the members of the NCAA Executive Committee to use surveys to gain Title IX compliance.

In March 2005, the U.S. Department of Education's Office for Civil Rights issued a clarification to Title IX policy that allows institutions to use a survey to determine interest among potential student-athletes. The clarification also provided a model survey. Title IX advocates believe the survey provides a way for institutions to skirt their obligations to female students.

A month after the clarification was issued, the Executive Committee passed a resolution urging schools not to use the survey and asking the Office for Civil Rights to rescind the clarification. The resolution cited flaws in the survey methodology and a shift in the burden to female students to show that they are entitled to equal opportunity as reasons the presidents opposed the clarification and accompanying survey.

The August 29 letter from College Sports Council Executive Director Eric Pearson to the members of the Executive Committee refers presidents to a legal analysis of the survey in the Vanderbilt Journal of Entertainment and Technology Law that analyzed the pros and cons of the survey. Authors John Almond and Dan Cohen, attorneys from Atlanta, said they believe schools should consider the survey as a path to Title IX compliance (see NCAA News story).

Pearson asked the presidents to survey both men and women as part of their institutions' registration process. "The (College Sports Council) believes that it is both a reasonable way to provide opportunity and a prudent legal course of action," he wrote. "Men and women both deserve the opportunity to voice their interest. There is no method that could be more fair and straight forward for students to demonstrate their interest than simply to be asked."

In addition to the Executive Committee's resolution opposing the use of the survey, other Title IX advocates, including the National Women's Law Center, the Women's Sports Foundation and the National Association of Collegiate Women Athletics Administrators all spoke out against the clarification.

[http://www.ncaa.org/wps/portal!/ut/p/kcxml/04_Sj9SPykssy0xPLMnMz0vM0Y_Qjz...+group+urges+Executive+Committee+to+use+Title+IX+survey+-+08-30-06+update+\(2+of+2\)9/1/2006+10:56:42+AM+\(last+accessed+April+19,+2007\).](http://www.ncaa.org/wps/portal!/ut/p/kcxml/04_Sj9SPykssy0xPLMnMz0vM0Y_Qjz...+group+urges+Executive+Committee+to+use+Title+IX+survey+-+08-30-06+update+(2+of+2)9/1/2006+10:56:42+AM+(last+accessed+April+19,+2007).)

Advocating for the Additional Clarification

"Advocacy Group Urges Executive Committee to Use Title IX Survey," August 30, 2006,
National Collegiate Athletic Association

Is the Title IX clarification your path to compliance with the law?

2 attorneys have tips on following the ED clarification

The media hasn't given much practical advice on using last year's additional clarification of Title IX to comply with prong three of the Title IX test, according to Daniel J. Cohen and John J. Almond, attorneys at the Rogers & Hardin LLP in Atlanta. They tried to fill that void by writing *Navigating into the New "Safe Harbor"-Model interest Surveys as a New Tool for Title IX Compliance Programs*.

It was recently published in the *Vanderbilt Journal of Entertainment and Technology Law*. The article offers tips on using the clarification properly so the Office for Civil Rights will consider you in compliance with prong three. However, they recommend meeting with your general counsel to decide if the clarification is a viable option for Title IX compliance.

Even though Title IX advocates want the ED clarification withdrawn, Cohen and Almond emphasize that it offers a definitive way to comply with prong three. "We're encouraging a more reasoned analysis of the clarification," Cohen said.

Here are some best practices that Almond and Cohen recommended for properly following the additional clarification:

- **Measure athletic interests.** If you use the model survey and find insufficient interest among female students at your institution in competing in a sport your institution doesn't offer, you're in compliance, according to OCR.
- **Predetermine the level of interest that would make you assess whether to create another varsity sport.** OCR defers to athletic administrators' decisions as to the minimum number of positive responses that will show requisite interest, according to the clarification. But if 10 women are interested in playing a sport and you only need five to field a team, there's sufficient interest in the sport, Almond said.
- **Predetermine the process for assessing sufficient ability for each sport.** You should try to maximize the transparency of your approach so OCR will consider it legitimate, according to the article. OCR will defer to AD's and coaches expertise in this area. For instance, you could have well-publicized meetings and tryouts. Make it clear before tryouts what's considered to be varsity level ability. You could also outline the expectations for a prospective teams' talent level in an athletics department mission statement.
- **Don't let a single coach make decisions about requisite ability.** She might be attacked in the future for having an agenda. Instead, select a panel with varying vantage points, including disinterested third parties, to make the assessments.

- **Administer the model survey periodically.** Cohen and Almond recommend conducting the survey on a biannual basis. However, if you administer the survey and six months later there's a deluge of petitions from intramural or club sports teams to create a particular sport, you still need to assess that interest, according to Almond.
- **Survey male and female undergraduate students.** It would probably be more difficult to just survey female students, Cohen and Almond state in the article. Also, you would lose a chance to collect potentially useful data that could help you track students' athletic interests.
- **Administer the survey so you generate high response rates.** You could make it a mandatory part of the registration process, according to Almond. Critics of the clarification have referred to the model survey as e-mail based, but it's actually Internet-based. And if you administer it only by e-mail, OCR won't defer to the results, unless you do it in a way that establishes a high response rate, Cohen said. "It's not like you can just e-mail this thing and be done with it," Cohen said.
- **Adequately explain the survey to students.** OCR will assume nonresponses to the survey indicate lack of interest only if all students have had an easy opportunity to respond to it, the purpose of the census has been made clear, and students are informed that nonresponses indicate a lack of interest, according to the additional clarification.

Contact Daniel J. Cohen at dcohen@rh-law.com and John J. Almond at jalmond@rh-law.com. Download a PDF copy of Cohen and Almond's article at www.rh-law.com/titleix.

Helpful Hints

Do more than the model survey to deflect criticism about using the clarification

There are a few things that might be deterring you from using the Department of Education's additional clarification to comply with prong three of the Title IX three-part test.

First, a group opposing the clarification might target your institution with a policy-based media campaign attacking your institution's Title IX compliance efforts, according to article Navigating into the New "Safe Harbor" -- Model Interest Surveys as a New Tool for Title IX. This was written by attorneys Daniel J. Cohen and John J. Almond.

But you might deflect this criticism by monitoring participation in club and intramural sports, using other factors besides model survey, getting the views of coaches, or tracking trends in local high school participation.

Second, the clarification could be challenged in court, according to National Women's Law Center senior counsel Neena Chaudhry.

"Courts generally give deference to an agency's interpretation of its own regulations," according to the article.

Usually courts can't easily jump in and second-guess interpretations of statutes by agencies, such as OCR, according to Almond. But he agrees it could be challenged in court.

Finally, what about the bipartisan resolution in Congress calling on the ED to withdraw the clarification?

"It's a statement by Congress of their concern about this issue," Chaudhry said. So even if it's approved, the clarification won't be overturned.

Opposing the Additional Clarification

Position of the National Coalition for Women and Girls in Education on the March 17, 2005 Department of Education Title IX "Additional Clarification"
<http://www.savetitleix.com/position_paper.html>.

Is the Title IX clarification your path to compliance with the law?
2 attorneys have tips on following the ED clarification

The media hasn't given much practical advice on using last year's additional clarification of Title IX to comply with prong three of the Title IX test, according to Daniel J. Cohen and John J. Almond, attorneys at the Rogers & Hardin LLP in Atlanta. They tried to fill that void by writing *Navigating into the New "Safe Harbor"-Model Interest Surveys as a New Tool for Title IX Compliance Programs*.

It was recently published in the *Vanderbilt Journal of Entertainment and Technology Law*. The article offers tips on using the clarification properly so the Office for Civil Rights will consider you in compliance with prong three. However, they recommend meeting with your general counsel to decide if the clarification is a viable option for Title IX compliance.

Even though Title IX advocates want the ED clarification withdrawn, Cohen and Almond emphasize that it offers a definitive way to comply with prong three. "We're encouraging a more reasoned analysis of the clarification," Cohen said.

Here are some best practices that Almond and Cohen recommended for properly following the additional clarification:

- **Measure athletic interests.** If you use the model survey and find insufficient interest among female students at your institution in competing in a sport your institution doesn't offer, you're in compliance, according to OCR.
- **Predetermine the level of interest that would make you assess whether to create another varsity sport.** OCR defers to athletic administrators' decisions as to the minimum number of positive responses that will show requisite interest, according to the clarification. But if 10 women are interested in playing a sport and you only need five to field a team, there's sufficient interest in the sport, Almond said.
- **Predetermine the process for assessing sufficient ability for each sport.** You should try to maximize the transparency of your approach so OCR will consider it legitimate, according to the article. OCR will defer to AD's and coaches expertise in this area. For instance, you could have well-publicized meetings and tryouts. Make it clear before tryouts what's considered to be varsity level ability. You could also outline the expectations for a prospective teams' talent level in an athletics department mission statement.
- **Don't let a single coach make decisions about requisite ability.** She might be attacked in the future for having an agenda. Instead, select a panel with varying vantage points, including disinterested third parties, to make the assessments.

- **Administer the model survey periodically.** Cohen and Almond recommend conducting the survey on a biannual basis. However, if you administer the survey and six months later there's a deluge of petitions from intramural or club sports teams to create a particular sport, you still need to assess that interest, according to Almond.
- **Survey male and female undergraduate students.** It would probably be more difficult to just survey female students, Cohen and Almond state in the article. Also, you would lose a chance to collect potentially useful data that could help you track students' athletic interests.
- **Administer the survey so you generate high response rates.** You could make it a mandatory part of the registration process, according to Almond. Critics of the clarification have referred to the model survey as e-mail based, but it's actually Internet-based. And if you administer it only by e-mail, OCR won't defer to the results, unless you do it in a way that establishes a high response rate, Cohen said. "It's not like you can just e-mail this thing and be done with it," Cohen said.
- **Adequately explain the survey to students.** OCR will assume nonresponses to the survey indicate lack of interest only if all students have had an easy opportunity to respond to it, the purpose of the census has been made clear, and students are informed that nonresponses indicate a lack of interest, according to the additional clarification.

Contact Daniel J. Cohen at dcohen@rh-law.com and John J. Almond at jalmond@rh-law.com. Download a PDF copy of Cohen and Almond's article at www.rh-law.com/titleix.

Helpful Hints

Do more than the model survey to deflect criticism about using the clarification

There are a few things that might be deterring you from using the Department of Education's additional clarification to comply with prong three of the Title IX three-part test.

First, a group opposing the clarification might target your institution with a policy-based media campaign attacking your institution's Title IX compliance efforts, according to article Navigating into the New "Safe Harbor" -- Model Interest Surveys as a New Tool for Title IX. This was written by attorneys Daniel J. Cohen and John J. Almond.

But you might deflect this criticism by monitoring participation in club and intramural sports, using other factors besides model survey, getting the views of coaches, or tracking trends in local high school participation.

Second, the clarification could be challenged in court, according to National Women's Law Center senior counsel Neena Chaudhry.

"Courts generally give deference to an agency's interpretation of its own regulations," according to the article.

Usually courts can't easily jump in and second-guess interpretations of statutes by agencies, such as OCR, according to Almond. But he agrees it could be challenged in court.

Finally, what about the bipartisan resolution in Congress calling on the ED to withdraw the clarification?

"It's a statement by Congress of their concern about this issue," Chaudhry said. So even if it's approved, the clarification won't be overturned.

Opposing the Additional Clarification

Statement from NCAA President Myles Brand Regarding Department of Education Title IX Clarification, March 22, 2005



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POSITION OF THE NATIONAL COALITION FOR WOMEN AND GIRLS IN EDUCATION ON THE MARCH 17, 2005 DEPARTMENT OF EDUCATION TITLE IX "ADDITIONAL CLARIFICATION"

On March 17, 2005, the U.S. Department of Education ("DOE") issued a new Title IX policy that threatens to reverse the decades of progress women and girls have made in sports. Under the "Additional Clarification of Intercollegiate Athletics Policy: Three-Part Test - Part Three" and the model survey accompanying it, schools can now claim they are fully meeting women's interests in sports based simply on the responses, or lack of responses, to an e-mail survey asking female students about their interests in sports. This under-the-radar attack on Title IX's application to athletics was issued without public notice or opportunity for public comment.



It is the position of the National Coalition for Women and Girls in Education (NCWGE) that the Clarification violates basic principles of equality under Title IX and will perpetuate the cycle of discrimination to which female athletes have been subjected. In particular:

- The Clarification creates a major loophole through which schools can evade their obligation to provide equal opportunity in sports. It conflicts with a key purpose of Title IX-to encourage women's interest in sports and eliminate stereotypes that discourage them from participating-and inappropriately puts the burden on female students to show that they are entitled to equal opportunity, instead of on schools to demonstrate that they are in compliance with Title IX.
- The Clarification eliminates schools' responsibility to look broadly and proactively at whether they are satisfying women's interests in sports by allowing schools to rely solely on an e-mail survey of enrolled and admitted students. Such a survey is likely to measure only the discrimination that limited women's opportunities in sports.
- The Clarification authorizes a survey methodology that is scientifically flawed and inconsistent with prior Department policies. For example, the Department states that failure to respond to the survey is evidence of a lack of interest in playing sports.

For these reasons, the NCWGE calls on the Secretary of Education to withdraw the Clarification.

Opposing the Additional Clarification

Statement of the National Center for Lesbian Rights, April 2005
<http://www.nclrights.org/projects/sp-titleix_factsheets.htm>

Statement from NCAA President Myles Brand Regarding Department of Education Title IX Clarification

For Immediate Release

Tuesday, March 22, 2005

Contact

Bob Williams

Managing Director of Public
and Media Relations

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INDIANAPOLIS—The following is a statement from NCAA President Myles Brand regarding the Department of Education's clarification of Title IX with respect to the use of an e-mail survey to enrolled undergraduate students as a measure of interest in athletics:

"I am disappointed in the way the Department of Education promulgated its clarification of Title IX regulations with regard to determining the interest level of females in athletics. The department issued its clarification without benefit of public discussion and input.

"The e-mail survey suggested in the clarification will not provide an adequate indicator of interest among young women to participate in college sports, nor does it encourage young women to participate – a failure that will likely stymie the growth of women's athletics and could reverse the progress made over the last three decades. One need only observe the Division I Women's Basketball Championship that is underway to understand the effect of encouragement for women to participate, the high level of play at which women compete and the public interest in women's athletics."

Opposing the Additional Clarification

Department of Education Creates Huge Title IX Compliance Loophole: The Foundation
Position, Women's Sports Foundation, Jun. 16, 2005,
<<http://www.womenssportsfoundation.org>>



The National Center for Lesbian Rights

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THE DEPARTMENT OF EDUCATION'S "CLARIFICATION" OF TITLE IX POLICY UNDERMINES THE LAW AND THREATENS THE GAINS WOMEN AND GIRLS HAVE MADE IN SPORTS

National Women's Law Center, April 2005



The Department of Education, without any notice or public input, has issued a new Title IX policy—under the guise of a "Clarification"—that creates a major loophole through which schools can evade their obligation to provide equal opportunity in sports. The new policy allows schools to gauge female students' interest in athletics simply by conducting e-mail surveys and to claim—in these days of excessive e-mail spam—that a failure to respond to the survey shows a lack of interest in playing sports. It eliminates schools' obligation to look broadly and proactively at whether they are satisfying women's interests in sports, and will thereby perpetuate the cycle of discrimination which women have been subjected. The new "Clarification"—an under-the-radar revision to Title IX's application to athletics following public rejection of the Administration's prior efforts to weaken the law—violates basic principles of equality and threatens to reverse the enormous progress women and girls have made in sports since the enactment of Title IX.

The new "Clarification" is inconsistent with long-standing Department policies and with fundamental principles of equality under Title IX.

Title IX requires schools to provide young women with equal sports participation opportunities. The long-standing athletics policies reaffirmed by the Department of Education less than two years ago¹ provide three independent ways—the "three prong test"—for schools to satisfy this requirement. Specifically, a school can demonstrate compliance if:

- The percentages of male and female athletes are about the same as the percentages of male and female students enrolled in the school (the "proportionality" prong); **or**
- The school has a history and continuing practice of expanding opportunities for the gender that has been excluded from sports—usually women; **or**
- The school is fully and effectively meeting the interests and abilities of the underrepresented gender—usually women—to participate in sports.²

The Department's new "Clarification" allows schools not meeting either the first or second prong to show that they are nonetheless in compliance with Title IX by doing nothing more than sending a "model" e-mail survey to their female students asking about their interest in additional sports opportunities. The Department will presume that schools comply with Title IX if they administer this survey and find insufficient interest to support additional opportunities for women—even if schools get very low response rates—unless female students can provide "direct and very persuasive evidence" to the contrary. This policy change makes a mockery of the third prong requirement that schools show full and effective accommodation of their female students' athletic interests. Among the problems with the new policy are the following:

- **The new "Clarification" allows schools to use surveys alone to demonstrate compliance with the law.** Under prior and longstanding Department policies, a survey of student interest is only one of many factors

a school must evaluate to show that it is fully meeting women's interests is the third prong of the three-part test. Other factors that schools must consider include: requests by students to add a particular sport; participation rates in extramural or intramural sports; participation rates in sports in high schools, amateur athletic associations, and community sports leagues in areas from which the school draws its students; and interviews with students, coaches, and administrators.³ The new "Clarification" eliminates the obligation to consider these important criteria.

- **Surveys are likely only to provide a measure of the discrimination if interest has limited, and continues to limit, sports opportunities for women and girls.** Courts have recognized that interest cannot be measured apart from opportunity⁴; women's interests in sports have been artificially limited by discrimination to which they have been subjected, and women's interests have grown as Title IX has opened new sports participation opportunities for them. As a result, basing women's future opportunities on their responses to a survey to measure their prior lack of exposure will only perpetuate the cycle of discrimination.
- **The new "Clarification" conflicts with a key purpose of Title IX—to encourage women's interest in sports and eliminate stereotypes that discourage them from participating.**⁵ The new "Clarification" is particularly damaging for students in high school, where female students are likely to have had few or no sports opportunities that would inform their responses to an interest survey, and where students should be encouraged to try many different sports, not have their future opportunities limited by what they might have experienced or be interested in at that time.
- **The new "Clarification" allows schools to restrict their surveys to only enrolled and admitted students, thereby permitting schools to evade their legal obligation to measure interest broadly.** The "Clarification" ignores the reality that students interested in a sport not offered by a school are unlikely to attend that school. By not requiring schools to evaluate interest exists beyond their own campuses—such as in high school, community, and recreational programs in the areas from which a school typically draws its students—the new policy allows schools to evade their legal obligation to measure interest broadly for interest in certain sports by women. Instead, the policy rewards schools with a presumption of compliance for wearing blinders—that is, for restricting their sports offerings and then claiming that they are satisfying the interests of those who are content with those restricted offerings.
- **The survey methodology authorized under the new "Clarification" is flawed and inconsistent with the requirements of prior Department of Education policy. For example:**
 - **Schools may e-mail the survey to all female students and interpret a lack of response as evidence of lack of interest.** Given the notoriously low response rates to surveys in general, let alone to surveys sent via email, this authorization will allow schools to avoid adding sports opportunities for women even where interest does in fact exist on campus.
 - **Schools may presume that young women's self-assessment of ability to compete at the varsity level reflects an actual lack of ability.** Young women who have played sports at the club level, or who have played sports other than the particular ones being considered for varsity status, may well have the ability to compete at a varsity level in the sport at issue. Tennis players, for example, may also be able to play squash, and many female athletes can become expert rowers. But under the new "Clarification"—and contrary to the Department's prior policy—schools are relieved of any obligation to seek the opinions of coaches

other experts on this issue.

- **The new "Clarification" shifts the burden to female students to show that they are entitled to equal opportunity.** Where schools are not providing equal participation opportunities for women, long-standing Department of Education policies make clear that schools have the burden of showing—and the Office for Civil Rights the burden of rigorously evaluating—that they are nevertheless fully meeting the interests and abilities of their female students. The new "Clarification" instead forces women to prove that their schools are satisfying their interests and that they are entitled to additional opportunities.
- **The new "Clarification" makes no provision for the Department to monitor schools' implementation of the model survey or its results.** Adding insult to injury, the Department's new policy does not require that the Office for Civil Rights monitor compliance to ensure that schools meet even minimal requirements for survey use or interpret the results accurately.

The new policy threatens to reverse the enormous progress women and girls have made in sports since the enactment of Title IX and to perpetuate further discrimination against them.

Title IX has opened the door for millions of women and girls to participate in sports. While fewer than 32,000 women participated in college sports prior to the enactment of Title IX, today that number has expanded nearly five fold—or 400%—to more than 150,000 women. Female participation in high school athletics has increased from less than 300,000 to over 2.8 million.⁶

These increased sports opportunities have provided immense benefits to a new generation of female athletes. Playing sports promotes responsible social behavior, greater academic success, and increased personal skills. Compared to their non-athletic peers, athletes are less likely to smoke or use drugs; have lower rates of sexual activity and teen pregnancy; have higher grades; and learn important life skills including the ability to work with a team, perform under pressure, set goals, and accept criticism.⁷

Despite these important benefits, critics of gender equity continue to attack Title IX's requirement that women be provided equal participation opportunities and claim instead that women are inherently less interested in sports than are men. Claims like these, as well as wide-spread non-compliance with Title IX in schools across the country, have resulted in women being treated like second-class citizens on the field. For example, although women in Division I colleges are 53% of the student body, they receive only 41% of the sports participation opportunities, 36% of athletic operating dollars, and 32% of the money spent on recruitment.⁸ At the high school level, girls represent only 42% of varsity athletes.⁹

* * *

This is not the first time that the Bush Administration has attempted to undermine Title IX's equal opportunities for female athletes. Its attempts to do so through its 2002 Commission on Opportunity in Athletics were stalled by a massive public outcry and the defense of Title IX. Unable to achieve its goals in the light of day, the Administration has now resorted to stealth tactics by unilaterally adopting this dangerous new policy without public announcement or opportunity for public comment. **The Department should withdraw this misguided and illegal "Clarification" and honor its promise to enforce long-standing policies that reflect Title IX's goals and requirements.**

NOTES:

1. United States Department of Education, Office for Civil Rights, *Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance* (July 11, 2003).

2. United States Department of Health, Education, and Welfare, Office for Civil Rights, *Title IX of the Education Amendments of 1972; a Policy Interpretation of Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71,413 (December 11, 1979).
3. United States Department of Education, Office for Civil Rights, *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* (Jan. 16, 1990).
4. *Cohen v. Brown University*, 101 F.3d 155, 179-80 (1st Cir. 1996).
5. *Neal v. Board of Trustees of the California State Universities*, 198 F.3d 763 (9th Cir. 1999).
6. National Collegiate Athletic Association (NCAA), *1982-2002 Sponsorship and Participation Report 65*, available at http://ncaa.org/library/research/participation_rates/1982-2002/participation_rates.htm; National Federation of State High School Associations (NFHS), *2002 High School Athletics Participation Survey*, available at http://www.nfhs.org/nf_survey_resources.asp.
7. See, e.g., Carnegie Corporation, *The Role of Sports in Youth Development* (March 1996); NFHS, *The Case for High School Activities* (2002) at 3, 9; T. National Campaign to Prevent Teen Pregnancy, *Fact Sheet: Not Just Another Single Issue: Teen Pregnancy and Athletic Involvement* (July 2003); *The Women's Sports Foundation Report: Sport and Teen Pregnancy* (1998) at 1; The President's Council on Physical Fitness and Sports, *Physical Activity & in the Lives of Girls* (Spring 1997); and *Black Female Athletes Show Grad-Gains*, *The NCAA News* (June 28, 1995).
8. NCAA, *1999-00 Gender Equity Report* (2002).
9. NFHS, *2002 High School Athletics Participation Survey*.

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Opposing the Additional Clarification

"Sen. Murray, Colleagues Sign Letter to Protect Title IX," *US Fed News*, Nov. 10, 2005



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ISSUES & ACTION

Department of Education Creates Huge Title IX Compliance Loophole: The Foundation Position

Thu 16-Jun-2005

Executive Summary

The Department of Education's March 17, 2005, letter announcing "additional clarification" of its policy for collegiate compliance with Title IX in athletic programs, issued without public input or comment, "clarifies" nothing and, instead, marks a dramatic and unprecedented reversal of the department's previous policy that violates practically every legal principle upon which Title IX's 30-year jurisprudence is based and shifts the burden of compliance from schools to female athletes.



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Specifically, the letter and accompanying "model survey" are contrary to established case law, contradict the Department's prior pronouncements and its Title IX Athletics Investigator's Manual, and ignore the reality that high schools and colleges create their sports teams and sports offerings sometimes years in advance by encouraging (in the case of high schools) and recruiting (in the case of colleges) prospective athletes to their campuses. The "model survey" ignores this reality by measuring only the interest of current, existing students, who were neither encouraged nor recruited for teams or sports beyond those the schools or colleges provided at the time. As such, the survey is an inherently biased and illogical methodology that merely entrenches the inequalities in the institutions' predetermined, existing sports programs.

The gist of the letter is that schools in which females are underrepresented in athletics compared to their proportion in the general student body (Prong 1 of Title IX's participation requirement) and that have not demonstrated a history and continuing practice of expanding opportunities for the underrepresented sex (Prong 2) would be deemed in compliance with the law under Prong 3 of the athletic participation provision if they simply e-mailed a "model survey" to current students to determine their interests and abilities and found interest by the underrepresented sex to be lacking.

This survey would create a presumption of compliance with Title IX, as long as the school did not recently drop a women's team or had a recent request for elevation of women's club sport to varsity status. Once the survey is administered, the burden of demonstrating compliance with Prong 3 would shift from the college or school to the athlete. In essence, the institution would enjoy a presumption of compliance, a difficult hurdle for an athlete to surmount.

In summary, the letter and "model survey" contravene the basic principles of Title IX and its long-standing jurisprudence. Every legal authority -- including the department's own prior policies and interpretations -- agree that surveys of existing students are an inaccurate, biased, and invalid method of determining compliance under Title IX's third prong. The letter confirms that the department has become the "fox guarding the henhouse" by thumbing its nose at the law and the female athletes it is charged with protecting. The Department, which has conducted no Title IX investigations since 2002, has now taken a startling step that protects the status quo in college sports.

Accordingly, the Women's Sports Foundation calls upon the Secretary of Education to withdraw the March 17 letter and model survey.

A "Survey" Is an Invalid Measure of Interest in Participation

The Department's "model survey" fails to provide a valid measure of women's interest in sports and, instead, institutionalizes the very discrimination that is and has been the basis for women's lack of opportunity to participate in sports. The use of surveys rests on the stereotyped notion that women are inherently less interested in sports than men, which is contradicted by the country's experience of Title IX and fundamental principles of civil rights law.

Some experts in the use of survey instruments have found that surveys measure attitude, rather than predicting behavior. They assert that male respondents are simply more likely than women to profess an interest in sport, regardless of their eventual willingness to show up for a team and play. In other words, professing interest does not predict behavior well and should not be used to predict actual levels of participation when nondiscriminatory opportunities are made available to boys and girls. To use the results of interest surveys as the sole justification for withholding participation opportunities is an improper use of attitude survey methodology that the courts and policy-makers have repeatedly rejected due to their irrelevance and bias.

And what if the students do not respond to the e-mailed "model survey"? The letter says, "Although rates of nonresponse may be high with the e-mail procedure, under these conditions, OCR will interpret such nonresponse as a lack of interest." To get a chance to play, females have to respond to their e-mails, a requirement that male athletes never have to meet. Experts in survey methodology confirm that inferring nonresponses as "no interest" turns survey empiricism on its ear. A general rule of thumb is that only around 20% of persons who receive a survey respond to it. The results of the respondents are then generalized to the population of interest. If half of the respondents indicated they were interested in sports, then the school should assume that half of the female students are interested. To demonstrate the bias in the proposed model survey, reverse the OCR approach. A school would send out an e-mail survey and ask students if they have NO interest in a given sport. Nonresponses would then be interpreted as affirmative interest.

Male Athletes Have Never Been Required to Prove Interest in Order to Obtain Participation Opportunities

Male athletes have never had to prove they were interested in sports to receive opportunities to play. Schools simply assumed male athletes were interested in sports, hired a coach who recruited athletes to play, and offered varsity athletic experiences. If you do the same for women, they too will play. We know of no instance in which a high school or college started a varsity women's team, hired a coach and then had the coach return his or her paycheck because he or she could not find enough women to play.

Reliance on Existing Student Body for Assessment is Wrong

At the college level, athletes are only rarely recruited from the existing student body, but rather are recruited from the region or country at large. At the high school level, the coach finds students with and without experience or skill who are big enough or fast enough and urges them to come out for the team. Now, a college that goes out and recruits male athletes from all over the country and not from its existing student body, is not required to do the same for female athletes and can eliminate this obligation by administering an e-mail survey. Now, a high school is not obligated to encourage female athletes to come out for teams in the same way it encourages male athletes to come out for teams, so long as it administers an e-mail survey.

This result reflects an absence of common sense and a dereliction of the

Department's authority. A huge Title IX compliance loophole has been created despite a similar analysis by the courts on why surveys of the interest of the existing student body or even a pool of applicants to the university are patently wrong. In the most comprehensive and accepted case on the topic, *Cohen v. Brown University*, a federal appeals court stated that the type of survey the department has proposed to gauge compliance under the third prong was "illogical" and "circular" in its reasoning.

The court expressly rejected the practice of surveying current students, noting that Brown actively recruits most students who end up playing on its varsity teams. The court stated: "What students are present on campus to participate in a survey of interests has already been predetermined through the recruiting practices of the coaches. What teams are established and can recruit or qualify for admissions preferences has already been predetermined by Brown. Thus, the interest present on campus is controlled by Brown; to then suggest that Brown must only satisfy the relative interests of students present on campus is circular."

Further, the court rejected surveying the pool of applicants to Brown. The court stated: "Using the pool of actual Brown applicants fails to consider the fact that college applicants interested in a sport not offered as a varsity sport at Brown may not even apply to Brown. A survey of actual Brown applicants would thus fail to capture the interest of those student-athletes who choose not to apply due to the limits of Brown's program offerings. To suggest that Brown need only satisfy the interests of actual applicants where Brown's selection of program offerings affects who applies to the school in the first place is illogical."

Model Survey as Sole Litmus Test Defines Current Legal Authority

Every legal authority has disallowed using surveys of existing students as the sole measure of compliance, including:

- IX Policy Interpretation, 44 Fed. Reg. 71415 (1979 policy)
- Valerie M. Bonnette & Lamar Daniel, Department of Education, Title IX Athletics Investigator's Manual (1990)
- 1996 OCR Clarification of Intercollegiate Athletics Policy Guidance; The Three-Part Test, available at <http://www.ed.gov/about/offices/list/ocr/docs/clarific.html>
- *Cohen v. Brown University*, 101 F.3d 155 (1st Cir. 1996) at 178-179.

While these legal authorities have held that this survey practice cannot be made the sole litmus test for compliance under Prong 3 of Title IX, the letter sets up just a situation, totally reversing the current standard. The letter states that only if the "model survey" is not administered will it look at the following other factors which the courts have maintained must all be examined:

- Requests for the addition of a varsity team (even if no club team currently exists) or elevation of an existing club sport to varsity status
- Participation in club or intramural sports
- Participation in high school sports, amateur athletic associations and community sports leagues that operate in areas from which the institution draws its students
- Intercollegiate varsity participation rates, as identified by national and regional intercollegiate sports governing bodies, in the institution's competitive region

Yet these are the same factors that schools formerly had to adhere to under the former policy.

Dependence on a single survey methodology cancels the Department of Education's 1979 Policy Interpretation, which states that schools are permitted to

determine the athletic interests and abilities of students by nondiscriminatory methods of their choosing, provided that all of the following standards are met:

- a. The process take into account the nationally increasing levels of women's interests and abilities;
- b. The methods of determining interest and ability do not disadvantage the members of an underrepresented sex;
- c. The methods of determining ability take into account team performance records; and
- d. The methods are responsive to the expressed interests of students capable of intercollegiate competition who are members of an underrepresented sex.

The letter and "model survey" also conflict with the department's Title IX Athletics Investigator's Manual, which instructs investigating officials to consider other factors reflecting interests and abilities, such as sports programs at "feeder" schools and community and regional sports programs. More importantly the investigator's manual states that a student survey may be a remedial tool to be used after a determination that an institution has failed the third prong; a survey is not utilized to determine compliance in the first instance, however. While a student survey may be part of a remedy to determine what sports to add when an institution's current program fails Prong Three, it is not a proper test upon which to base compliance.

In summary, the letter and "model survey" contravene the basic principles of Title IX and its long-standing jurisprudence. Every legal authority – including the Department's prior policies and interpretations – agree that surveys of existing students are an inaccurate, biased and invalid method of determining compliance under Title IX's third prong. It ignores the effect of recruiting and the self-selection of athletes with existing desired sports programs. Yet the Department's letter and "model survey" contravene the law's very purpose by further disadvantaging women via a biased and rejected methodology.

References

- 1** Authored by Nancy Hogshead-Makar, Professor of Law, Florida Coastal School of Law, Olympic gold medalist swimmer, and Donna Lopiano, Ph.D., Chief Executive Officer, Women's Sports Foundation. First published as commentary on *InsideHigherEd.com*, March 24, 2005: (<http://www.insidehighered.com/views/2005/03/24/lopiano>)
- 2** Full text located at: <http://www.ed.gov/about/offices/list/ocr/docs/title9guidanceadditional.htm>
- 3** *Cohen v. Brown University*, 101 F.3d 155 (1st Cir. 1996) at 198-179.
- 4** 1996 OCR Clarification of Intercollegiate Athletics Policy Guidance; *The Three-Part Test*, available at <http://www.ed.gov/offices/OCR/docs/clarific.html>.
- 5** Department of Education's Title IX Athletics Investigator's Manual (1990).
- 6** This point has been made by, for example, Donald Sabo, Ph.D., Professor of Sociology, D'Youville College, Director of the Center for Research on Physical Activity, Sport & Health. Former President, North American Society for the Sociology of Sport. Professor Sabo was an expert witness on research methodology for *Cohen v. Brown University*, and has extensively analyzed the methodological problems with such surveys.
- 7** *Cohen v. Brown University*, 879 F.Supp. 185 at 206
- 8** *Id.* at 207
- 9** "OCR will determine whether there is sufficient unmet interest among

the institution's students who are members of the underrepresented sex to sustain an intercollegiate team. OCR will look for interest by the underrepresented sex as expressed through the following indicators, among others:

- requests by students and admitted students that a particular sport be added;*
- requests that an existing club sport be elevated to intercollegiate team status;*
- participation in particular club or intramural sports;*
- interviews with students, admitted students, coaches, administrators and others regarding interest in particular sports;*
- results of questionnaires of students and admitted students regarding interests in particular sports; and*
- participation in particular interscholastic sports by admitted students.*

In addition, OCR will look at participation rates in sports in high schools, amateur athletic associations, and community sports leagues that operate in areas from which the institution draws its students in order to ascertain likely interest and ability of its students and admitted students in particular sport(s).⁵ For example, where OCR's investigation finds that a substantial number of high schools from the relevant region offer a particular sport which the institution does not offer for the underrepresented sex, OCR will ask the institution to provide a basis for any assertion that its students and admitted students are not interested in playing that sport. OCR may also interview students, admitted students, coaches, and others regarding interest in that sport.

An institution's evaluation of interest should be done periodically so that the institution can identify in a timely and responsive manner any developing interests and abilities of the underrepresented sex. The evaluation should also take into account sports played in the high schools and communities from which the institution draws its students both as an indication of possible interest on campus and to permit the institution to plan to meet the interests of admitted students of the underrepresented sex."

¹⁰ 44 Fed. Reg. at 71, 417

¹¹ Valerie M. Bonnette & Lamar Daniel, Department of Education, Title IX Athletics Investigator's Manual (1990)

¹² *Id.*

¹³ *Id.* at 27 "[a] survey or assessment may be required as a part of a remedy when OCR has concluded that an institution's current program does not equally effectively accommodate the interests and abilities of students.

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Opposing the Additional Clarification

"Senate Panel Says More Proof Needed for Colleges' Compliance with Title IX," Jamie Schuman, *Chronicle for Higher Education*, July 29, 2005

THE CHRONICLE OF HIGHER EDUCATION

Athletics

<http://chronicle.com/weekly/v51/i47/47a03802.htm>

From the issue dated July 29, 2005

SIDELINES

Senate Panel Says More Proof Needed for Colleges' Compliance With Title IX

By JAMIE SCHUMAN

How should colleges prove that they are complying with a key federal gender-equity law?

This month the Senate Appropriations Committee said the U.S. Department of Education should rescind a guideline that allows colleges to use the results of a single e-mail survey to measure the demand for women's sports on their campuses. Colleges use those surveys to demonstrate compliance with Title IX of the Education Amendments of 1972.

Calling such survey results an insufficient measurement, committee members said colleges should seek out additional evidence when trying to determine the level of interest in women's athletics as a means of compliance with the law. Title IX bars sex discrimination at institutions receiving federal funds and requires, among other things, that men and women have equal opportunities to play college sports.

Colleges can demonstrate that they meet the terms of Title IX in several ways. One is to prove that their women's sports programs fully accommodate the interests of female students. In March the department said colleges could prove that they are meeting those interests through one test: e-mail surveys of all students or all female students.

The committee expressed its views on the guideline in a report accompanying a bill to finance the Education Department in the 2006 fiscal year. The bill itself, which was adopted this month with no major changes from legislation passed earlier by an appropriations subcommittee (*The Chronicle*, July 13), now moves to the Senate floor.

Some members of the Appropriations Committee hope to amend the bill at that point to include their sentiments on the Title IX guideline, said Alex S. Glass, a spokeswoman for Sen. Patty Murray, a Democrat from Washington State, who helped write the report's language.

The report asks the Education Department to require colleges to make "reasonable, good-faith efforts" to gather other evidence of women's interest in sports.

"The committee believes survey results are not sufficient to demonstrate compliance if other evidence exists, such as requests for athletic teams, that contradicts the conclusions drawn from the survey," the report says.

It also asks the department to produce a report by March 17, 2006, on how and to what extent colleges that use the survey option also seek out additional information.

The committee wrote that the department had intended to provide colleges with more guidance on how to comply with Title IX, but that in practice, the new guideline created a loophole that allows institutions to bypass the comprehensive analysis of interest in women's sports.

Last month more than 140 Democrats in the U.S. House of Representatives sent a letter to President Bush, urging him to withdraw the guideline.

<http://chronicle.com>

Section: Athletics

Volume 51, Issue 47, Page A38

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Opposing the Additional Clarification

"The Testimony of Donna De Varona before the Senate Committee on Commerce, Science, and Transportation," February 1, 2006, <<http://commerce.senate.gov>>

US Fed News

November 10, 2005 Thursday 12:53 AM EST

SEN. MURRAY, COLLEAGUES SIGN LETTER TO PROTECT TITLE IX

BYLINE: US Fed News

LENGTH: 862 words

DATELINE: WASHINGTON

The office of Sen. Patty Murray, D-Wash., issued the following press release:

Sen. Patty Murray (D-Wash.) today joined with six of her Senate colleagues in sending a letter to the House and Senate managers of the Labor, HHS and Education Appropriations conference report, to urge them to accept Senate language protecting Title IX.

Senators Hillary Rodham Clinton (D-NY), Jim Jeffords (I-VT), Edward Kennedy (D-MA), Joe Lieberman (D-CT), Gordon Smith (R-OR) and Olympia Snowe (R-ME) also signed the letter.

"Title IX has been an extraordinary success in opening up new worlds of participation in sports by young women and girls, and it would be a serious mistake to roll back that progress," the Senators wrote in their letter. "We urge you to accept the Senate language regarding **Title IX and the Additional Clarification** to ensure that the new guidance does not weaken enforcement of Title IX athletics."

On March 17, 2005, the U.S. Department of Education issued a new Title IX policy that threatens to reverse the decades of progress women and girls have made in sports. Under the Administration's "Clarification," schools can now claim they are fully meeting women's interests in sports based simply on the responses - or lack of responses - to an e-mail survey asking female students about their interests in sports. This under-the-radar attack on Title IX's application to athletics was issued without public notice or opportunity for public comment.

The proposed Senate report language requires the Department of Education to prepare a report on the use of surveys by institutions of higher education. The report will include what other information was considered in assessing student interest and the decisions made about athletic opportunities at these institutions. The report further directs the Department of Education not to expend funds on activities associated with this guidance until the conferees have adequate time to review the process.

A full transcript of the letter to the LHHS conference managers follows:

November 10, 2005

Dear Chairman Specter, Ranking Member Harkin, Chairman Regula and Ranking Member Obey:

We urge you to accept the Senate language regarding Title IX of the Education Amendments of 1972 and the Department of Education's March 17, 2005 policy guidance entitled "Additional Clarification of the Intercollegiate Athletic Policy: Three Part Test - Part Three" in the final 2006 Labor, Health and Human Services, and Education Appropriations Conference Report.

For over thirty years, Title IX has opened doors by giving women and girls an equal opportunity to participate in student sports, and we are concerned that the Department's proposal could unfairly reduce their

opportunities for participation in the future. Under the Department's new guidance, schools that provide fewer sports opportunities to women can be considered to have accommodated female students and complied with Title IX, based solely on the results of a student survey. If female students do not reply to a survey emailed to them, the Department will assume that they are not interested in additional sports activities. We are concerned that a survey alone cannot reliably measure students' interest in sports. Many students may not respond to, or even open, email surveys.

The new guidance also does not require colleges to weigh other factors they have traditionally had to consider, such as coaches' and administrators' opinions, or women's athletic participation at nearby high schools or in recreational leagues, even though these factors are important guides to female students' interest and potential. By contrast, in answering a survey, students who have been denied equal opportunity in sports may express only tentative interest in sports or confidence in their skills. Such surveys may actually do little more than reflect the current denial of equal opportunity, rather than the students' true interest and potential. We are concerned that such surveys would provide colleges an easy means of evading Title IX's goal of equal opportunity.

The proposed Senate report language responds to these concerns by requiring the Department of Education to prepare a report on the use of surveys by institutions of higher education. The report will include what other information was considered in assessing student interest and the decisions made about athletic opportunities at these institutions. The report further directs the Department of Education not to expend funds on activities associated with this guidance until the conferees have adequate time to review the report.

Title IX has been an extraordinary success in opening up new worlds of participation in sports by young women and girls, and it would be a serious mistake to roll back that progress. We urge you to accept the Senate language regarding **Title IX and the Additional Clarification** to ensure that the new guidance does not weaken enforcement of Title IX in athletics. Thank you.

Sincerely,

Senator Patty Murray

Senator Hillary Rodham Clinton

Senator Jim Jeffords

Senator Edward Kennedy

Senator Joe Lieberman

Senator Gordon Smith

Senator Olympia Snowe

LOAD-DATE: November 14, 2005

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Given at a Full Committee Hearing:

Promotion and Advancement of Women in Sports

Wednesday, February 1 2006 - 10:00 AM - Hart 216

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The Testimony of

Ms. Donna de Varona

U.S. Olympian and Sports Commentator,

**TESTIMONY OF DONNA DE VARONA
BEFORE THE SENATE COMMITTEE
ON COMMERCE, SCIENCE, AND TRANSPORTATION**

February 1, 2006

Good Morning, I am Donna de Varona. I want to thank the Senate Committee on Commerce, Science and Transportation for inviting me to testify today, and I ask that my written statement and attachments be included in the record.

My relationship with Washington and Congress dates back to the 1960s, when after returning from the 1964 Olympic games in Tokyo, I was appointed to my first of four terms on the President's Council on Physical Fitness. Back then I spent my summers working in intercity programs with children. I have also served on the United States Olympic Committee and the Boards of the Special Olympics, the Women's Sports Foundation, and the U.S. Soccer Foundation. I was a member of President Ford's Commission on Olympic Sports and President Carter's Women's Advisory Commission. From 1976 to 1978, I was a special consultant to the U.S. Senate on sports matters, and most recently I served as a Commissioner on Secretary of Education Roderick Paige's Opportunity in Athletics Commission. Subsequently, I was appointed to a Senate task force to help recommend a comprehensive plan to restructure the United States Olympic Committee.


Today we have been asked to address the status of women in sport both in the areas of promotion and opportunities. Although women and young girls have come a long way since the passage of Title IX some thirty four years ago, there is still a lot to do. The framers of the legislation and later on the guidelines understood that mandating equality in opportunity could not happen overnight, and that is the reason why the guidelines and the three-part participation test are crafted the way they are. The guidelines and the test are flexible and fair. History has painted a picture of tremendous growth and acceptance of the female athlete, but she still battles the perception that girls and women are inherently less interested in sports than men and that providing women with opportunities cheats men out of resources. The argument pits young men and women against each other, and claims like these, as well as widespread non-compliance with Title IX in schools across the country have resulted in women being treated like second-class citizens on the playing field. For example, although on average women are 54% of the students in colleges, they receive only 43% of the sports participation opportunities, 38% of athletic operating dollars and 33% of the money spent on recruitment. At the high school level, girls represent only 42% of varsity athletes. In addition, women and girls continue to face discrimination at all levels of education and in community, recreational and professional sports programs, including in

coverage of these programs by the media. With respect to promotion, the lifeblood of any sport, a study of national and regional papers revealed that women receive only about 7 to 9 percent of the space in the sports sections and less than that in air time.

While girls and women can perform on the athletic stage, they still do not run a major sports broadcast network, nor make many important broadcast programming decisions. In educational institutions, the number of women head coaches and sports administrators has stagnated. In the past decade, we have seen two women's sports magazines fold, two professional leagues go out of business, and numerous established women's sports leaders leave the sporting profession. Softball has been taken off the Olympic program. In the broadcast profession, two well-known sports personalities—Robyn Roberts and Hanna Storm—have moved over to news departments. On the collegiate level, many female sports administrators have been let go with no future hope of employment in a sporting world too often controlled by a huge boys' club with sports boosters pulling the strings. For example, take a look at the story of 1972 Olympic gold medalist swimmer, Karen Moe. Karen has spent more than twenty years at the University of California. A winning and honored athlete and coach, she mentored 49 All-Americans and 9 Olympians. Fourteen years ago she was promoted to the athletics department and has consistently been given high performance ratings as an administrator. This year she was let go from her job with no explanation. Her departure is a loss to the University, to the students, and to those women who have lost a role model and are now wondering about pursuing a profession as sports administrator.


Yet with the stunning success of events like the 1999 Women's World Cup, when America's largest and most prestigious stadiums were packed with young vibrant fans to watch women compete, one might get the impression that all is healthy in women's sports. After all, since the passage of Title IX, we have witnessed an unprecedented increase in participation. Before Title IX was enacted, fewer than 32,000 took part in collegiate sports. Now more than 150,000 take part. In high school, the number has gone from 300,000 to over 2.8 million. With this increased participation has come the ability to research the true benefits of sport for women, and the results show huge benefits such as the promotion of responsible social behavior, greater academic success, and increased personal skills. According to published research such as the Carnegie Corporation's "The Role of Sports in Youth Development," compared to their non-athletic peers, athletes are less likely to smoke or use drugs; have lower rates of sexual activity and teen pregnancy; have higher grades; and learn how to work with a team, perform under pressure, set goals, and take criticism. Since health costs are soaring in this country and the nation faces a serious problem with morbid obesity and diabetes, I would be remiss if I did not mention the health benefits to those who are fit and much more able lead by example and teach the values of a healthy lifestyle to their peers and someday their children.

However, it is dangerous to assume that just because some exceptional efforts attract a nationwide spotlight all is healthy in women's sports. In fact, despite the fact that sports for girls and women have proven to be so beneficial, there is still an unfortunate debate going on as to the merits of the law that created those opportunities: In June 2002, a 15 member commission was appointed by Secretary of Education Roderick Paige to review opportunities in athletics. I was a member and I am disappointed to say that most of our time was spent on longstanding Title IX policies governing athletics and whether they should be revised. To this day, I feel that we all missed an important opportunity to address the larger issue of how to provide more sports and fitness opportunities to all students in all our schools. As you have heard from others today, Title IX has been the engine that has created an explosion of sports opportunities for women over the last three decades. But Title IX has also been under constant attack and scrutiny since it was enacted, and today is unfortunately no different. The impetus for the Commission centered on claims by some that the way in which Title IX has always been enforced by the Department "needlessly results in the




elimination of some men's teams." The Department spent a year and about \$700,000 of taxpayers' money and heard from thousands of experts and citizens nationwide through public meetings, emails, reports, and letters, ultimately adopting 23 recommendations. A USA Today/CNN/Gallup poll conducted during the Commission's tenure indicated that seven of 10 adults who are familiar with Title IX think the federal law should be strengthened or left alone. Yet many of the Commission's ultimate recommendations would have seriously weakened Title IX's protections and substantially reduced the opportunities to which women and girls are entitled under current law.

For this reason, and because the Commission's report failed to address key issues regarding the discrimination women and girls still face in obtaining equal opportunities in athletics, Co-Commissioner Julie Foudy and I released a Minority Report setting forth our views. We felt an obligation to all those who testified to produce a Minority Report because, contrary to what we were promised at the beginning of our deliberations, we were not permitted to include within the Commission's report a full discussion of the issues and our position on the recommendations that were adopted.



In our Minority Report, we pointed out that the Title IX athletics policies have been critical to the effort to expand opportunities for women and girls, have been in place through Republican and Democratic Administrations, and have been upheld unanimously by the federal appellate courts. We also noted that advances for women and girls have not resulted in an overall decrease in opportunities for men, and that in the cases where men's teams have been cut, budgetary decisions and the athletics arms race are the true culprits. Even the Division I athletic directors who served on the Commission testified that revenue producing sports in big-time colleges are "headed for a train wreck." Based on these findings, we recommended that the current Title IX athletics policies not be changed but enforced to eliminate the continuing discrimination against women and girls in athletics. We also recommended that schools and the public be educated about the flexible nature of the law, reminded that cutting men's teams to achieve compliance is not necessary or favored, and encouraged to rein in escalating athletics costs to give more female and male athletes chances to play. The outcome of this lengthy and costly Opportunity in Athletics debate was that the Department of Education rejected the Commission's proposals and strongly reaffirmed the longstanding Title IX athletics policies. In its July 11, 2003 "Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance," the Department of Education stated: "After eight months of discussion and an extensive and inclusive fact-finding process, the Commission found very broad support throughout the country for the goals and spirit of Title IX. With that in mind, OCR today issues this Further Clarification in order to strengthen Title IX's promise of non-discrimination in the athletic programs of our nation's schools." The document goes on to say that Title IX's three-part participation test provides schools with three separate ways to comply and that nothing in that test requires or encourages schools to cut men's teams; it also promised that OCR would aggressively enforce the longstanding Title IX standards, including implementing sanctions for institutions that do not comply.



However, less than two years after strongly reaffirming the longstanding Title IX athletics policies, and without any notice or public input, the Department of Education did an about-face and posted on its website, late in the afternoon of Friday, March 17, 2005, a new Title IX policy that threatens to reverse the enormous progress women and girls have made in sports since the enactment of Title IX. This new policy, called an "Additional Clarification," creates a major loophole through which schools can evade their obligation to provide equal sports opportunities to women and girls. The bottom line is that the policy allows schools to gauge female students' interest in athletics by doing nothing more than conducting an e-mail survey and to claim—in these days of excessive e-mail spam—that a failure to respond to the survey shows a lack of interest in playing sports. It eliminates

schools' obligation to look broadly and proactively at whether they are satisfying women's interests in sports, and will thereby perpetuate the cycle of discrimination to which women have been subjected. The new Clarification violates basic principles of equality, as I explain further below.


As a member of the Commission that spent a year carefully analyzing these issues, I am deeply troubled that the Department would change its 2003 stated position, in which it reaffirmed the longstanding Title IX policies and pledged to enforce them. Instead, the Administration has unilaterally adopted this dangerous new policy without public announcement or opportunity for public comment. Five of my fellow Commissioners and I are so concerned about this new Clarification that we recently sent a letter to athletic administrators around the country warning them about the flaws of the survey procedure endorsed in it, and urging them to decline to use such procedures and instead to join us in asking for it to be withdrawn. To fully understand why this new Clarification is so dangerous, it is important to review the relevant longstanding Title IX athletics policies. Title IX requires schools to provide males and females with equal sports participation opportunities. A 1979 Policy Interpretation elaborates on this requirement by providing three independent ways that schools can meet it – by showing that:

The percentages of male and female athletes are about the same as the percentages of male and female students enrolled in the school (the “proportionality” prong); or

The school has a history and continuing practice of expanding opportunities for the underrepresented sex—usually women; or


The school is fully and effectively meeting the athletic interests and abilities of the underrepresented sex. The Department's new Clarification allows schools not meeting the first or second prongs --that is, schools that are not providing equal opportunities to their female students and that have not consistently improved opportunities for them--to show that they are nonetheless in compliance with Title IX by doing nothing more than sending a “model” e-mail survey to their female students asking about their interest in additional sports opportunities. According to the Clarification, the Department will presume that schools comply with Title IX if they use this survey and find insufficient interest to support additional opportunities for women, unless female students can provide “direct and very persuasive evidence” to the contrary.

This new policy dramatically weakens existing law. First, it allows schools to use surveys alone to demonstrate compliance with the law. Under prior Department policies, schools must consider many other factors besides surveys to show compliance with prong three, including: requests by students to add a particular sport; participation rates in club or intramural sports; participation rates in sports in high schools, amateur athletic associations, and community sports leagues in areas from which the school draws its students; and interviews with students, coaches, and administrators. The new Clarification eliminates the obligation to consider these important criteria. Second, surveys are problematic because they are likely only to measure the discrimination that has limited, and continues to limit, sports opportunities for women and girls. Courts have recognized that interest cannot be measured apart from opportunity. In other words, to quote the movie *Field of Dreams*, “If you build it, they will come.” Basing women's opportunities on their responses to surveys that measure their prior lack of exposure will only perpetuate the cycle of discrimination. The new Clarification is particularly damaging for students in high school, where female students are likely to have had even fewer sports opportunities that would inform their responses to a survey, and where students should be encouraged to try many different sports, not have their opportunities limited by what they might have experienced or be interested in at that time.



Third, by allowing schools to restrict surveys to enrolled and admitted students, the Clarification lets schools off the hook from having to measure interest broadly. The Clarification ignores the reality that students interested in a sport not offered by a school are unlikely to attend that school. By not requiring schools to evaluate interest that exists beyond their own campuses—such as in high school, community, and recreational programs in the areas from which a school typically draws its students—the new policy allows schools to select the universe of people who will be able to respond from those who have already signaled their willingness to accept limited opportunities.

Fourth, the Clarification authorizes flawed survey methodology. For example, schools may e-mail the survey to all female students and interpret a lack of response as evidence of lack of interest. Given the notoriously low response rates to surveys in general, let alone to anything sent via email, this authorization will allow schools to avoid adding new opportunities for women even where interest does in fact exist on campus. In addition, schools may presume that young women's self-assessment of lack of ability to compete at the varsity level reflects an actual lack of ability. Young women who have played sports at the club level or sports other than the ones being considered for varsity status may well have the ability to compete at a varsity level in the sport at issue. Tennis players, for example, may also be able to play squash, and many female athletes can become expert rowers. But under the new Clarification, schools are relieved of any obligation to seek the opinions of coaches or other experts on this issue.



Fifth, the new Clarification shifts the burden to female students to show that they are entitled to equal opportunity. Longstanding Title IX policies put the burden on schools to show that they are fully meeting the interests and abilities of their female students. The new Clarification forces women to prove that their schools are not satisfying their interests and that they are entitled to additional opportunities.

Finally, the Department's new policy does not even require that the Office for Civil Rights monitor schools' use of the survey to ensure that they meet minimal requirements for survey use or interpret the results accurately. For all these reasons, the Department's new Clarification represents a giant step backwards in the progress that women and girls have made in the past three decades. If left in place and used by schools, the new Clarification will lead to a reduction in opportunities for our nation's daughters. We call on Congress to do everything within its power ensure that this does not happen.

Title IX has opened the door for millions of women and girls to participate in sports, but much work remains to be done to fulfill its promise and vision. We welcome Congress' focus on the promotion and advancement of women in sports and look forward to working together to expand athletic opportunities for women and girls.

Footnotes

1. NCAA, 2002-03 Gender Equity Report (2004).
2. NFHS, 2002 High School Athletics Participation Survey.
3. See, e.g., Priest, Laurie and Liane M. Summerfield, "Promoting Gender Equity in Middle and Secondary School Sports Programs," ERIC Digest, 1994; Rebecca Vesely, "California Takes Lead in Sports Equity," Women's eNews, Sept. 13, 2004 (regarding bill banning gender bias in youth athletics programs run by cities and counties), available at <http://www.womensenews.org/article.cfm/dyn/aid/1988/context/archive>; Sarah J. Murray, "Posting Up in the Pink Ghetto," Women's Sports Foundation, available at <http://www.womenssportsfoundation.org/cgi-bin/iowa/issues/body/article.html?record=884>.

4. Judith Jenkins George, "Lack of News Coverage for Women's Athletics: A Questionable Practice of Newspaper Priorities," Aug. 20, 2001, available at <http://www.womenssportsfoundation.org/cgi-bin/iowa/issues/media/article.html?record=807>.
5. National Collegiate Athletic Association (NCAA), 1982-2002 Sponsorship and Participation Report 65, available at http://ncaa.org/library/research/participation_rates/1982-2002/participation.pdf; National Federation of State High School Associations (NFHS), 2002 High School Athletics Participation Survey, available at http://www.nfhs.org/nf_survey_resources.asp.
6. See, e.g., Carnegie Corporation, The Role of Sports in Youth Development 9 (March 1996); NFHS, The Case for High School Activities (2002) at 3, 9; The National Campaign to Prevent Teen Pregnancy, Fact Sheet: Not Just Another Single Issue: Teen Pregnancy and Athletic Involvement (July 2003); The Women's Sports Foundation Report: Sport and Teen Pregnancy (1998) at 5-7; The President's Council on Physical Fitness and Sports, Physical Activity & Sports in the Lives of Girls (Spring 1997); and Black Female Athletes Show Grad-Rate Gains, The NCAA News (June 28, 1995).
7. See "Open to All": Title IX at Thirty, The Secretary of Education's Commission on Opportunity in Athletics, Feb. 28, 2003, available at <http://www.ed.gov/about/bdscomm/list/athletics/report.html>.
8. Erik Brady, "Poll: Most adults want Title IX law left alone," USA TODAY, Jan. 7, 2003.
9. See Minority Views on the Report of the Commission on Opportunity in Athletics, Report Submitted by Donna de Varona and Julie Foudy, Feb. 2003 (attached).
10. Office for Civil Rights, United States Department of Education, "Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance," July 11, 2003 (attached).
11. Office for Civil Rights, United States Department of Education, "Additional Clarification of Intercollegiate Athletics Policy: Three-Part Test ? Part Three," Mar. 17, 2005 (attached).
12. "Dear Colleague" Letter from Ted Leland et al., Oct. 11, 2005 (attached).
13. United States Department of Health, Education, and Welfare, Office for Civil Rights, Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71,413 (December 11, 1979).
14. United States Department of Education, Office for Civil Rights, Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (Jan. 16, 1996).
15. Cohen v. Brown University, 101 F.3d 155, 179-80 (1st Cir. 1996).

Opposing the Additional Clarification

"Athletic Opportunity for All," *US Fed News*, February 3, 2006

5 of 36 DOCUMENTS

US Fed News

February 3, 2006 Friday 3:17 AM EST

ATHLETIC OPPORTUNITY FOR ALL

BYLINE: US Fed News**LENGTH:** 631 words**DATELINE:** WASHINGTON

Sen. Olympia J. Snowe, R-Maine, issued the following column:

Until about 34 years ago, girls and boys did not have equal opportunities to participate in sports. In 1972, Congress passed the Educational Amendments and one section of this law, Title IX, prohibited discrimination against girls and women in federally-funded education, including in athletics programs. A landmark civil rights law, Title IX has been the driving factor in allowing thousands of women and girls the opportunity to benefit from intercollegiate and high school sports. And many have gone on to prosper; according to a 2002 study, 81 percent of executive businesswomen played organized team sports growing up.

As a result of Title IX, women and girls have benefited from more opportunities and equitable facilities. Indeed, prior to Title IX, only 1 in 27 high school girls - fewer than 300,000 - played sports. Today, the number is 1 in 3 - for a total of nearly 2.8 million, an increase of 800 percent. Because of Title IX, more women have received athletic scholarships, and thus the opportunity for higher education than would have been possible otherwise. In fact, many women Olympic athletes credit Title IX for the opportunity to attend college through athletic scholarships and to participate in sports.

In less than two weeks, many of us will tune in to watch the 2006 Winter Olympics, and I am especially proud of the women from Maine who will represent our country. Kirsten Clark from Raymond, Maine, who grew up skiing at Sugarloaf/USA, will compete in the downhill and Super-G skiing events. Twin sisters Lanny and Tracy Barnes, who train at the Maine Winter Sports Center and study at the University of Maine in Fort Kent, will both compete in the biathlon - and I wish them all the best of luck.

From the very first day I set foot in Washington in 1979, I have been a stalwart supporter of Title IX and women's athletics. As a member of the U.S. House of Representatives, I sponsored the first "National Women in Sports Day" Resolution in 1986 and then continued to sponsor or cosponsor the same resolution every successive year while I was in the House. The pen President Reagan used to sign the measure along with his letter of appreciation still hangs on my office wall.

We must continue to preserve the efficacy of Title IX. I have expressed concern that a March 17, 2005 clarification of the law by the U.S. Department of Education may undermine Title IX by allowing schools to use unreliable internet-based surveys to determine whether or not it is "fully and effectively" **accommodating the interests and abilities** of women. Under the Department's new guidance, schools that provide fewer sports opportunities to women can be considered to have accommodated female students and complied with Title IX based solely on the results of a student survey. If female students do not reply to a survey e-mailed to them, the Department will assume that they are not interested in additional sports activities. Following this decision, I joined in a letter with some of my Senate colleagues opposing the clarification and urging that it be rescinded. With all the progress we have made in dramatically increasing girls' participation in sports, we can't afford to turn back the clock.

Athletics help cultivate the kind of positive, competitive spirit that develops self-confidence and dedication and makes for more successful, well-rounded individuals. Given its overwhelming success, Congress must

ensure that there is sufficient oversight of Title IX to make certain that educational facilities are in full compliance with its provisions and mandates. We absolutely must guarantee that women are fairly represented in sports programs and are given the same opportunities as their male peers.

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US Fed News

February 3, 2006 Friday 3:17 AM EST

ATHLETIC OPPORTUNITY FOR ALL

BYLINE: US Fed News**LENGTH:** 631 words**DATELINE:** WASHINGTON

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"Survey says: E-mails No Way to Judge Title IX," Christine Brennan, *USA Today*, Mar. 24, 2005

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Christine Brennan

Survey says: E-mails no way to judge Title IX

It seemed too good to be true, nearly two years of peace and quiet on the Title IX front. No more fighting, no more brinkmanship, no more pitting the boys against the girls, just all-around American delight over the 33-year-old law that opened the playing fields of this country to the other 50% of our population.

It seemed too good to be true, and it was. Last Friday, the Department of Education posted a surprise on its Web site: a new Title IX guideline that allows for the use of controversial Internet surveys that also can be distributed via e-mail. The surveys are supposed to gauge students' sports interest as a way to be in compliance with the law, a move that experts on both sides believe could weaken Title IX.

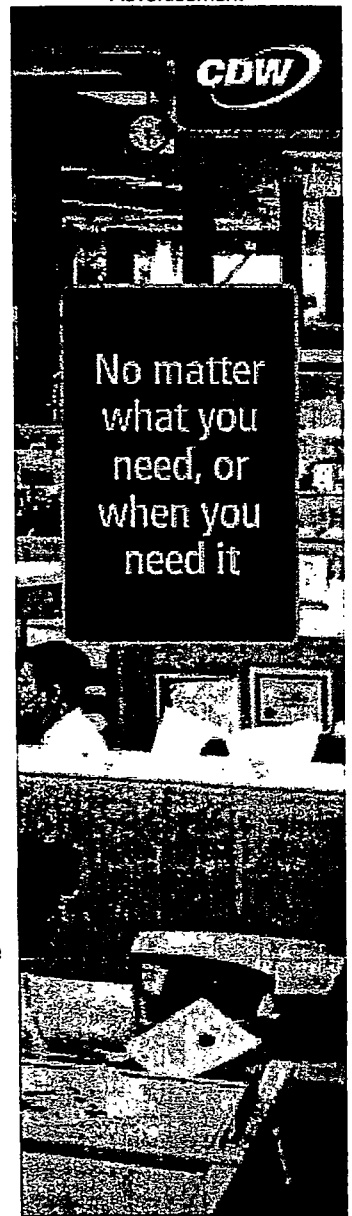
"I can hear it now," said Julie Foudy, captain of the gold medal-winning U.S. Olympic women's soccer team who served on the Title IX commission in 2002-03. "We lost a women's team because the e-mail survey got stuck in my spam folder for six months."

"I have serious concerns about an omnibus test to judge the interest and abilities of students," said Stanford athletics director Ted Leland, who was co-chair of the Title IX commission. "It sounds like if a student doesn't respond to an e-mail, that's coded as a lack of interest in athletics. I'm concerned that this lowers the bar for institutions to comply with Title IX."

At first blush, you hear the word survey and you say, what's the big deal? What could be wrong with a questionnaire to determine what women's sports are missing from a campus, and then add them? In theory, it sounds wonderful. But in practice, especially for girls and women who have not been given enough opportunity in sports, it's a notoriously flawed tool.

Cary Groth, the athletics director at Nevada-Reno, was another of the 15 Title IX commissioners. She recounted a story from the commission hearings that she said was "staggering." The Illinois high school athletic association said it sent out surveys asking girls if they would be interested in playing volleyball. The surveys came back showing little or no interest in the sport. Lacking confidence in their own abilities, perhaps, and never having played the sport before, the girls by a resounding margin said, no, they didn't have any interest in volleyball.

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But the athletic association, seeking more opportunities for female athletes, took it upon itself nonetheless to start volleyball for high school girls in Illinois. And, wouldn't you know, volleyball became one of the state's most popular girls sports, with more than 300 high school teams in the state.

"If they had judged by the survey," Groth said, "they would have thought there was no interest."

Officials at the Department of Education heard this story as well. But instead of heeding it, instead of learning from the six months of Title IX commission hearings at a cost of \$700,000 to taxpayers, those officials apparently chose to ignore it.

Groth and Leland, however, were paying attention. Both said Wednesday that they would not be using surveys on their campuses as a way to prove compliance with Title IX. So, six days into Title IX's new rule, two ADs with vast knowledge of the subject have already turned thumbs down on the Department of Education's new idea. So much for a roaring start.

This is just another in a series of twists and turns for the Bush administration and this law. President Bush has been gunning for Title IX since he came into office and appeared all set to weaken the law after the commission issued a fractured report two years ago.

But something happened that stunned the administration: Tens of thousands of e-mails and phone calls from soccer moms and soccer dads, voters all, as well as female athletes young and old, telling the administration not to touch Title IX.

"They were caught off guard by the public's response and the public outcry," Foudy said.

So, not wanting to commit political suicide before the 2004 election, the administration reaffirmed Title IX completely. And that was it — until last Friday.

"You just kind of felt something was brewing," said Groth, "particularly after the re-election."

Perhaps fearing thousands more e-mails from parents, the Department of Education this time allowed for no public comment. "I'm concerned that it wasn't a more open, transparent process," Leland said.


Unfortunately, this is a done deal. Nothing can stop the Department of Education now. The next stop, apparently, is the courts. Said Foudy, "I think they've once again underestimated how much this means to people, to young girls and to their parents."

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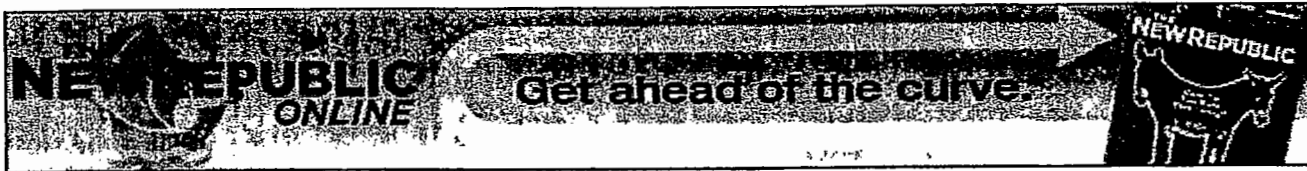
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Opposing the Additional Clarification

"Foul Play," Nancy Hogshead-Makar and Donna Lopiano, *Inside Higher Ed*. Mar. 24, 2005, <<http://www.insidehighered.com/layout/set/print/views/205/03/24/lopiano>>

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March 24, 2005

Foul Play

By Nancy Hogshead-Makar and Donna Lopiano

The Department of Education's March 17 letter announcing "additional clarification" of its policy for collegiate compliance with Title IX in athletic programs, issued without public input or comment, "clarifies" nothing and, instead, marks a dramatic and unprecedented reversal of the department's previous policy. It violates practically every legal principle upon which Title IX's 30-year jurisprudence is based and shifts the burden of compliance from schools to female athletes.

Specifically, the letter and accompanying "model survey" are contrary to established case law, contradict the department's prior pronouncements and its Title IX Athletics Investigator's Manual, and ignore the reality that high schools and colleges create sports teams by predetermining sports offerings and encouraging (in the case of high schools) and recruiting prospective athletes (in the case of colleges) rather than requiring a demonstration of interest by existing students.

The gist of the letter is that schools in which females are underrepresented in athletics compared to their proportion in the general student body (Prong 1 of Title IX's participation requirement) and that have not demonstrated a history and continuing practice of expanding opportunities for the underrepresented sex (Prong 2) would be deemed in compliance with the law under Prong 3 of the athletic participation provision if they simply e-mailed a "model survey" to *current* students to determine their interests and abilities and found interest by the underrepresented sex to be lacking.

This survey would create a presumption of compliance with Title IX, as long as the college or school did not recently drop a women's team or receive a recent request to elevate a women's club sport to varsity status. Once the survey is administered, the burden of demonstrating compliance with Prong 3 would shift from the college or school to the athlete. In essence, the institution would enjoy a presumption of compliance, a difficult hurdle for an athlete to surmount.

The "model survey" issued by the department fails to provide a valid measure of women's interest in sports and, instead, institutionalizes the very discrimination that is and has been the basis for women's lack of opportunity to participate in sports. The use of surveys rests on the stereotyped notion that women are inherently less interested in sports than men, which is contradicted by the country's experience of Title IX and fundamental principles of civil rights law.

Male athletes have never had to prove they were interested in sports to receive opportunities to play. Schools simply assumed male athletes were interested in sports, hired a coach who recruited athletes to play and offered varsity athletic experiences. Lo and behold, if you do the same for women, they too will play. We know of no instance in which a high school or college started a varsity women's team, hired a coach and then had the coach return his or her paycheck because they could not find enough women to play.

At the college level, athletes are only rarely recruited from the existing student body, but from the region or country at large. At the high school level, the coach finds students with and without experience or skill who are big enough or fast enough and urges them to come out for the team. Now, a college that goes out and recruits male athletes from all over the country and not from its existing student body, is not required to do the same for female athletes and can eliminate this obligation by administering an e-mail survey. Now, a high school is not obligated to encourage female athletes to come out for teams in the same way they encourage male athletes to come out for teams, so long as they administer an e-mail survey.

What an absence of common sense and abuse of power! A huge Title IX compliance loophole has been created despite a clear analysis by the courts on why surveys of the interest of the existing student body or even a pool of applicants to the university are patently wrong. In the most comprehensive and accepted case on the topic, Cohen v. Brown University, a federal appeals court stated that the type of survey the department has proposed to gauge compliance under the third prong was "illogical" and "circular" in its reasoning.

The court expressly rejected the practice of surveying current students, noting that Brown actively recruits most students who end up playing on its varsity teams. The court stated: "What students are present on campus to participate in a survey of interests has already been predetermined through the recruiting practices of the coaches. What teams are established and can recruit or qualify for admissions preferences has already been predetermined by Brown. Thus, *the interest present on campus is controlled by Brown; to then suggest that Brown must only satisfy the relative interests of students present on campus is circular.*"

Further, the court rejected surveying the pool of applicants to Brown. The court stated: "Using the pool of actual Brown applicants fails to consider the fact that college applicants interested in a sport not offered as a varsity sport at Brown may not even apply to Brown. A survey of actual Brown applicants would thus fail to capture the interest of those student-athletes who choose not to apply due to the limits of Brown's program offerings. To suggest that Brown need only satisfy the interests of actual applicants where Brown's selection of program offerings affects who applies to the school in the first place is illogical."

The letter also creates a disincentive for schools to develop their women's sports club programs — exactly the opposite of the intent of the law. The letter explains that the presumption of compliance can be overcome only if the Office for Civil Rights finds direct and very persuasive evidence of unmet interest, such as if a college either discontinues a viable existing team or fails to upgrade a club team to varsity status when there is a recent, "broad-based petition from an existing club team." It does not explain how a student could overcome the presumption in an effort to start a new sport, such as crew, thereby freezing current inequities into place. If the club team doesn't exist, there cannot be a "broad-based petition from an existing club team," a new standard established by the letter.

And what if the students do not respond to the e-mailed "model survey"? The letter says, "Although rates of nonresponse may be high with the e-mail procedure, under these conditions, OCR will interpret such nonresponse as a lack of interest." To get a chance to play, females have to respond to their emails,

a requirement that male athletes never have to meet.

Experts in the use of survey instruments have condemned the use of surveys of interest — which measure attitude — as a way to predict behavior. Culturally, men are simply more likely than women to profess an interest in sport. They are chastised if they fail to exhibit interest. It's just the opposite for women, who are more likely to be criticized for their interest. Given their historic and current exclusion from a fair share of participation opportunities and this cultural bias, women are less likely to profess an interest in sports, even if they are interested! However, professing interest does not predict behavior and cannot be used to predict actual levels of participation when nondiscriminatory opportunities are made available. To use the results of interest surveys as a justification for withholding participation opportunities is an improper use of attitude survey methodology that the courts and policy-makers have repeatedly rejected due to irrelevance and bias.

While every legal authority has held that this survey practice cannot be made the sole litmus test for compliance under Prong 3 of Title IX, the letter sets up just a situation, totally reversing the current standard. The letter states that only if the “model survey” is not administered will it look at the following other factors which the courts have maintained must all be examined:

- Requests for the addition of a varsity team (even if no club team currently exists) or elevation of an existing club sport to varsity status
- Participation in club or intramural sports
- Participation in high school sports, amateur athletic associations and community sports leagues that operate in areas from which the institution draws its students
- Intercollegiate varsity participation rates, as identified by national and regional intercollegiate sports governing bodies, in the institution's competitive region

Dependence on a single survey methodology also cancels the Department of Education's own 1979 Policy Interpretation, which states that schools are permitted to determine the athletic interests and abilities of students by nondiscriminatory methods of their choosing, provided that all of the following standards are met:

- The process take into account the nationally increasing levels of women's interests and abilities;
- The methods of determining interest and ability do not disadvantage the members of an underrepresented sex;
- The methods of determining ability take into account team performance records; and
- The methods are responsive to the expressed interests of students capable of intercollegiate competition who are members of an underrepresented sex.

The letter and “model survey” also conflict with the department's Title IX Athletics Investigator's Manual, which instructs investigating officials to consider other factors reflecting interests and abilities, such as sports programs at “feeder” schools and community and regional sports programs. More importantly, the investigator's manual states that a student survey may be a remedial tool to be used after a determination that an institution has failed the third prong; a survey is not utilized to determine compliance in the first instance, however. While a student survey may be part of a remedy to determine

what sports to add when an institution's current program fails Prong 3, it is not a proper test upon which to base compliance.

In summary, the letter and "model survey" contravene the basic principles of Title IX and its long-standing jurisprudence. Every legal authority — including the department's own prior policies and interpretations — agree that surveys of existing students are an inaccurate, biased and invalid method of determining compliance under Title IX's third prong. The letter confirms that the department has become the "fox guarding the henhouse" by thumbing its nose at the law and the female athletes it is charged with protecting.

The department, which has conducted no Title IX investigations since 2002, has now taken a startling step that protects the status quo in college sports.


Nancy Hogshead-Makar is an assistant professor of law at Florida Coastal School of Law and an Olympic gold-medal swimmer. Donna Lopiano is executive director of the Women's Sports Foundation.

*The original story and user comments can be viewed online at
<http://insidehighered.com/views/2005/03/24/lopiano>.*

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Opposing the Additional Clarification

"Limitations of the Department of Education's Online Survey Method For Measuring Athletic Interest and Ability on U.S.A. Campuses," Don Sabo, Ph. D. and Christine H.B. Grant, Ph. D., June 2005.



**LIMITATIONS OF THE DEPARTMENT OF
EDUCATION'S
ONLINE SURVEY METHOD FOR MEASURING
ATHLETIC INTEREST AND ABILITY ON U.S.A. CAMPUSES**



Don Sabo, Ph.D. and Christine H.B. Grant, Ph.D.

June 2005



LIMITATIONS OF THE DEPARTMENT OF EDUCATION'S ONLINE SURVEY METHOD FOR MEASURING ATHLETIC INTEREST AND ABILITY ON U.S.A. CAMPUSES¹

Don Sabo, Ph.D. and Christine H.B. Grant, Ph. D.²

The Department of Education has endorsed using an online survey method as the sole means of assessing student interest in additional athletic participation opportunities. The March 17, 2005 *Additional Clarification on Intercollegiate Athletics Policy: Three-Part Test—Part Three* would allow colleges and universities to use a “Model Survey” alone to claim compliance with Title IX’s mandate that schools provide equal participation opportunities to male and female students. In particular, the results of the Department’s survey could be used to determine institutional compliance with the third prong of Title IX’s three-part participation test.³ Under this prong, an institution may comply if it can show that its athletics program fully and effectively accommodates the interests and abilities of the underrepresented sex.

Until it issued its new Clarification, the Department had interpreted the third prong of the test to require a systematic evaluation of a host of factors, beyond surveys, to assess whether institutions had fully met the interests and abilities of their female students. See *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* (January 1996). The Department’s new “Additional” Clarification would eviscerate that interpretation and allow educational institutions to rely exclusively on a survey to measure unmet interest. But it would be methodologically misguided for institutions to utilize the Department’s on-line survey method as the sole measure of compliance with Prong 3. Instead, sound methodological guidelines dictate that multiple approaches to assessing the athletic interests and abilities of students be deployed. Moreover, the online survey authorized by the new Clarification suffers from serious methodological flaws.

¹ Preferred citation: Sabo, D. & Grant, C.H.B. (June, 2005). *Limitations of the Department of Education's Online Survey Method for Measuring Athletic Interest and Ability on U.S.A. Campuses*. Buffalo, NY: Center for Research on Physical Activity, Sport & Health, D'Youville College.

² Don Sabo is the Director of the Center for Research on Physical Activity, Sport & Health at D'Youville College. Christine H.B. Grant is an Associate Professor of Health and Sports Studies and the Women's Athletics Director Emerita at the University of Iowa.

³ Under Prong 1 of the three-part test, a school will be in compliance if its representation of male and female athletes is substantially proportionate to its male and female enrollment. For example, if females comprise 54% of the student body, the school will comply with Prong 1 if about 54% of its athletes are female. Under Prong 2, a school will be in compliance if it demonstrates a history and continuing practice of expanding opportunities for the underrepresented gender. Adding teams for women in order to balance team offerings for men, for example, would support compliance. Prong 3 requires a demonstration that the interests and abilities of the underrepresented sex have been fully and effectively accommodated by the school's existing program.

Sound Methodology Requires the Use of Multiple Measures to Evaluate Interest and Ability and Shows the Limitations of a Survey

Basic methodological principles, as well as substantial research, demonstrate that exclusive reliance on a survey to evaluate women's interests and ability to participate in sports is not likely to fairly reveal the true extent of those interests and abilities. This is so for several reasons:

1. Research shows that an individual's disposition and willingness to express personal interest in athletics is influenced by social norms, culture, gender, race, and ethnicity. For example:
 - a. Boys and men are apt to express interest in sports and identify as athletes because these interests are traditionally associated with appropriately "masculine" behavior and identity.⁴
 - b. Girls and women often have a higher set of behavioral standards for what it means to be an "athlete." Researcher and author Catherine McKinnon, for example, practiced the martial arts for five years, two hours per night, and five nights a week before she began to consider herself an "athlete."⁵ For many young women, increased involvement with sports entails rethinking traditional cultural notions about femininity.⁶
 - c. The pervasiveness of "Marianisma" in some Latina/Hispanic cultures (which emphasizes conformity to housewife-motherhood and discourages nontraditional roles for girls and women) can lead some Latinas to downplay interest and involvement in athletics.⁷

⁴ See Connell, R. W. (2000), *The Men and the Boys*, Berkeley, CA: University of California Press; Messner, M. A. (2002), *Taking the Field: Women, Men, and Sports*, Minneapolis, MN: University of Minnesota Press; Pollack, W. (1998), *Real Boys: Rescuing Our Sons from the Myths of Boyhood*, New York: Henry Holt and Company; Senay, E. & Waters, R. (2004), *From Boys to Men: A Woman's Guide to the Health of Husbands, Partners, Sons, Fathers, and Brothers*, New York: Scribner.

⁵ Stimpson, C. R. (2004), *The Atalanta syndrome: Women, sports, and cultural values*, Inaugural Helen Pond McIntyre Lecture, *Scholar & Feminist Online*, October 20.

⁶ See The President's Council on Physical Fitness and Sports Report (1997), *Physical Activity & Sport in the Lives of Girls: Physical and Mental Health Dimensions from an Interdisciplinary Approach*, Washington, D.C.: Department of Health and Human Services; Sabo, D., Miller, K.E., Melnick, M.J. & Heywood, L. (2004), *Her Life Depends On It: Sport, Physical Activity, and the Health and Well-Being of American Girls*, East Meadow, N.Y.: Women's Sports Foundation.

⁷ Melnick, M., Sabo, D. & Vanfossen, B. (1992), *Educational effects of interscholastic athletic participation on African-American and Hispanic youth*, *Journal of Adolescence*, 27(106):295-308; Melnick, M., Sabo, D. & Vanfossen, B. (1992), *Effects of interscholastic athletic participation on the social, educational, and career mobility of Hispanic boys and girls*, *International Review of Sport Sociology*, 17(1):57-75; Sabo, D., Melnick M. & Vanfossen, B. (1993), *The influence of high school*

2. Any failure to express interest likely reflects a lack of prior exposure, which in turn is the result of discriminatory limitations on women's opportunities. Interest cannot be measured apart from opportunity, particularly in the context of sports, where women's interest in athletics has been limited by the discrimination to which they have been – and continue to be – subjected. As a result, surveys cannot measure the extent to which women would show interest and ability if non-discriminatory opportunities were made available to them.
3. As a related matter, any survey of athletic interests is based on the problematic theoretical assumption that surveys of interest can be used to predict athletic behavior. Behavioral scientists have long observed the discrepancy between attitude and behavior. For example, millions of Americans who profess a keen interest in quitting smoking or losing weight continue to smoke and overeat. Particularly in the context of athletics, where women's opportunities have historically been limited, the converse is also true: individuals who fail to express interest in participating in sports will often embrace the chance to play if offered the opportunity. Many girls who would have expressed no interest in sports, for example, become enthusiastic participants after joining a team because a friend did so, because they were actively recruited by an enthusiastic coach, or because they were taken to tryouts by a pro-sport parent.

For all of these reasons, the Department's long-standing prior policies, including its 1996 Clarification, make clear that a survey of students is only one of many factors that schools must consider in evaluating whether they are fully meeting the interests and abilities of their female students. The 1996 Clarification also requires schools to consider requests by students to add a sport; participation rates in club or intramural sports; participation rates in sports in high schools, amateur athletic associations and community sports leagues in areas from which the school draws its students; and interviews with students, coaches, teachers and administrators.

The use of multiple measures, as set forth in the Department's 1996 Clarification, is methodologically sound and enhances the likelihood that schools will accurately assess the extent of their students' interest in additional sports opportunities. Moreover, this approach has worked as a practical matter. According to the Additional Clarification, between 1992 and 2002, approximately two-thirds of schools complied with Title IX's athletic participation requirements under the third prong of the three-part test.⁸ The evidence thus supports the overall efficacy of the Department's long-standing policies, and their reliance on a multiple-measure approach, for promoting athletic opportunity and assessing compliance with Title IX for both sexes.

athletic participation on post-secondary educational and occupational mobility: A focus on race and gender, *Sociology of Sport Journal* (Winter, 1993).

⁸ Additional Clarification at 2.

The Department's Survey Suffers from Methodological Flaws

Although the Department's Additional Clarification was issued with 177 pages of policy and text, the methodological procedures it authorizes and the rationales for those procedures need systematic review and assessment. Even a preliminary review of the Clarification, however, reveals serious concerns about the methodological efficacy of the Department's proposed survey.

1. *The Department's Survey is Likely to Generate Low Response Rates.* Online surveys often result in low response rates, thereby creating the risk of drawing conclusions based on inadequate sample sizes. Many campuses experience difficulty generating full responses to online surveys, which makes it likely that relatively few students would participate in the Department's online survey.

The problem of low response rates is exacerbated because the Department's survey does not take into account variation in student access to or use of e-mail. The Department's design deploys erroneous sampling logic by assuming that use of campus-based e-mail services is either supplied or utilized uniformly across student populations. But student access to and use of university and college e-mail services is varied and uneven. Some students frequently use college-based online services for e-mail; others do not use it at all. At institutions where frequent disruptions or periodic shutdowns of e-mail services occur, students may seek and secure commercial e-mail suppliers. Students who work full-time or part-time jobs may spend less time online and/or check e-mail less frequently. Poor students may not own a computer or be able to pay for convenient e-mail services. And numerous students may ignore campus e-mail systems in order to avoid real or perceived encounters with what they regard as bureaucratic or commercially invasive spam.

Some (but not all) campuses maintain policies requiring students to check email at certain intervals--for example, once a week or once a day. But even on campuses that do have policies that require students to check email regularly, one cannot guarantee that students actually conform to such policies, or that the institution maintains current (and reliably accurate) directories of e-mail.

Moreover, the Department's survey methodology does not take into account the accelerating diversity in telecommunication preferences among college students. The campus-based online survey design ignores both national and international trends among young and tech-savvy consumers to increasingly rely on text messaging through cell phones as a vehicle for interpersonal communication. Those students who are opting for these regional, "off-campus" communication vehicles would likely not be included in campus-based online surveys.

For all of these reasons, the Department's survey is likely to yield a low response rate. Additionally, nothing in the new Clarification makes clear how policymakers will determine when a large enough sample has been generated by a particular administration of the Department's survey.

2. *The Department's Methodological Procedure to Count Nonrespondents is Misguided.* The User's Guide for the Department's survey recommends that institutions conduct a "census" of the student population. Under a census methodology, there is no attempt to draw a sample from the student population. Rather, a census involves polling *all* students. But unless completing the online survey is somehow made mandatory (e.g., student registration is blocked until the survey is completed),⁹ it is highly unlikely that all students will complete it, based on the reasons set forth above, among others.


Recognizing this reality, the Department's survey guidelines treat the survey methodology as a "census" if all students are simply contacted and asked to go to a website and complete the questionnaire. If a student does not respond to the request, the Clarification specifically states that schools may interpret the nonresponse as evidence of lack of interest—in other words, that student is still "counted" as a respondent and, furthermore, operationally defined as someone with no interest in athletics. By equating nonresponses to a lack of athletic interest (past, present, and future), the Office for Civil Rights' methodological procedures do not meet basic scientific criteria for establishing reliable and valid survey results and interpretations.

Furthermore, even if students are screened at the point of registration using a campus ID, one cannot be certain that the person completing the registration is the student who is being targeted; e.g., it is not uncommon for students to have other people register for them. On many campuses, some students, faculty, and staff share their campus IDs and passwords, even though doing so is against University policy.

3. *The Department's Survey is Properly Understood to Embody a Sampling Methodology, but is Unlikely to Generate a Representative Sample.* Based on the foregoing analysis, what the Department's survey really relies on is a sampling methodology. But unfortunately, there is nothing in the new Clarification that ensures that the sample that responds to the on-line survey will be representative of the student population. One major problem is referred to as the "coverage error," which occurs, for example, when a researcher assumes that those who did not respond to the survey are similar in all other respects to those who did respond. In many instances, however, the respondents may be very different from the nonrespondents in ways that remain hidden or are not measured. When this occurs, the sample is compromised and the empirical results become suspect.

In addition, the Department's survey suffers from blind recruitment of respondents. A methodological bias often inherent in an online survey method is that participants are blind-recruited online, and thus, respondents self-select for participation rather than being randomly or strategically pre-selected from an existing population roster and individually

⁹ Even if the online survey is made mandatory, students who do not want to participate (irrespective of their interest or participation in athletics) may "protest" the requirement by providing inaccurate information (e.g., indicating "no interest/experience" at the beginning). This may be particularly likely since the survey will probably take many students more time to complete than is stated in the Clarification. The difficulty is that analysts would not know the extent of the inaccuracy.



targeted for recruitment by researchers. Much on-line survey research is done by posting a link to a survey on web pages visited by the target demographic--e.g., a link to the National Basketball Association website, a website for cat or dog lovers, or CNN.com. Analysis and inferences based on resulting data are limited in value because the respondents are entirely self-selected, compared to research designs in which respondents are contacted directly by phone, e-mail, or face-to-face and then enlisted in a study.

4. *Some Students May Misinterpret the Purpose of the Department's Survey.* The Department of Education survey is called "Assessment of Students' Athletic Interests & Abilities." Because those terms are undefined, some students may misinterpret the goal of the survey as an assessment of their interest in participating in intercollegiate sports rather than the broad spectrum of real and potential recreational, intramural, club, or junior varsity activities that might be part of campus life. But schools have an obligation to ensure gender equity in all athletic offerings, not just intercollegiate teams. Moreover, to the extent that these latter athletic activities are historically marginalized or comparatively under-funded within a specific campus community, students could fail to see them as viable or realistic choices in comparison with the notoriety and institutional centrality of the major intercollegiate sports. Personal interest in participating in a wide array of athletic activities could be skewed or dampened by a realistic assessment of the institutional inequalities that actually exist on campus. As a result, surveys are unlikely to capture the full range of athletic interests that institutions should consider in structuring each level of their sports programs.



Conclusion

The above deficits of the Department's online survey method call into question its empirical efficacy. As a result, it would be methodologically misguided for institutions to utilize the Department's online survey method as a sole measure of compliance with Prong 3. Moreover, the Clarification states that the Department "is not requiring that individual schools conduct elaborate scientific validation" of the procedures and results of the online survey.¹⁰ But the procedures and results are suspect unless they are validated based on established scientific and methodological criteria.

We encourage policymakers, government officials, educators, and researchers to fully evaluate the Department's proposed use of the online survey method to further elucidate these and other methodological concerns.

¹⁰ See <http://www.ed.gov/about/offices/list/ocr/docs/title9guidanceadditional.pdf>

Opposing the Additional Clarification

"Ex-members of Title IX Panel Urge Schools Not to Use the Surveys," Erik Brady, *USA Today*, Oct. 18, 2005

Ex-members of Title IX panel urge schools not to use surveys

By Erik Brady
10/18/2005
USA TODAY

A letter sent to college administrators this month by six former members of a presidential commission on Title IX asks schools to ignore a new method for determining compliance with the law. The Department of Education issued a clarification letter in March that allows schools to use interest surveys alone to determine if they are meeting the athletic interests and abilities of women on campus.

Critics say the e-mail surveys allow schools an easy out because a non-response can be interpreted as non-interest. The Department of Education says schools that use the surveys correctly may well find they have an obligation to add sports for women under Title IX, which bans sex discrimination at schools receiving federal funds.

The sentiment expressed in the Oct. 11 letter is not new; the NCAA executive council passed a resolution in April asking member schools not to use surveys. But the letter is important because it shows some former commissioners feel their service was for naught. The clarification letter "has made me feel our time on the commission was not well spent," Nevada athletics director Cary Groth says. "What did we do all that work for, if this is the end result?"

Groth says she called outgoing Stanford athletics director Ted Leland and they came up with the idea to send a letter to administrators at NCAA and NAIA schools across the country asking them not to use the March guidance. Leland was co-chair of the 15-member Commission on Opportunity in Athletics that was named by the Bush administration in 2002 and that met in 2002 and 2003.

Groth says she and Leland sent copies to other former commissioners to see if they wanted to sign the letter. Four others did: Notre Dame women's basketball coach Muffet McGraw, Michigan faculty athletic representative Percy Bates, former U.S. women's soccer captain Julie Foudy and former Olympic swimmer Donna de Varona.

Iowa athletics director Bob Bowlsby says he decided not to sign. "I'm keeping my powder dry," he says. "Reasonable people can disagree" on the use of surveys. Maryland athletics director Deborah Yow says she does not recall receiving the letter to sign. She says she probably did receive it but has not yet had time to read it because of more important business. She declined to say if she would have signed it if she had seen it sooner.

"That was a long time ago," she says of her time on the commission. "I've moved on."

The letter cites a unanimous recommendation passed by the commission that says any "substantive adjustments to current enforcement of Title IX should be developed through the normal federal rulemaking process."

The letter goes on to say the Department of Education ignored that recommendation when it issued its March clarification "without benefit of public notice or comment." It says the guidance has "the potential of undermining the goal of providing equal opportunity."

Susan Aspey, spokeswoman for the Department of Education, wrote in an e-mail: "The guidance is simply that — guidance. Schools can choose to use the model survey or not, it's their choice."

It is unclear how many schools are using the new surveys to determine if they pass the third part of Title IX's so-called three-part test. Schools are in compliance with the participation requirements of Title IX if they pass any one of the tests:

- Test 1: A school's male and female athletes are substantially proportionate to enrollment.

<http://www.savefresnowrestling.com/titleix.html>

•Test 2: A school has a history and continuing practice of expanding opportunities for women.

•Test 3: A school can demonstrate the interests and abilities of women have been fully and effectively accommodated. This is where the March clarification comes in. Schools that use the model survey and say they find no interest in adding sports are presumed to be in compliance.

<http://www.savefresnowrestling.com/titleix.html>

Public Comment

Public Comment of Lisa Maatz, Director of Public Policy and Government Relations,
American Association of University Women, May 11, 2007



**Public Comment of Lisa Maatz
Director of Public Policy and Government Relations
American Association of University Women**

**U.S. Commission on Civil Rights
"Title IX Athletics: Accommodating Interests and Abilities"
May 11, 2007**

Members of the Commission on Civil Rights, on behalf of the over 100,000 bipartisan members of the American Association of University Women, I thank you for the opportunity to submit public comments on the "Title IX Athletics: Accommodating Interests and Abilities" briefing.

AAUW has grave concerns regarding the U.S. Department of Education's March 17, 2005 Title IX policy guidance, "Additional Clarification of Intercollegiate Athletics Policy: Three-Part Test — Part Three." We believe this guidance undermines the law and the 35 years of progress made by women and girls as a result of this landmark legislation.

Since Title IX's enactment, women's participation in sports has increased. In 1971, 7 percent of high school varsity athletes were young women.¹ But by the 2005-2006 academic year, 41.2 percent of high school varsity athletes were young women.² This law has opened up not only opportunities to play sports but the chance to receive college scholarships and the significant health, emotional, and academic benefits that flow from sports participation.³ Meanwhile, Title IX's goal of equal opportunity has yet to be fully realized. Female athletes continue to be shortchanged. Women's teams receive 33 percent of recruiting dollars (or \$43 million less than men's teams), 38 percent of athletic operating dollars (or \$1.17 billion less), and 45 percent of college athletic scholarship dollars (or \$148 million less).⁴ To reach the full potential of the law, the Department of Education should vigorously enforce Title IX rather than weakening any measure of compliance.

In particular, AAUW is deeply concerned that the clarification is a dramatic departure from the previous standards under which schools could demonstrate compliance with Title IX. We believe the March 2005 clarification lowers the bar for schools, making it easier for schools to prove compliance by using a less rigorous e-mail-based model survey.

AAUW firmly believes that the model survey does not accurately measure students' interests. If students do not respond to the email it is assumed they are not interested. It does not make sense to assume that if students do not respond to an email they are not interested. People often ignore emails, and AAUW does not believe that SPAM is an effective or appropriate civil rights enforcement tool. Prong three of Title IX states that

schools must “demonstrate that interests and abilities of the members of that [underrepresented] sex have been fully and effectively accommodated by the present program.”⁵ AAUW firmly believes that there is no way that email, such as the model survey, can accurately demonstrate that students’ interests and abilities have been fully and effectively accommodated.

The March 2005 clarification could seriously jeopardize the number of athletic opportunities that are available to women on campus and it threatens to turn back the clock on much of the progress that has been made in increasing women’s athletic participation.

Research experts maintain that the results of interest surveys should not be used to limit athletic opportunities. In addition, the use of interest surveys to justify offering fewer opportunities to females has been rejected by the courts. Despite this, suggestions regarding the use of such surveys have consistently been used to advance the argument that institutions should be able to provide fewer athletics opportunities for women at the college level because they are “less interested in sports.” However, this argument cannot stand against the evidence: 2.9 million high school girls compete for less than 200,000 college female athletic participation opportunities.⁶ In addition, while women comprise 57 percent of the college student population,⁷ they receive just 43 percent of the opportunities to play intercollegiate sports.⁸ But more importantly, it is simply logical to assume that inherent athletic ability, like intelligence, is equally distributed by gender. As a result, fair distribution of athletic participation opportunities followed by rigorous enforcement of compliance must be determined by a broad set of indicators rather than a reliance on one flawed measure of interest and ability.

Before the March 2005 clarification, schools had to take other factors into consideration, such as the opinions of coaches and administrators and participation rates in sports in surrounding high schools or recreational leagues. These methods are more accurate measures of the demand for athletic opportunities among girls and women. The NCAA also supports considering additional factors. In June 2005, the NCAA Executive Committee urged the Department of Education to rescind the March 17, 2005 clarification and instead honor the Department’s 2003 commitment to enforce long-standing Title IX athletics policies.⁹ In addition, the NCAA Executive Committee urged colleges and universities to not use the procedures set forth in the March 17, 2005 clarification.¹⁰ This is a telling action from the main governing body for collegiate athletics, and should inform policy makers as to the wrongheaded-ness of the 2005 clarification.

The public overwhelmingly supports strong Title IX standards. A USA Today/CNN poll done in January 2003 found that seven of ten adults familiar with Title IX think the law should be strengthened or left alone.¹¹ Indeed, prior to the 2005 clarification, the policies have been in place through Republican and Democratic administrations and have been uniformly upheld by all eight of the federal appeals courts that have considered them.

Despite the public support Title IX enjoys, the issuance of the March 2005 guidance appears to be the latest in a series of attempts to weaken Title IX.

AAUW was encouraged by the Department of Education's July 2003 clarification letter that clearly reaffirmed Title IX and its enforcement mechanisms, as well as Secretary Spellings' supportive comments about Title IX during her confirmation hearings. However, the March 2005 action appears to signal the willingness of the U.S. Department of Education to undermine Title IX's effectiveness. AAUW has strongly urged the Department of Education to reconsider the guidance issued on March 17, 2005 and urges the U.S. Commission on Civil Rights to do the same.

Thank you for your consideration. If you have any questions, please contact Lisa Maatz, director of public policy and government relations, at 202/785-7793, or Tracy Sherman, government relations manager, at 202/785-7730.

¹ Women's Sports Foundation. "Playing Fair: A Guide to Title IX in High School & College Sports." October 2001.

<http://www.womenssportsfoundation.org/cgi-bin/iowa/issues/geena/record.html?record=829>
Accessed January 18, 2007.

² National Federation of State High School Associations. 2005-2006.

http://www.nfhs.org/web/2006/09/participation_in_high_school_sports_increases_again_confirms_nf.aspx. Accessed January 18, 2007.

³ Women's Sports Foundation. "Benefits—Why Sports Participation for Girls and Women: The Foundation Position, 2000." Research Report: Health Risks and the Teen Athlete, 2001.

<http://www.womenssportsfoundation.org/cgi-bin/iowa/issues/body/index.html> Accessed December 19, 2006.

⁴ National Collegiate Athletic Association. *NCAA Gender Equity Report, 2003-2004*. Statistics available from Women's Sports Foundation. <http://www.womenssportsfoundation.org/cgi-bin/iowa/issues/article.html?record=1017>. Accessed December 18, 2006.

⁵ 44 Fed. Reg. 71,481. December 11, 1979.

⁶ National Federation of State High School Associations. 2005-2006.

http://www.nfhs.org/web/2006/09/participation_in_high_school_sports_increases_again_confirms_nf.aspx. Accessed January 18, 2007.

⁷ National Center for Education Statistics. 2005 Digest of Education Statistics, Table 185. (Data is from 2004.)

http://nces.ed.gov/programs/digest/d05/tables/dt05_185.asp Accessed January 16, 2007.

⁸ National Collegiate Athletic Association. *Sports Sponsorship Report, 2004-2005*. Statistics available from Women's Sports Foundation. <http://www.womenssportsfoundation.org/cgi-bin/iowa/issues/article.html?record=1017> Accessed December 18, 2006.

⁹ NCAA News Release. "NCAA Leadership Groups Urge Department of Education to Rescind Additional Clarification for Title IX and Maintain 1996 Clarification." June 28, 2005.

¹⁰ NCAA News Release. "NCAA Leadership Groups Urge Department of Education to Rescind Additional Clarification for Title IX and Maintain 1996 Clarification." June 28, 2005.

¹¹ Brady, Erik. "Poll: Most Adults Want Title IX Law Left Alone." *USA Today*. January 7, 2003. http://www.usatoday.com/sports/college/other/2003-01-07-title-ix_x.htm Accessed December 19, 2006.

Appendix:

1. Title IX, Education Amendments of 1972 (Title 20 U. S. C. Sections 1681–1688)
2. US Department of Education, Office for Civil Rights, Letter to Chief of State Schools, Title IX Obligations in Athletics, December 11, 1975
3. A Policy Interpretation: Title IX and Intercollegiate Athletics, Federal Register, Vol. 44, No. 239-Tuesday, Dec. 11, 1979
4. US Department of Education, Office for Civil Rights, Clarification of Intercollegiate Athletics Policy Guidance: The Three Part Test: The Part Three, Jan. 16, 1996
5. US Department of Education, Office for Civil Rights, Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance, July 11, 2003
6. US Department of Education, Office for Civil Rights, Requirements Under Title IX of the Education Amendments of 1972, *no date*

Appendix

Title IX, Education Amendments of 1972 (Title 20 U. S. C. Sections 1681–1688)

Title IX, Education Amendments of 1972

(Title 20 U.S.C. Sections 1681-1688)

Sec. 1681. Sex

(a) Prohibition against discrimination; exceptions

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, except that:

(1) Classes of educational institutions subject to prohibition in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

(2) Educational institutions commencing planned change in admissions in regard to admissions to educational institutions, this section shall not apply (A) for one year from June 23, 1972, nor for six years after June 23, 1972, in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of only one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education, whichever is the later;

(3) Educational institutions of religious organizations with contrary religious tenets this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

(4) Educational institutions training individuals for military services or merchant marine this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

(5) Public educational institutions with traditional and continuing admissions policy in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

(6) Social fraternities or sororities; voluntary youth service organizations this section shall not apply to membership practices -

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;

(7) Boy or Girl conferences this section shall not apply to -

(A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(B) any program or activity of any secondary school or educational institution specifically for -

(i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) the selection of students to attend any such conference;

(8) Father-son or mother-daughter activities at educational institutions this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and

(9) Institution of higher education scholarship awards in "beauty" pageants this section shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other on discrimination provisions of Federal law.

(b) Preferential or disparate treatment because of imbalance in participation or receipt of Federal benefits; statistical evidence of imbalance

Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: Provided, That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this chapter of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

(c) "Educational institution" defined For purposes of this chapter an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

Sec. 1682. Federal administrative enforcement; report to Congressional committees

Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 1681 of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President.

Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or

(2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full

written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

Sec. 1683. Judicial review

Any department or agency action taken pursuant to section 1682 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 1682 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of section 701 of that title.

Sec. 1684. Blindness or visual impairment; prohibition against discrimination

No person in the United States shall, on the ground of blindness or severely impaired vision, be denied admission in any course of study by a recipient of Federal financial assistance for any education program or activity, but nothing herein shall be construed to require any such institution to provide any special services to such person because of his blindness or visual impairment.

Sec. 1685. Authority under other laws unaffected

Nothing in this chapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

Sec. 1686. Interpretation with respect to living facilities

Notwithstanding anything to the contrary contained in this chapter, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.

Sec. 1687. Interpretation of "program or activity"

For the purposes of this chapter, the term "program or activity" and "program" mean all of the operations of -

(1)

(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)

(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 8801 of this title), system of vocational education, or other school system;

(3)

(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship -

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance, except that such term does not include any operation of an entity which is controlled by a religious organization if the application of section 1681 of this title to such operation would not be consistent with the religious tenets of such organization.

Sec. 1688. Neutrality with respect to abortion

Nothing in this chapter shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any

person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.

Appendix

US Department of Education, Office for Civil Rights, Letter to Chief of State Schools,
Title IX Obligations in Athletics, December 11, 1975



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Letter to Chief State School Officers, Title IX Obligations in Athletics

U.S. Department of Education, Office for Civil Rights

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Chief State School Officers FR

Elimination of sex discrimination in athletic programs sept. 1975 Memo to Chief State School Officers, LEA Superintendents, and PSE Presidents on Title IX obligations in athletics, including athletic scholarships; intercollegiate, club, and intramural programs. Cheerleading and drill teams are covered by extracurricular activities provision of Title IX. Physical education and health classes are covered by instructional programs provisions. Required first year activities are obsolete except for institutions covered by Title IX for the first time. Should be read in conjunction with 1979 intercollegiate athletics policy interpretation.

Doc. No. 00036 DATE: November 11, 1975

Typed From Original Copy

September 1975

TO : Chief State School Officers, Superintendents of Local Educational Agencies and College and University Presidents

FROM : Director, Office for Civil Rights

SUBJECT: Elimination of Sex Discrimination in Athletic Programs

Title IX of the Education Amendments of 1972 and the Departmental Regulation (45 CFR Part 86) promulgated thereunder prohibit discrimination on the basis of sex in the operation of most federally-assisted education programs. The regulation became effective on July 21, 1975.

During the forty-five day period immediately following approval by the President and publication of the regulation on June 4, 1975, concerns were raised about the immediate obligations of educational institutions to comply with certain sections of the Departmental Regulation as they relate to athletic programs. These concerns, in part, focus on the application of the adjustment period provision (86.41 (d)) to the various non-discrimination requirements, and additionally, on how educational institutions can carry out the self-evaluation requirement (86.3(c)).

This memorandum provides guidance with respect to the major first year responsibilities of an educational institution to ensure equal opportunity in the operation of both its athletic activities and its athletic scholarship programs. Practical experience derived from actual on-site compliance reviews and the concomitant development of greater governmental expertise on the application of the Regulation to athletic activities may, of course, result in further or revised guidance being issued in the future. Thus, as affected institutions proceed to conform their programs with the Department's regulation, they and other interested persons are encouraged to review carefully the operation of these guidelines and to provide the Department with the benefit of their views.

Basic Requirements

There are two major substantive provisions of the regulation which define the basic responsibility of educational institutions to provide equal opportunity to members of both sexes interested in participating in the athletics programs institutions offer.

Section 86.41 prohibits discrimination on the basis of sex in the operation of any interscholastic, intercollegiate, club or intramural athletic program offered by an educational institution. Section 86.37(c) sets forth requirements for ensuring equal opportunity in the provision of athletic scholarships.

These sections apply to each segment of the athletic program of a federally assisted educational institution whether or not that segment is the subject of direct financial support through the Department. Thus, the fact that a particular segment of an athletic program is supported by funds received from various other sources (such as student fees, general revenues, gate receipts, alumni donations, booster clubs, and non-profit foundations) does not remove it from the reach of the statute and hence of the regulatory requirements. However, drill teams, cheerleaders and the like, which are covered more generally as extracurricular activities under section 86.31, and instructional offerings such as physical education and health classes, which are covered under section 86.34, are not a part of the institution's "athletic program" within the meaning of the regulation.

Section 86.41 does not address the administrative structure(s) which are used by educational institutions for athletic programs. Accordingly, institutions are not precluded from employing separate administrative structures for men's and women's sports (if separate teams exist) or a unitary structure. However, when educational institutions evaluate whether they are in compliance with the provisions of the regulation relating to non-discrimination in employment, they must carefully assess the effects on employees of both sexes of current and any proposed administrative structure and related coaching assignments. Changes in current administrative structure(s) or coaching assignments which have a disproportionately adverse effect on the employment opportunities of employees of one sex are prohibited by the regulation.

Self-Evaluation and Adjustment Periods

Section 86.3(c) generally requires that by July 21, 1976, educational institutions (1) carefully evaluate current policies and practices (including those related to the operation of athletic programs) in terms of compliance with those provisions and (2) where such policies or practices are inconsistent with the regulation, conform current policies and practices to the requirements of the regulation.

An institution's evaluation of its athletic program must include every area of the program covered by the regulation. All sports are to be included in this overall assessment, whether they are contact or non-contact sports.

With respect to athletic programs, section 86.41 (d) sets specific time limitations on the attainment of total conformity of institutional policies and practices with the requirements of the regulation up to one year for elementary schools and up to three years for all other educational institutions.

Because of the integral relationship of the provision relating to athletic scholarships and the provision relating to the operation of athletic programs, the adjustment periods for both are the same.

The adjustment period is not a waiting period. Institutions must begin now to take whatever steps are necessary to ensure full compliance as quickly as possible. Schools may design an approach for achieving full compliance tailored to their own circumstances; however, self-evaluation, as required by section 86.3 (c) is a very important step for every institution to assure compliance with the entire Title IX regulation, as well as with the athletics provisions.

Required First Year Actions

School districts, as well as colleges and universities, are obligated to perform a self-evaluation of their entire education program, including the athletics program, prior to July 21, 1976. School districts which offer interscholastic or intramural athletics at the elementary school level must immediately take significant steps to accommodate the interests and abilities of elementary school pupils of both sexes, including steps to eliminate obstacles to compliance such as inequities in the provision of equipment, scheduling and the assignment of coaches and other supervisory personnel. As indicated earlier, school districts must conform their total athletic program at the elementary level to the requirements of section 86.41 no later than July 21, 1976.

In order to comply with the various requirements of the regulation addressed to nondiscrimination in athletic programs, educational institutions operating athletic programs above the elementary level should:

- (1) Compare the requirements of the regulation addressed to nondiscrimination in athletic programs and equal opportunity in the provision of athletic scholarships with current policies and practices;
- (2) Determine the interests of both sexes in the sports to be offered by the institution and, where the sport is a contact sport or where participants are selected on the basis of competition, also determine the relative abilities of members of each sex for each such sport offered, in order to decide whether to have single sex teams or teams composed of both sexes. (Abilities might be determined through try-outs or by relying upon the

knowledge of athletic teaching staff, administrators and athletic conference and league representatives.)

- (3) Develop a plan to accommodate effectively the interests and abilities of both sexes, which plan must be fully implemented as expeditiously as possible and in no event later than July 21, 1978. Although the plan need not be submitted to the Office for Civil Rights, institutions should consider publicizing such plans so as to gain the assistance of students, faculty, etc. in complying with them.

Assessment of Interests and Abilities

In determining student interests and abilities as described in (2) above, educational institutions as part of the self-evaluation process should draw the broadest possible base of information. An effort should be made to obtain the participation of all segments of the educational community affected by the athletics program, and any reasonable method adopted by an institution to obtain such participation will be acceptable.

Separate Teams

The second type of determination discussed in (2) above relates to the manner in which a given sports activity is to be offered. Contact sports and sports for which teams are chosen by competition may be offered either separately or on a unitary basis.

Contact sports are defined as football, basketball, boxing, wrestling, rugby, ice hockey and any other sport the purpose or major activity of which involves bodily contact. Such sports may be offered separately.

If by opening a team to both sexes in a contact sport an educational institution does not effectively accommodate the abilities of members of both sexes (see 86.41(c) (1)), separate teams in that sport will be required if both men and women express interest in the sport and the interests of both sexes are not otherwise accommodated. For example an institution would not be effectively accommodating the interests and abilities of women if it abolished all its women's teams and opened up its men's teams to women, but only a few women were able to qualify for the men's teams.

Equal Opportunity

In the development of the total athletic program referred to in (3) above, educational institutions, in order to accommodate effectively the interests and abilities of both sexes, must ensure that equal opportunity exists in both the conduct of athletic programs and the provision of athletic scholarships.

Section 86.41(c) requires equal opportunity in athletic programs for men and women. Specific factors which should be used by an educational institution during its self-evaluative planning to determine whether equal opportunity exists in its plan for its total athletic program are:

- the nature and extent of the sports programs to be offered (including the levels of competition, such as varsity, club, etc.);
- the provision of equipment and supplies;

- the scheduling of games and practice time;
- the provision of travel and per diem allowances;
- the nature and extent of the opportunity to receive coaching and academic tutoring;
- the assignment and compensation of coaches and tutors;
- the provision of locker rooms, practice and competitive facilities;
- the provision of medical and training facilities and services;
- the provision of housing and dining facilities and services;
- the nature and extent of publicity.

Overall Objective

The point of the regulation is not to be so inflexible as to require identical treatment in each of the matters listed under section 86.41(c). During the process of self-evaluation, institutions should examine all of the athletic opportunities for men and women and make a determination as to whether each has an equal opportunity to compete in athletics in a meaningful way. The equal opportunity emphasis in the regulation addresses the totality of the athletic program of the institution rather than each sport offered.

Educational institutions are not required to duplicate their men's program for women. The thrust of the effort should be on the contribution of each of the categories to the overall goal of equal opportunity in athletics rather than on the details related to each of the categories.

While the impact of expenditures for sex identifiable sports programs should be carefully considered in determining whether equal opportunity in athletics exists for both sexes, equal aggregate expenditures for male and female teams are not required. Rather, the pattern of expenditures should not result in a disparate effect on opportunity. Recipients must not discriminate on the basis of sex in the provision of necessary equipment, supplies, facilities, and publicity for sports programs. The fact that differences in expenditures may occur because of varying costs attributable to differences in equipment requirements and levels of spectator interest does not obviate in any way the responsibility of educational institutions to provide equal opportunity.

Athletic Scholarships

As part of the self-evaluation and planning process discussed above, educational institutions must also ensure that equal opportunity exists in the provision of athletic scholarships. Section 86.37(c) provides that "reasonable opportunities" for athletic scholarships should be "in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics."

Following the approach of permitting separate teams, section 86.37(c) of the regulation permits the overall allocation of athletic scholarships on the basis of sex. No such separate treatment is permitted for non-athletic scholarships.

The thrust of the athletic scholarship section is the concept of reasonableness, not strict proportionality in the allocation of scholarships. The degree of interest and participation of male and female students in athletics is the critical factor in determining whether the allocation of athletic scholarships conforms to the requirements of the regulation.

Neither quotas nor fixed percentages of any type are required under the regulation. Rather, the institution is required to take a reasonable approach in its award of athletic scholarships, considering the participation and relative interests and athletic proficiency of its student of both sexes.

Institutions should assess whether male and female athletes in sports at comparable levels of competition are afforded approximately the same opportunities to obtain scholarships. Where the sports offered or the levels of competition differ for male and female students, the institution should assess its athletic scholarship program to determine whether overall opportunities to receive athletic scholarships are roughly proportionate to the number of students of each sex participating in intercollegiate athletics.

If an educational institution decides not to make an overall proportionate allocation of athletic scholarships on the basis of sex, and thus, decides to award such scholarships by other means such as applying general standards to applicants of both sexes, institutions should determine whether the standards used to award scholarships are neutral, i.e. based on criteria which do not inherently disadvantage members of either sex. There are a number of "neutral" standards which might be used including financial need, athletic proficiency or a combination of both. For example, an institution may wish to award its athletic scholarships to all applicants on the basis of need after a determination of a certain level of athletic proficiency. This would be permissible even if it results in a pattern of award which differs from the relative levels of interests or participation of men and women students so long as the initial determination of athletic proficiency is based on neutral standards. However, if such standards are not neutral in substance or in application then different standards would have to be developed and the use of the discriminatory standard discontinued. For example, when "ability" is used as a basis for scholarship award and the range of ability in a particular sport, at the time, differs widely between the sexes, separate norms must be developed for each sex.

Availability of Assistance

We in the Office for Civil Rights will be pleased to do everything possible to assist school officials to meet their Title IX responsibilities. The names, addresses and telephone numbers of Regional Offices for Civil Rights are attached.

/s/

Peter E. Holmes

[Top](#)

Appendix

A Policy Interpretation: Title IX and Intercollegiate Athletics, Federal Register, Vol. 44, No. 239-Tuesday, Dec. 11, 1979



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A Policy Interpretation: Title IX and Intercollegiate Athletics

Federal Register, Vol.44, No. 239 - Tuesday, Dec. 11, 1979

Intercollegiate athletics policy interpretation; provides more specific factors to be reviewed by OCR under program factors listed at Section 106.41 Of the Title IX regulation; explains OCR's approach to determining compliance in inter-collegiate athletics; adds two program factors, recruitment and support services to be reviewed; clarifies requirement for athletic scholarships - 34 C.F.R. Section 106.37(C). The document contains dated references, and footnote 6 is out of date; however, the policy is still current.

Federal Register / Vol. 44, No. 239 / Tuesday, December 11, 1979 / Rules and Regulations

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office for Civil Rights

Office of the Secretary

45 CFR Part 26

Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX and Intercollegiate Athletics

AGENCY: Office for Civil Rights, Office of the Secretary, HEW.

ACTION: Policy interpretation.

SUMMARY: The following Policy Interpretation represents the Department of Health, Education, and Welfare's interpretation of the intercollegiate athletic provisions of Title IX of the Education Amendments of 1972 and its implementing regulation. Title IX prohibits educational programs and institutions funded or otherwise supported by the Department from discriminating on the basis of sex. The Department published a proposed Policy Interpretation for public comment on December 11, 1978. Over 700 comments reflecting a broad range of opinion were received. In addition, HEW staff visited eight universities during June and July, 1979, to see how the proposed policy and other suggested alternatives would apply in actual practice at individual campuses. The final Policy Interpretation reflects the many comments HEW received and the results of the individual campus visits

EFFECTIVE DATE: December 11, 1979

FOR FURTHER INFORMATION CONTACT: Colleen O'Connor, 330 Independence Avenue, Washington, D.C. (202) 245-6671

SUPPLEMENTARY INFORMATION:

1. Legal Background

A. The Statute

Section 901(a) of Title IX of the Education Amendments of 1972 provides:

- 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.

Section 844 of the Education Amendments of 1974 further provides:

- The Secretary of [of HEW] shall prepare and publish ! ! ! proposed regulations implementing the provisions of Title IX of the Education Amendments of 1972 relating to the prohibition of sex discrimination in federally assisted education programs which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports.

Congress passed Section 844 after the Conference Committee deleted a Senate floor amendment that would have exempted revenue-producing athletics from the jurisdiction of Title IX.

B. The Regulation

The regulation implementing Title IX is set forth, in pertinent part, in the Policy Interpretation below. It was signed by President Ford on May 27, 1975, and submitted to the Congress for review pursuant to Section 431(d)(1) of the General Education Provisions Act (GEPA).

During this review, the House Subcommittee on Postsecondary Education held hearings on a resolution disapproving the regulation. The Congress did not disapprove the regulation within the 45 days allowed under GEPA, and it therefore became effective on July 21, 1975.

Subsequent hearings were held in the Senate Subcommittee on Education on a bill to exclude revenues produced by sports to the extent they are used to pay the costs of those sports. The Committee, however, took no action on this bill.

The regulation established a three year transition period to give institutions time to comply with its equal athletic opportunity requirements. That transition period expired on July 21, 1978.

II. Purpose of Policy Interpretation

By the end of July 1978, the Department had received nearly 100 complaints alleging discrimination in athletics against more than 50 institutions of higher education. In attempting to investigate these complaints, and to answer questions from the university community, the Department determined that it should provide further guidance on what constitutes compliance with the law. Accordingly, this Policy Interpretation explains the regulation so as to provide a framework within which the complaints can be resolved, and to provide institutions of higher education with additional guidance on the requirements for compliance with Title IX in intercollegiate athletic programs.

III. Scope of Application

This Policy Interpretation is designed specifically for intercollegiate athletics. However, its general principles will often apply to club, intramural, and interscholastic athletic programs, which are also covered by regulation. Accordingly, the Policy Interpretation may be used for guidance by the administrators of such programs when appropriate.

This policy interpretation applies to any public or private institution, person or other entity that operates an educational program or activity which receives or benefits from financial assistance authorized or extended under a law administered by the Department. This includes educational institutions whose students participate in HEW funded or guaranteed student loan or assistance programs. For further information see definition of "recipient" in Section 86.2 of the Title IX regulation.

IV. Summary of Final Policy Interpretation

The final Policy Interpretation clarifies the meaning of "equal opportunity" in intercollegiate athletics. It explains the factors and standards set out in the law and regulation which the Department will consider in determining whether an institution's intercollegiate athletics program complies with the law and regulations. It also provides guidance to assist institutions in determining whether any disparities which may exist between men's and women's programs are justifiable and nondiscriminatory. The Policy Interpretation is divided into three sections:

- Compliance in Financial Assistance (Scholarships) Based on Athletic Ability: Pursuant to the regulation, the governing principle in this area is that all such assistance should be available on a substantially proportional basis to the number of male and female participants in the institution's athletic program.
- Compliance in Other Program Areas (Equipment and supplies; games and practice times; travel and per diem, coaching and academic tutoring; assignment and compensation of coaches and tutors; locker rooms, and practice and competitive facilities; medical and training facilities; housing and dining facilities; publicity; recruitment; and support services): Pursuant to the regulation, the governing principle is that male and female athletes should receive equivalent treatment, benefits, and opportunities.
- Compliance in Meeting the Interests and Abilities of Male and Female Students: Pursuant to the regulation, the governing principle in this area is that the athletic interests and abilities of male and female students must be equally effectively accommodated.

V. Major Changes to Proposed Policy Interpretation

The final Policy Interpretation has been revised from the one published in proposed form on December 11, 1978. The proposed Policy Interpretation was based on a two-part approach. Part I addressed equal opportunity for participants in athletic programs. It required the elimination of discrimination in financial support and other benefits and opportunities in an institution's existing athletic program. Institutions could establish a presumption of compliance if they could demonstrate that:

- "Average per capita" expenditures for male and female athletes were substantially equal in the area of "readily financially measurable" benefits and opportunities or, if not, that any disparities were the result of nondiscriminatory factors, and
- Benefits and opportunities for male and female athletes, in areas which are not financially measurable, "were comparable."

Part II of the proposed Policy Interpretation addressed an institution's obligation to accommodate effectively the athletic interests and abilities of women as well as men on a continuing basis. It required an institution either

- To follow a policy of development of its women's athletic program to provide the participation and competition opportunities needed to accommodate the growing interests and abilities of women, or
- To demonstrate that it was effectively (and equally) accommodating the athletic interests and abilities of students, particularly as the interests and abilities of women students developed.

While the basic considerations of equal opportunity remain, the final Policy Interpretation sets forth the factors that will be examined to determine an institution's actual, as opposed to presumed, compliance with Title IX in the area of intercollegiate athletics.

The final Policy Interpretation does not contain a separate section on institutions' future responsibilities. However, institutions remain obligated by the Title IX regulation to accommodate effectively the interests and abilities of male and female students with regard to the selection of sports and levels of competition available. In most cases, this will entail development of athletic programs that substantially expand opportunities for women to participate and compete at all levels.

The major reasons for the change in approach are as follows:

(1) Institutions and representatives of athletic program participants expressed a need for more definitive guidance on what constituted compliance than the discussion of a presumption of compliance provided. Consequently the final Policy Interpretation explains the meaning of "equal athletic opportunity" in such a way as to facilitate an assessment of compliance.

(2) Many comments reflected a serious misunderstanding of the presumption of compliance. Most institutions based objections to the proposed Policy Interpretation in part on the assumption that failure to provide compelling justifications for disparities in per capita expenditures would have automatically resulted in a finding of noncompliance. In fact, such a failure would only have deprived an institution of the benefit of the presumption that it was in compliance with the law: The Department would still have had the burden of demonstrating that the institution was actually engaged in unlawful discrimination. Since the purpose of issuing a policy interpretation was to clarify the regulation, the Department has determined that the approach of stating actual compliance factors would be more useful to all concerned.

(3) The Department has concluded that purely financial measures such as the per capita test do not in themselves offer conclusive

documentation of discrimination, except where the benefit or opportunity under review, like a scholarship, is itself financial in nature. Consequently, in the final Policy Interpretation, the Department has detailed the factors to be considered in assessing actual compliance. While per capita breakdowns and other devices to examine expenditure patterns will be used as tools of analysis in the Department's investigative process, it is achievement of "equal opportunity" for which recipients are responsible and to which the final Policy Interpretation is addressed.

A description of the comments received, and other information obtained through the comment/consultation process, with a description of Departmental action in response to the major points raised, is set forth at Appendix "B" to this document.

● VI. Historic Patterns of Intercollegiate Athletics Program Development and Operations

In its proposed Policy Interpretation of December 11, 1978, the Department published a summary of historic patterns affecting the relative status of men's and women's athletic programs. The Department has modified that summary to reflect additional information obtained during the comment and consultation process. The summary is set forth at Appendix A to this document.

VII. The Policy Interpretation

This Policy Interpretation clarifies the obligations which recipients of Federal aid have under Title IX to provide equal opportunities in athletic programs. In particular, this Policy Interpretation provides a means to assess an institution's compliance with the equal opportunity requirements of the regulation which are set forth at 45 CFR 88.37(c) and 88.4a(c).

A. Athletic Financial Assistance (Scholarships)

1. The Regulation. Section 86.37(c) of the regulation provides:

- [Institutions] must provide reasonable opportunities for such award (of financial assistance) for member of each sex in proportion to the number of students of each sex participating in !!! inter-collegiate athletics.

2. The Policy - The Department will examine compliance with this provision of the regulation primarily by means of a financial comparison to determine whether proportionately equal amounts of financial assistance (scholarship aid) are available to men's and women's athletic programs. The Department will measure compliance with this standard by dividing the amounts of aid available for the members of each sex by the numbers of male or female participants in the athletic program and comparing the results. Institutions may be found in compliance if this comparison results in substantially equal amounts or if a resulting disparity can be explained by adjustments to take into account legitimate, nondiscriminatory factors. Two such factors are:

a. At public institutions, the higher costs of tuition for students from out-of state may in some years be unevenly distributed between men's and women's programs. These differences will be considered nondiscriminatory if they are not the result of policies or practices which disproportionately limit the availability of out-of-state scholarships to either men or women.

b. An institution may make reasonable professional decisions concerning the awards most appropriate for program development. For example, team development initially may require spreading scholarships over as much as a full generation (four years) of student athletes. This may result in the award of fewer scholarships in the first few years than would be necessary to create proportionality between male and female athletes.

3. Application of the Policy - a. This section does not require a proportionate number of scholarships for men and women or individual scholarships of equal dollar value. It does mean that the total amount of scholarship aid made available to men and women must be substantially proportionate to their participation rates.

b. When financial assistance is provided in forms other than grants, the distribution of non-grant assistance will also be compared to determine whether equivalent benefits are proportionately available to male and female athletes. A disproportionate amount of work-related aid or loans in the assistance made available to the members of one sex, for example, could constitute a violation of Title IX.

4. Definition - For purposes of examining compliance with this Section, the participants will be defined as those athletes:

- a. Who are receiving the institutionally-sponsored support normally provided to athletes competing at the institution involved, e.g., coaching, equipment, medical and training room services, on a regular basis during a sport's season; and
- b. Who are participating in organized practice sessions and other team meetings and activities on a regular basis during a sport's season; and
- c. Who are listed on the eligibility or squad lists maintained for each sport, or
- d. Who, because of injury, cannot meet a, b, or c above but continue to receive financial aid on the basis of athletic ability.

B. Equivalence in Other Athletic Benefits and Opportunities

1. The Regulation C The Regulation requires that recipients that operate or sponsor interscholastic, intercollegiate, club or intramural athletics, "provide equal athletic opportunities for members of both sexes." In determining whether an institution is providing equal opportunity in intercollegiate athletics the regulation requires the Department to consider, among others, the following factors:

- (1)
- (2) Provision and maintenance of equipment and supplies;
- (3) Scheduling of games and practice times;
- (4) Travel and per diem expenses;
- (5) Opportunity to receive coaching and academic tutoring;
- (6) Assignment and compensation of coaches and tutors;
- (7) Provision of locker rooms, practice and competitive facilities;

- (8) Provision of medical and training services and facilities;
- (9) Provision of housing and dining services and facilities; and
- (10) Publicity

Section 86.41(c) also permits the Director of the Office for Civil Rights to consider other factors in the determination of equal opportunity. Accordingly, this Section also addresses recruitment of student athletes and provision of support services.

This list is not exhaustive. Under the regulation, it may be expanded as necessary at the discretion of the Director of the Office for Civil Rights.

2. The Policy - The Department will assess compliance with both the recruitment and the general athletic program requirements of the regulation by comparing the availability, quality and kinds of benefits, opportunities, and treatment afforded members of both sexes. Institutions will be in compliance if the compared program components are equivalent, that is, equal or equal in effect. Under this standard, identical benefits, opportunities, or treatment are not required, provided the overall effects of any differences is negligible.

If comparisons of program components reveal that treatment, benefits, or opportunities are not equivalent in kind, quality or availability, a finding of compliance may still be justified if the differences are the result of nondiscriminatory factors. Some of the factors that may justify these differences are as follows:

a. Some aspects of athletic programs may not be equivalent for men and women because of unique aspects of particular sports or athletic activities. This type of distinction was called for by the "Javits' Amendment" to Title IX which instructed HEW to make "reasonable (regulatory) provisions considering the nature of particular sports" in intercollegiate athletics.

Generally, these differences will be the result of factors that are inherent to the basic operation of specific sports. Such factors may include rules of play, nature/replacement of equipment, rates of injury resulting from participation, nature of facilities required for competition, and the maintenance/upkeep requirements of those facilities. For the most part, differences involving such factors will occur in programs offering football, and consequently these differences will favor men. If sport-specific needs are met equivalently in both men's and women's programs, however, differences in particular program components will be found to be justifiable.

b. Some aspects of athletic programs may not be equivalent for men and women because of legitimately sex-neutral factors related to special circumstances of a temporary nature. For example, large disparities in recruitment activity for any particular year may be the result of annual fluctuations in team needs for first-year athletes. Such differences are justifiable to the extent that they do not reduce overall equality of opportunity.

c. The activities directly associated with the operation of a competitive event in a single-sex sport may, under some circumstances, create unique demands or imbalances in particular program components. Provided any special demands associated with the activities of sports involving participants of the other sex are met to an equivalent degree, the resulting differences may be found nondiscriminatory. At many schools, for example, certain sports (notably football and men's basketball) traditionally draw large crowds. Since the costs of managing an athletic event increase with crowd size, the overall support made available for event management to men's and women's programs may differ in degree and kind. These differences would not violate Title IX if the recipient does not limit the potential for women's athletic events to rise in spectator appeal and if the levels of event management support available to both programs are based on sex-neutral criteria (e.g., facilities used, projected attendance, and staffing needs).

d. Some aspects of athletic programs may not be equivalent for men and women because institutions are undertaking voluntary affirmative actions to overcome effects of historical conditions that have limited participation in athletics by the members of one sex. This is authorized at ' 86.3(b) of the regulation.

3. Application of the Policy - General Athletic Program Components C

a. **Equipment and Supplies (' 86.41(c)(2)).** Equipment and supplies include but are not limited to uniforms, other apparel, sport-specific equipment and supplies, general equipment and supplies, instructional devices, and conditioning and weight training equipment.

Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

- (1) The quality of equipment and supplies;
- (2) The amount of equipment and supplies;
- (3) The suitability of equipment and supplies;
- (4) The maintenance and replacement of the equipment and supplies; and
- (5) The availability of equipment and supplies.

b. **Scheduling of Games and Practice Times (' 86.41(c)(3)).** Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

- (1) The number of competitive events per sport;
- (2) The number and length of practice opportunities;
- (3) The time of day competitive events are scheduled;
- (4) The time of day practice opportunities are scheduled; and
- (5) The opportunities to engage in available pre-season and post-season competition.

c. **Travel and Per Diem Allowances (' 86.41(c)(4)).** Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

- (1) Modes of transportation;

- (2) Housing furnished during travel:
- (3) Length of stay before and after competitive events:
- (4) Per diem allowances: and
- (5) Dining arrangements.

d. Opportunity to Receive Coaching and Academic Tutoring (' 86.41(c)(5)). (1) Coaching Compliance will be assessed by examining, among other factors:

- (a) Relative availability of full-time coaches:
- (b) Relative availability of part-time and assistant coaches; and
- (c) Relative availability of graduate assistants.

(2) Academic tutoring-Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

- (a) The availability of tutoring; and
- (b) Procedures and criteria for obtaining tutorial assistance.

e. Assignment and Compensation of Coaches and Tutors (' 86.41(c)(6)). In general, a violation of Section 86.41(c)(6) will be found only where compensation or assignment policies or practices deny male and female athletes coaching of equivalent quality, nature, or availability.

Non-discriminatory factors can affect the compensation of coaches. In determining whether differences are caused by permissible factors, the range and nature of duties, the experience of individual coaches, the number of participants for particular sports, the number of assistant coaches supervised, and the level of competition will be considered.

Where these or similar factors represent valid differences in skill, effort, responsibility or working conditions they may, in specific circumstances, justify differences in compensation. Similarly, there may be unique situations in which a particular person may possess such an outstanding record of achievement as to justify an abnormally high salary.

(1) Assignment of Coaches - Compliance will be assessed by examining, among other factors, the equivalence for men's and women's coaches of:

- (a) Training, experience, and other professional qualifications;
- (b) Professional standing.

(2) Assignment of Tutors-Compliance will be assessed by examining, among other factors, the equivalence for men's and women's tutors of:

- (a) Tutor qualifications;
- (b) Training, experience, and other qualifications.

(3) Compensation of Coaches - Compliance will be assessed by examining, among other factors, the equivalence for men's and women's coaches of:

- (a) Rate of compensation (per sport, per season);
- (b) Duration of contracts;
- (c) Conditions relating to contract renewal;
- (d) Experience;
- (e) Nature of coaching duties performed;
- (f) Working conditions; and
- (g) Other terms and conditions of employment.

(4) Compensation of Tutors - Compliance will be assessed by examining, among other factors, the equivalence for men's and women's tutors of:

- (a) Hourly rate of payment by nature subjects tutored;
- (b) Pupil loads per tutoring season;
- (c) Tutor qualifications;
- (d) Experience;
- (e) Other terms and conditions of employment.

f. Provision of Locker Rooms, Practice and Competitive Facilities. (' 86.41(c)(7)). Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

- (1) Quality and availability of the facilities provided for practice and competitive events;
- (2) Exclusivity of use of facilities provided for practice and competitive events;

- (3) Availability of locker rooms;
- (4) Quality of locker rooms;
- (5) Maintenance of practice and competitive facilities; and
- (6) Preparation of facilities for practice and competitive events.

g. Provision of Medical and Training Facilities and Services (' 86.41(c)(8)). Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

- (1) Availability of medical personnel and assistance;
- (2) Health, accident and injury insurance coverage;
- (3) Availability and quality of weight and training facilities;
- (4) Availability and quality of conditioning facilities; and
- (5) Availability and qualifications of athletic trainers.

h. Provision of Housing and Dining Facilities and Services (' 86.41(c)(9)). Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

- (1) Housing provided;
- (2) Special services as part of housing arrangements (e.g., laundry facilities, parking space, maid service).

i. Publicity (' 86.41(c)(10)). Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

- (1) Availability and quality of sports information personnel;
- (2) Access to other publicity resources for men's and women's programs; and
- (3) Quantity and quality of publications and other promotional devices featuring men's and women's programs.

4. Application of the Policy-Other Factors (' 86.41(c)). a. Recruitment of Student Athletes. The athletic recruitment practices of institutions often affect the overall provision of opportunity to male and female athletes. Accordingly, where equal athletic opportunities are not present for male and female students, compliance will be assessed by examining the recruitment practices of the athletic programs for both sexes to determine whether the provision of equal opportunity will require modification of those practices.

Such examinations will review the following factors:

- (1) Whether coaches or other professional athletic personnel in the programs serving male and female athletes are provided with substantially equal opportunities to recruit;
- (2) Whether the financial and other resources made available for recruitment in male and female athletic programs are equivalently adequate to meet the needs of each program; and
- (3) Whether the differences in benefits, opportunities, and treatment afforded prospective student athletes of each sex have a disproportionately limiting effect upon the recruitment of students of either sex.

b. Provision of Support Services. The administrative and clerical support provided to an athletic program can affect the overall provision of opportunity to male and female athletes, particularly to the extent that the provided services enable coaches to perform better their coaching functions.

In the provision of support services, compliance will be assessed by examining, among other factors, the equivalence of:

- (1) The amount of administrative assistance provided to men's and women's programs;
- (2) The amount of secretarial and clerical assistance provided to men's and women's programs.

5. Overall Determination of Compliance. The Department will base its compliance determination under ' 86.41(c) of the regulation upon an examination of the following:

- a. Whether the policies of an institution are discriminatory in language or effect; or
- b. Whether disparities of a substantial and unjustified nature exist in the benefits, treatment, services, or opportunities afforded male and female athletes in the institution's program as a whole; or
- c. Whether disparities in benefits, treatment, services, or opportunities in individual segments of the program are substantial enough in and of themselves to deny equality of athletic opportunity.

C. Effective Accommodation of Student Interests and Abilities.

1. The Regulation. The regulation requires institutions to accommodate effectively the interests and abilities of students to the extent necessary to provide equal opportunity in the selection of sports and levels of competition available to members of both sexes.

Specifically, the regulation, at ' 86.41(c)(1), requires the Director to consider, when determining whether equal opportunities are available

Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes.

Section 86.41(c) also permits the Director of the Office for Civil Rights to consider other factors in the determination of equal

opportunity. Accordingly, this section also addresses competitive opportunities in terms of the competitive team schedules available to athletes of both sexes.

2. The Policy. The Department will assess compliance with the interests and abilities section of the regulation by examining the following factors:

- a. The determination of athletic interests and abilities of students;
- b. The selection of sports offered; and
- c. The levels of competition available including the opportunity for team competition.

3. Application of the Policy C Determination of Athletic Interests and Abilities.

Institutions may determine the athletic interests and abilities of students by nondiscriminatory methods of their choosing provided:

- a. The processes take into account the nationally increasing levels of women's interests and abilities;
- b. The methods of determining interest and ability do not disadvantage the members of an underrepresented sex;
- c. The methods of determining ability take into account team performance records; and
- d. The methods are responsive to the expressed interests of students capable of intercollegiate competition who are members of an underrepresented sex.

4. Application of the Policy - Selection of Sports.

In the selection of sports, the regulation does not require institutions to integrate their teams nor to provide exactly the same choice of sports to men and women. However, where an institution sponsors a team in a particular sport for members of one sex, it may be required either to permit the excluded sex to try out for the team or to sponsor a separate team for the previously excluded sex.

a. Contact Sports - Effective accommodation means that if an institution sponsors a team for members of one sex in a contact sport, it must do so for members of the other sex under the following circumstances:

- (1) The opportunities for members of the excluded sex have historically been limited; and
- (2) There is sufficient interest and ability among the members of the excluded sex to sustain a viable team and a reasonable expectation of intercollegiate competition for that team.

b. Non-Contact Sports - Effective accommodation means that if an institution sponsors a team for members of one sex in a non-contact sport, it must do so for members of the other sex under the following circumstances:

- (1) The opportunities for members of the excluded sex have historically been limited;
- (2) There is sufficient interest and ability among the members of the excluded sex to sustain a viable team and a reasonable expectation of intercollegiate competition for that team; and
- (3) Members of the excluded sex do not possess sufficient skill to be selected for a single integrated team, or to compete actively on such a team if selected.

5. Application of the Policy - Levels of Competition.

In effectively accommodating the interests and abilities of male and female athletes, institutions must provide both the opportunity for individuals of each sex to participate in intercollegiate competition, and for athletes of each sex to have competitive team schedules which equally reflect their abilities.

a. Compliance will be assessed in any one of the following ways:

- (1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
- (2) Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or
- (3) Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

b. Compliance with this provision of the regulation will also be assessed by examining the following:

- (1) Whether the competitive schedules for men's and women's teams, on a program-wide basis, afford proportionally similar numbers of male and female athletes equivalently advanced competitive opportunities; or
- (2) Whether the institution can demonstrate a history and continuing practice of upgrading the competitive opportunities available to the historically disadvantaged sex as warranted by developing abilities among the athletes of that sex.

c. Institutions are not required to upgrade teams to intercollegiate status or otherwise develop intercollegiate sports absent a reasonable expectation that intercollegiate competition in that sport will be available within the institution's normal competitive regions. Institutions may be required by the Title IX regulation to actively encourage the development of such competition, however, when overall athletic opportunities within that region have been historically limited for the members of one sex.

6. Overall Determination of Compliance.

The Department will base its compliance determination under ' 86.41(c) of the regulation upon a determination of the following:

- a. Whether the policies of an institution are discriminatory in language or effect; or
- b. Whether disparities of a substantial and unjustified nature in the benefits, treatment, services, or opportunities afforded male and female athletes exist in the institution's program as a whole; or
- c. Whether disparities in individual segments of the program with respect to benefits, treatment, services, or opportunities are substantial enough in and of themselves to deny equality of athletic opportunity.

VIII. The Enforcement Process

The process of Title IX enforcement is set forth in ' 88.71 of the Title IX regulation, which incorporates by reference the enforcement procedures applicable to Title VI of the Civil Rights

Act of 1964. The enforcement process prescribed by the regulation is supplemented by an order of the Federal District Court, District of Columbia, which establishes time frames for each of the enforcement steps.

According to the regulation, there are two ways in which enforcement is initiated:

- Compliance Reviews - Periodically the Department must select a number of recipients (in this case, colleges and universities which operate intercollegiate athletic programs) and conduct investigations to determine whether recipients are complying with Title IX (45 CFR 80.7(a))
- Complaints - The Department must investigate all valid (written and timely) complaints alleging discrimination on the basis of sex in a recipient's programs. (45 CFR 80.7(b))

The Department must inform the recipient (and the complainant, if applicable) of the results of its investigation. If the investigation indicates that a recipient is in compliance, the Department states this, and the case is closed. If the investigation indicates noncompliance, the Department outlines the violations found.

The Department has 90 days to conduct an investigation and inform the recipient of its findings, and an additional 90 days to resolve violations by obtaining a voluntary compliance agreement from the recipient. This is done through negotiations between the Department and the recipient, the goal of which is agreement on steps the recipient will take to achieve compliance. Sometimes the violation is relatively minor and can be corrected immediately. At other times, however, the negotiations result in a plan that will correct the violations within a specified period of time. To be acceptable, a plan must describe the manner in which institutional resources will be used to correct the violation. It also must state acceptable time tables for reaching interim goals and full compliance. When agreement is reached, the Department notifies the institution that its plan is acceptable. The Department then is obligated to review periodically the implementation of the plan.

An institution that is in violation of Title IX may already be implementing a corrective plan. In this case, prior to informing the recipient about the results of its investigation, the Department will determine whether the plan is adequate. If the plan is not adequate to correct the violations (or to correct them within a reasonable period of time) the recipient will be found in noncompliance and voluntary negotiations will begin. However, if the institutional plan is acceptable, the Department will inform the institution that although the institution has violations, it is found to be in compliance because it is implementing a corrective plan. The Department, in this instance also, would monitor the progress of the institutional plan. If the institution subsequently does not completely implement its plan, it will be found in noncompliance.

When a recipient is found in noncompliance and voluntary compliance attempts are unsuccessful, the formal process leading to termination of Federal assistance will be begun. These procedures, which include the opportunity for a hearing before an administrative law judge, are set forth at 45 CFR 80.8-80.11 and 45 CFR Part 81.

IX. Authority

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374, 20 U.S.C. 1681, 1682; sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 612; and 45 CFR Part 86)

Dated December 3, 1979.

Roma Stewart,

Director, Office for Civil Rights, Department of Health, Education, and Welfare.

Dated December 4, 1979.

Patricia Roberts Harris,

Secretary, Department of Health, Education, and Welfare.

Appendix A-Historic Patterns of Intercollegiate Athletics Program Development

1. Participation in intercollegiate sports has historically been emphasized for men but not women. Partially as a consequence of this, participation rates of women are far below those of men. During the 1977-78 academic year women students accounted for 48 percent of the national undergraduate enrollment (5,496,000 of 11,267,000 students). Yet, only 30 percent of the intercollegiate athletes are women.

The historic emphasis on men's intercollegiate athletic programs has also contributed to existing differences in the number of sports and scope of competition offered men and women. One source indicates that, on the average, colleges and universities are providing twice the number of sports for men as they are for women.

2. Participation by women in sports is growing rapidly. During the period from 1971-1978, for example, the number of female participants in organized high school sports increased from 294,000 to 2,083,000 C an increase of over 600 percent. In contrast, between Fall 1971 and Fall 1977, the enrollment of females in high school decreased from approximately 7,600,000 to approximately 7,150,000 a decrease of over 5 percent.

The growth in athletic participation by high school women has been reflected on the campuses of the nation's colleges and universities.

During the period from 1971 to 1976 the enrollment of women in the nation's institutions of higher education rose 52 percent, from 3,400,000 to 5,201,000. During this same period, the number of women participating in intramural sports increased 108 percent from 276,167 to 576,167. In club sports, the number of women participants increased from 16,386 to 25,541 or 55 percent. In intercollegiate sports, women's participation increased 102 percent from 31,852 to 64,375. These developments reflect the growing interest of women in competitive athletics, as well as the efforts of colleges and universities to accommodate those interests.

3. The overall growth of women's intercollegiate programs has not been at the expense of men's programs. During the past decade of rapid growth in women's programs, the number of intercollegiate sports available for men has remained stable, and the number of male athletes has increased slightly. Funding for men's programs has increased from \$1.2 to \$2.2 million between 1970-1977 alone.

4. On most campuses, the primary problem confronting women athletes is the absence of a fair and adequate level of resources, services, and benefits. For example, disproportionately more financial aid has been made available for male athletes than for female athletes. Presently, in institutions that are members of both the National Collegiate Athletic Association (NCAA) and the Association for Intercollegiate Athletics for Women (AIAW), the average annual scholarship budget is \$39,000. Male athletes receive \$32,000 or 78 percent of this amount, and female athletes receive \$7,000 or 22 percent, although women are 30 percent of all the athletes eligible for scholarships.

Likewise, substantial amounts have been provided for the recruitment of male athletes, but little funding has been made available for recruitment of female athletes.

Congressional testimony on Title IX and subsequent surveys indicates that discrepancies also exist in the opportunity to receive coaching and in other benefits and opportunities, such as the quality and amount of equipment, access to facilities and practice times, publicity, medical and training facilities, and housing and dining facilities.

5. At several institutions, intercollegiate football is unique among sports. The size of the teams, the expense of the operation, and the revenue produced distinguish football from other sports, both men's and women's. Title IX requires that "an institution of higher education must comply with the prohibition against sex discrimination imposed by that title and its implementing regulations in the administration of any revenue producing intercollegiate athletic activity." However, the unique size and cost of football programs have been taken into account in developing this Policy Interpretation.

Appendix B-Comments and Responses

The Office for Civil Rights (OCR) received over 700 comments and recommendations in response to the December 11, 1978 publication of the proposed Policy Interpretation. After the formal comment period, representatives of the Department met for additional discussions with many individuals and groups including college and university officials, athletic associations, athletic directors, women's rights organizations and other interested parties. HEW representatives also visited eight universities in order to assess the potential of the proposed Policy Interpretation and of suggested alternative approaches for effective enforcement of Title IX.

The Department carefully considered all information before preparing the final policy. Some changes in the structure and substance of the Policy Interpretation have been made as a result of concerns that were identified in the comment and consultation process.

Persons who responded to the request for public comment were asked to comment generally and also to respond specifically to eight questions that focused on different aspects of the proposed Policy Interpretation.

Question No. 1: Is the description of the current status and development of intercollegiate athletics for men and women accurate? What other factors should be considered?

Comment A: Some commentators noted that the description implied the presence of intent on the part of all universities to discriminate against women. Many of these same commentators noted an absence of concern in the proposed Policy Interpretation for those universities that have in good faith attempted to meet what they felt to be a vague compliance standard in the regulation.

Response: The description of the current status and development of intercollegiate athletics for men and women was designed to be a factual, historical overview. There was no intent to imply the universal presence of discrimination. The Department recognizes that there are many colleges and universities that have been and are making good faith efforts, in the midst of increasing financial pressures, to provide equal athletic opportunities to their male and female athletes.

Comment B: Commentors stated that the statistics used were outdated in some areas, incomplete in some areas, and inaccurate in some areas.

Response: Comment accepted. The statistics have been updated and corrected where necessary.

Question No. 2: Is the proposed two-stage approach to compliance practical? Should it be modified? Are there other approaches to be considered?

Comment: Some commentators stated that Part II of the proposed Policy Interpretation "Equally Accommodating the Interests and Abilities of Women" represented an extension of the July 1978, compliance deadline established in ' 86.41(d) of the Title IX regulation.

Response: Part II of the proposed Policy Interpretation was not intended to extend the compliance deadline. The format of the two stage approach, however, seems to have encouraged that perception; therefore, the elements of both stages have been unified in this Policy Interpretation.

Question No. 3: Is the equal average per capita standard based on participation rates practical? Are there alternatives or modifications that should be considered?

Comment A: Some commentators stated it was unfair or illegal to find noncompliance solely on the basis of a financial test when more valid indicators of equality of opportunity exist.

Response: The equal average per capita standard was not a standard by which noncompliance could be found. It was offered as a standard of presumptive compliance. In order to prove noncompliance, HEW would have been required to show that the unexplained disparities in expenditures were discriminatory in effect. The standard, in part, was offered as a means of simplifying proof of compliance for universities. The widespread confusion concerning the significance of failure to satisfy the equal average per capita expenditure standard, however, is one of the reasons it was withdrawn.

Comment B: Many commentors stated that the equal average per capita standard penalizes those institutions that have increased participation opportunities for women and rewards institutions that have limited women's participation.

Response: Since equality of average per capita expenditures has been dropped as a standard of presumptive compliance, the question of its effect is no longer relevant. However, the Department agrees that universities that had increased participation opportunities for women and wished to take advantage of the presumptive compliance standard, would have had a bigger financial burden than universities that had done little to increase participation opportunities for women.

Question No. 4: Is there a basis for treating part of the expenses of a particular revenue producing sport differently because the sport produces income used by the university for non-athletic operating expenses on a non-discriminatory basis? If, so, how should such funds be identified and treated?

Comment: Commentors stated that this question was largely irrelevant because there were so few universities at which revenue from the athletic program was used in the university operating budget.

Response: Since equality of average per capita expenditures has been dropped as a standard of presumed compliance, a decision is no longer necessary on this issue.

Question No. 5: Is the grouping of financially measurable benefits into three categories practical? Are there alternatives that should be considered? Specifically, should recruiting expenses be considered together with all other financially measurable benefits?

Comment A: Most commentors stated that, if measured solely on a financial standard, recruiting should be grouped with the other financially measurable items. Some of these commentors held that at the current stage of development of women's intercollegiate athletics, the amount of money that would flow into the women's recruitment budget as a result of separate application of the equal average per capita standard to recruiting expenses, would make recruitment a disproportionately large percentage of the entire women's budget. Women's athletic directors, particularly, wanted the flexibility to have the money available for other uses, and they generally agreed on including recruitment expenses with the other financially measurable items.

Comment B: Some commentors stated that it was particularly inappropriate to base any measure of compliance in recruitment solely on financial expenditures. They stated that even if proportionate amounts of money were allocated to recruitment, major inequities could remain in the benefits to athletes. For instance, universities could maintain a policy of subsidizing visits to their campuses of prospective students of one sex but not the other. Commentors suggested that including an examination of differences in benefits to prospective athletes that result from recruiting methods would be appropriate.

Response: In the final Policy Interpretation, recruitment has been moved to the group of program areas to be examined under 86.41(c) to determine whether overall equal athletic opportunity exists. The Department accepts the comment that a financial measure is not sufficient to determine whether equal opportunity is being provided. Therefore, in examining athletic recruitment, the Department will primarily review the opportunity to recruit, the resources provided for recruiting, and methods of recruiting.

Question No. 6: Are the factors used to justify differences in equal average per capita expenditures for financially measurable benefits and opportunities fair? Are there other factors that should be considered?

Comment: Most commentors indicated that the factors named in the proposed Policy Interpretation (the "scope of competition" and the "nature of the sport") as justifications for differences in equal average per capita expenditures were so vague and ambiguous as to be meaningless. Some stated that it would be impossible to define the phrase "scope of competition", given the greatly differing competitive structure of men's and women's programs. Other commentors were concerned that the "scope of competition" factor that may currently be designated as "nondiscriminatory" was, in reality, the result of many years of inequitable treatment of women's athletic programs.

Response: The Department agrees that it would have been difficult to define clearly and then to quantify the "scope of competition" factor. Since equal average per capita expenditures has been dropped as a standard of presumed compliance, such financial justifications are no longer necessary. Under the equivalency standard, however, the "nature of the sport" remains an important concept. As explained within the Policy Interpretation, the unique nature of a sport may account for perceived inequities in some program areas.

Question No 7: Is the comparability standard for benefits and opportunities that are not financially measurably fair and realistic? Should other factors controlling comparability be included? Should the comparability standard be revised? Is there a different standard which should be considered?

Comment: Many commentors stated that the comparability standard was fair and realistic. Some commentors were concerned, however, that the standard was vague and subjective and could lead to uneven enforcement.

Response: The concept of comparing the non-financially measurable benefits and opportunities provided to male and female athletes has been preserved and expanded in the final Policy Interpretation to include all areas of examination except scholarships and accommodation of the interests and abilities of both sexes. The standard is that equivalent benefits and opportunities must be provided. To avoid vagueness and subjectivity, further guidance is given about what elements will be considered in each program area to determine the equivalency of benefits and opportunities.

Question No. 8: Is the proposal for increasing the opportunity for women to participate in competitive athletics appropriate and effective? Are there other procedures that should be considered? Is there a more effective way to ensure that the interest and abilities of both men and women are equally accommodated?

Comment: Several commentors indicated that the proposal to allow a university to gain the status of presumed compliance by having policies and procedures to encourage the growth of women's athletics was appropriate and effective for future students, but ignored students presently enrolled. They indicated that nowhere in the proposed Policy Interpretation was concern shown that the current selection of sports and levels of competition effectively accommodate the interests and abilities of women as well as men.

Response: Comment accepted. The requirement that universities equally accommodate the interests and abilities of their male and female athletes (Part II of the proposed Policy Interpretation) has been directly addressed and is now a part of the unified final Policy Interpretation.

Additional Comments

The following comments were not responses to questions raised in the proposed Policy Interpretation. They represent additional concerns expressed by a large number of commentators.

(1) Comment: Football and other "revenue producing" sports should be totally exempted or should receive special treatment under Title IX.

Response: The April 18, 1978, opinion of the General Counsel, HEW, concludes that "an institution of higher education must comply with the prohibition against sex discrimination imposed by that title and its implementing regulation in the administration of any revenue producing activity". Therefore, football or other "revenue producing" sports cannot be exempted from coverage of Title IX.

In developing the proposed Policy Interpretation the Department concluded that although the fact of revenue production could not justify disparity in average per capita expenditure between men and women, there were characteristics common to most revenue producing sports that could result in legitimate nondiscriminatory differences in per capita expenditures. For instance, some "revenue producing" sports require expensive protective equipment and most require high expenditures for the management of events attended by large numbers of people. These characteristics and others described in the proposed Policy Interpretation were considered acceptable, nondiscriminatory reasons for differences in per capita average expenditures.

In the final Policy Interpretation, under the equivalent benefits and opportunities standard of compliance, some of these non-discriminatory factors are still relevant and applicable.

(2) Comment: Commentors stated that since the equal average per capita standard of presumed compliance was based on participation rates, the word should be explicitly defined.

Response: Although the final Policy Interpretation does not use the equal average per capita standard of presumed compliance, a clear understanding of the word "participant" is still necessary, particularly in the determination of compliance where scholarships are involved. The word "participant" is defined in the final Policy Interpretation.

(3) Comment: Many commentators were concerned that the proposed Policy Interpretation neglected the rights of individuals.

Response: The proposed Policy Interpretation was intended to further clarify what colleges and universities must do within their intercollegiate athletic programs to avoid discrimination against individuals on the basis of sex. The Interpretation, therefore, spoke to institutions in terms of their male and female athletes. It spoke specifically in terms of equal, average per capita expenditures and in terms of comparability of other opportunities and benefits for male and female participating athletes.

The Department believes that under this approach the rights of individuals were protected. If women athletes, as a class, are receiving opportunities and benefits equal to those of male athletes, individuals within the class should be protected thereby. Under the proposed Policy Interpretation, for example, if female athletes as a whole were receiving their proportional share of athletic financial assistance, a university would have been presumed in compliance with that section of the regulation. The Department does not want and does not have the authority to force universities to offer identical programs to men and women. Therefore, to allow flexibility within women's programs and within men's programs, the proposed Policy Interpretation stated that an institution would be presumed in compliance if the average per capita expenditures on athletic scholarships for men and women, were equal. This same flexibility (in scholarships and in other areas) remains in the final Policy Interpretation.

(4) Comment: Several commentators stated that the provision of a separate dormitory to athletes of only one sex, even where no other special benefits were involved, is inherently discriminatory. They felt such separation indicated the different degrees of importance attached to athletes on the basis of sex.

Response: Comment accepted. The provision of a separate dormitory to athletes of one sex but not the other will be considered a failure to provide equivalent benefits as required by the regulation.

(5) Comment: Commentors, particularly colleges and universities, expressed concern that the differences in the rules of intercollegiate athletic associations could result in unequal distribution of benefits and opportunities to men's and women's athletic programs, thus placing the institutions in a posture of noncompliance with Title IX.

Response: Commentors made this point with regard to ' 86.6(c) of the Title IX regulation, which reads in part:

"The obligation to comply with (Title IX) is not obviated or alleviated by any rule or regulation of any * * * athletic or other * * * association * * *"

Since the penalties for violation of intercollegiate athletic association rules can have a severe effect on the athletic opportunities within an affected program, the Department has reexamined this regulatory requirement to determine whether it should be modified. Our conclusion is that modification would not have a beneficial effect, and that the present requirement will stand.

Several factors enter into this decision. First, the differences between rules affecting men's and women's programs are numerous and change constantly. Despite this, the Department has been unable to discover a single case in which those differences require members to act in a discriminatory manner. Second, some rule differences may permit decisions resulting in discriminatory distribution of benefits and opportunities to men's and women's programs. The fact that institutions respond to differences in rules by choosing to deny equal opportunities, however, does not mean that the rules themselves are at fault; the rules do not prohibit choices that would result in compliance with Title IX. Finally, the rules in question are all established and subject to change by the membership of the association. Since all (or virtually all) association member institutions are subject to Title IX, the opportunity exists for these institutions to resolve collectively any wide-spread Title IX compliance problems resulting from association rules. To the extent that this has not taken place, Federal intervention on behalf of statutory beneficiaries is both warranted and required by the law. Consequently, the Department can follow no course other than to continue to disallow any defenses against findings of noncompliance with Title IX that are based on intercollegiate athletic association rules.

(6) Comment: Some commentators suggested that the equal average per capita test was unfairly skewed by the high cost of some "major" men's sports, particularly football, that have no equivalently expensive counterpart among women's sports. They suggested that a certain percentage of those costs (e.g., 50% of football scholarships) should be excluded from the expenditures on male athletes prior to application of the equal average per capita test.

Response: Since equality of average per capita expenditures has been eliminated as a standard of presumed compliance, the suggestion is no longer relevant. However, it was possible under that standard to exclude expenditures that were due to the nature of

the sport, or the scope of competition and thus were not discriminatory in effect. Given the diversity of intercollegiate athletic programs, determinations as to whether disparities in expenditures were nondiscriminatory would have been made on a case-by-case basis. There was no legal support for the proposition that an arbitrary percentage of expenditures should be excluded from the calculations.

(7) Comment: Some commentors urged the Department to adopt various forms of team-based comparisons in assessing equality of opportunity between men's and women's athletic programs. They stated that well-developed men's programs are frequently characterized by a few "major" teams that have the greatest spectator appeal, earn the greatest income, cost the most to operate, and dominate the program in other ways. They suggested that women's programs should be similarly constructed and that comparability should then be required only between "men's major" and "women's major" teams, and between "men's minor" and "women's minor" teams. The men's teams most often cited as appropriate for "major" designation have been football and basketball, with women's basketball and volleyball being frequently selected as the counterparts.

Response: I here are two problems with this approach to assessing equal opportunity. First, neither the statute nor the regulation calls for identical programs for male and female athletes. Absent such a requirement, the Department cannot base noncompliance upon a failure to provide arbitrarily identical programs, either in whole or in part.

Second, no subgrouping of male or female students (such as a team) may be used in such a way as to diminish the protection of the larger class of males and females in their rights to equal participation in educational benefits or opportunities. Use of the "major/minor" classification does not meet this test where large participation sports (e.g., football) are compared to smaller ones (e.g., women's volleyball) in such a manner as to have the effect of disproportionately providing benefits or opportunities to the members of one sex.

(8) Comment: Some commenters suggest that equality of opportunity should be measured by a "sport-specific" comparison. Under this approach, institutions offering the same sports to men and women would have an obligation to provide equal opportunity within each of those sports. For example, the men's basketball team and the women's basketball team would have to receive equal opportunities and benefits.

Response: As noted above, there is no provision for the requirement of identical programs for men and women, and no such requirement will be made by the Department. Moreover, a sport-specific comparison could actually create unequal opportunity. For example, the sports available for men at an institution might include most or all of those available for women; but the men's program might concentrate resources on sports not available to women (e.g., football, ice hockey). In addition, the sport-specific concept overlooks two key elements of the Title IX regulation.

First, the regulation states that the selection of sports is to be representative of student interests and abilities (86.41(c)(1)). A requirement that sports for the members of one sex be available or developed solely on the basis of their existence or development in the program for members of the other sex could conflict with the regulation where the interests and abilities of male and female students diverge.

Second, the regulation frames the general compliance obligations of recipients in terms of program-wide benefits and opportunities (86.41(c)). As implied above, Title IX protects the individual as a student-athlete, not all a basketball player, or swimmer.

(9) Comment: A coalition of many colleges and universities urged that there are no objective standards against which compliance with Title IX in intercollegiate athletics could be measured. They felt that diversity is so great among colleges and universities that no single standard or set of standards could practicably apply to all affected institutions. They concluded that it would be best for individual institutions to determine the policies and procedures by which to ensure nondiscrimination in intercollegiate athletic programs.

Specifically, this coalition suggested that each institution should create a group representative of all affected parties on campus.

This group would then assess existing athletic opportunities for men and women, and, on the basis of the assessment, develop a plan to ensure nondiscrimination. This plan would then be recommended to the Board of Trustees or other appropriate governing body.

The role foreseen for the Department under this concept is:

- (a) The Department would use the plan as a framework for evaluating complaints and assessing compliance;
- (b) The Department would determine whether the plan satisfies the interests of the involved parties; and
- (c) The Department would determine whether the institution is adhering to the plan.

These commenters felt that this approach to Title IX enforcement would ensure an environment of equal opportunity.

Response: Title IX is an antidiscrimination law. It prohibits discrimination based on sex in educational institutions that are recipients of Federal assistance. The legislative history of Title IX clearly shows that it was enacted because of discrimination that currently was being practiced against women in educational institutions. The Department accepts that colleges and universities are sincere in their intention to ensure equal opportunity in intercollegiate athletics to their male and female students. It cannot, however, turn over its responsibility for interpreting and enforcing the law. In this case, its responsibility includes articulating the standards by which compliance with the Title IX statute will be evaluated.

The Department agrees with this group of commenters that the proposed self-assessment and institutional plan is an excellent idea. Any institution that engages in the assessment/planning process, particularly with the full participation of interested parties as envisioned in the proposal, would clearly reach or move well toward compliance. In addition, as explained in Section VIII of this Policy Interpretation, any college or university that has compliance problems but is implementing a plan that the Department determines will correct those problems within a reasonable period of time, will be found in compliance.

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Appendix

US Department of Education, Office for Civil Rights, Clarification of Intercollegiate Athletics Policy Guidance: The Three Part Test: The Part Three, Jan. 16, 1996

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Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test

Jan 16, 1996

Dear Colleague:

It is my pleasure to send you the enclosed Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (the Clarification).

As you know, the Office for Civil Rights (OCR) enforces Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities. The regulation implementing Title IX and the Department's Intercollegiate Athletics Policy Interpretation published in 1979--both of which followed publication for notice and the receipt, review and consideration of extensive comments--specifically address intercollegiate athletics. Since becoming Assistant Secretary, I have recognized the need to provide additional clarification regarding what is commonly referred to as the "three-part test," a test used to determine whether students of both sexes are provided nondiscriminatory opportunities to participate in athletics. The three-part test is described in the Department's 1979 Policy Interpretation.

Accordingly, on September 20, 1995, OCR circulated to over 4500 interested parties a draft of the proposed Clarification, soliciting comments about whether the document provided sufficient clarity to assist institutions in their efforts to comply with Title IX. As indicated when circulating the draft of the Clarification, the objective of the Clarification is to respond to requests for specific guidance about the existing standards that have guided the enforcement of Title IX in the area of intercollegiate athletics. Further, the Clarification is limited to an elaboration of the "three-part test." This test, which has generated the majority of the questions that have been raised about Title IX compliance, is a portion of a larger analytical framework reflected in the 1979 Policy Interpretation.

OCR appreciates the efforts of the more than 200 individuals who commented on the draft of the Clarification. In addition to providing specific comments regarding clarity, some parties suggested that the Clarification did not go far enough in protecting women's sports. Others, by contrast, suggested that the Clarification, or the Policy Interpretation itself, provided more protection for women's sports than intended by Title IX. However, it would not be appropriate to revise the 1979 Policy Interpretation, and adherence to its provisions shaped OCR's consideration of these comments. The Policy Interpretation has guided OCR's enforcement in the area of athletics for over fifteen years, enjoying the bipartisan support of Congress. The Policy Interpretation has also enjoyed the support of every court that has addressed issues of Title IX athletics. As one recent court decision recognized, the "three-part test" draws its "essence" from the Title IX statute.

The draft has been revised to incorporate suggestions that OCR received regarding how to make the document more useful and clearer. For instance, the Clarification now has additional examples to illustrate how to meet part one of the three-part test and makes clear that the term "developing interests" under part two of the test includes interests that already exist at the institution. The document also clarifies that an institution can choose which part of the test it plans to meet. In addition, it further clarifies how Title IX requires OCR to count participation opportunities and why Title IX does not require an institution, under part three of the test, to accommodate the interests and abilities of potential students.

OCR also received requests for clarification that relate primarily to fact- or institution-specific situations that only apply to a small number of athletes or institutions. These comments are more appropriately handled on an individual basis and, accordingly, OCR will follow-up on these comments and questions in the context of OCR's ongoing technical assistance efforts.

It is important to outline several points about the final document.

The Clarification confirms that institutions need to comply only with any one part of the three-part test in order to provide nondiscriminatory participation opportunities for individuals of both sexes. The first part of the test--substantial proportionality--focuses on the participation rates of men and women at an institution and affords an institution a "safe harbor" for establishing that it provides nondiscriminatory participation opportunities. An institution that does not provide substantially proportional participation opportunities for men and women may comply with Title IX by satisfying either part two or part three of the test. The second part--history and continuing practice--is an examination of an institution's good faith expansion of athletic opportunities through its response to developing interests of the underrepresented sex at that institution. The third part--fully and effectively accommodating interests and abilities of the underrepresented sex--centers on the inquiry of whether there are concrete and viable interests among the underrepresented sex that should be accommodated by an institution.

In addition, the Clarification does not provide strict numerical formulas or "cookie cutter" answers to the issues that are inherently case- and fact-specific. Such an effort not only would belie the meaning of Title IX, but would at the same time deprive institutions of the flexibility to which they are entitled when deciding how best to comply with the law.

Several parties who provided comments expressed opposition to the three-part test. The crux of the arguments made on behalf of those opposed to the three-part test is that the test does not really provide three different ways to comply. Opponents of the test assert, therefore, that the test improperly establishes arbitrary quotas. Similarly, they also argue that the three-part test runs counter to the intent of Title IX because it measures gender discrimination by underrepresentation and requires the full accommodation of only one sex. However, this understanding of Title IX and the three-part test is wrong.

First, it is clear from the Clarification that there are three different avenues of compliance. Institutions have flexibility in providing nondiscriminatory participation opportunities to their students, and OCR does not require quotas. For example, if an institution chooses to and does comply with part three of the test, OCR will not require it to provide substantially proportionate participation opportunities to, or demonstrate a history and continuing practice of program expansion that is responsive to the developing interests of, the

underrepresented sex. In fact, if an institution believes that its female students are less interested and able to play intercollegiate sports, that institution may continue to provide more athletic opportunities to men than to women, or even to add opportunities for men, as long as the recipient can show that its female students are not being denied opportunities, i.e., that women's interests and abilities are fully and effectively accommodated. The fact that each part of the three-part test considers participation rates does not mean, as some opponents of the test have suggested, that the three parts do not provide different ways to comply with Title IX.

Second, it is appropriate for parts two and three of the test to focus only on the underrepresented sex. Indeed, such a focus is required because Title IX, by definition, addresses discrimination. Notably, Title IX's athletic provisions are unique in permitting institutions--notwithstanding the long history of discrimination based on sex in athletics programs--to establish separate athletic programs on the basis of sex, thus allowing institutions to determine the number of athletic opportunities that are available to students of each sex. (By contrast, Title VI of the Civil Rights Act of 1964 forbids institutions from providing separate athletic programs on the basis of race or national origin.)

OCR focuses on the interests and abilities of the underrepresented sex only if the institution provides proportionately fewer athletic opportunities to members of one sex and has failed to make a good faith effort to expand its program for the underrepresented sex. Thus, the Policy Interpretation requires the full accommodation of the underrepresented sex only to the extent necessary to provide equal athletic opportunity, i.e., only where an institution has failed to respond to the interests and abilities of the underrepresented sex when it allocated a disproportionately large number of opportunities for athletes of the other sex.

What is clear then--because, for example, part three of the three-part test permits evidence that underrepresentation is caused not by discrimination but by lack of interest--is that underrepresentation alone is not the measure of discrimination. Substantial proportionality merely provides institutions with a safe harbor. Even if this were not the case and proportional opportunities were the only test, the "quota" criticism would be misplaced. Quotas are impermissible where opportunities are required to be created without regard to sex. However, schools are permitted to create athletic participation opportunities based on sex. Where they do so unequally, that is a legitimate measure of unequal opportunity under Title IX. OCR has chosen to make substantial proportionality only one of three alternative measures.

Several parties also suggested that, in determining the number of participation opportunities offered by an institution, OCR count unfilled slots, i.e., those positions on a team that an institution claims the team can support but which are not filled by actual athletes. OCR must, however, count actual athletes because participation opportunities must be real, not illusory. Moreover, this makes sense because, under other parts of the Policy Interpretation, OCR considers the quality and kind of other benefits and opportunities offered to male and female athletes in determining overall whether an institution provides equal athletic opportunity. In this context, OCR must consider actual benefits provided to real students.

OCR also received comments that indicate that there is still confusion about the elimination and capping of men's teams in the context of Title IX compliance. The rules here are straightforward. An institution can choose to eliminate or cap teams as a way of complying with part one of the three-part test. However, nothing in the Clarification requires that an institution cap or eliminate participation opportunities for men. In fact, cutting or capping men's teams will not help an institution comply with part two or part three of the test because these tests measure an institution's positive, ongoing response to the interests and abilities of the underrepresented sex. Ultimately, Title IX provides institutions with flexibility and choice regarding how they will provide nondiscriminatory participation opportunities.

Finally, several parties suggested that OCR provide more information regarding the specific elements of an appropriate assessment of student interest and ability. The Policy Interpretation is intended to give institutions flexibility to determine interests and abilities consistent with the unique circumstances and needs of an institution. We recognize, however, that it might be useful to share ideas on good assessment strategies. Accordingly, OCR will work to identify, and encourage institutions to share, good strategies that institutions have developed, as well as to facilitate discussions among institutions regarding potential assessment techniques.

OCR recognizes that the question of how to comply with Title IX and to provide equal athletic opportunities for all students is a significant challenge that many institutions face today, especially in the face of increasing budget constraints. It has been OCR's experience, however, that institutions committed to maintaining their men's program have been able to do so--and comply with Title IX--notwithstanding limited athletic budgets. In many cases, OCR and these institutions have worked together to find creative solutions that ensured equal opportunities in intercollegiate athletics. OCR is similarly prepared to join with other institutions in assisting them to address their own situations.

OCR is committed to continuing to work in partnership with colleges and universities to ensure that the promise of Title IX becomes a reality for all students. Thank you for your continuing interest in this subject.

Sincerely,

/signed/

Norma V. Cantú

Assistant Secretary
for Civil Rights

Enclosure

Jan 16, 1996

CLARIFICATION OF INTERCOLLEGIATE ATHLETICS POLICY GUIDANCE: THE THREE-PART TEST

The Office for Civil Rights (OCR) enforces Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. (Title IX), which prohibits discrimination on the basis of sex in education programs and activities by recipients of federal funds. The regulation implementing Title IX, at 34 C.F.R. Part 106, effective July 21, 1975, contains specific provisions governing athletic programs, at 34 C.F.R. § 106.41, and the awarding of athletic scholarships, at 34 C.F.R. § 106.37(c). Further clarification of the Title IX regulatory requirements is provided by the Intercollegiate Athletics Policy Interpretation, issued December 11, 1979 (44 Fed. Reg. 71413 et seq.

Appendix

US Department of Education, Office for Civil Rights, Further Clarification of
Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance, July 11, 2003



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Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance

**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
400 MARYLAND AVE., S.W.
WASHINGTON, D.C. 20202-1100**

THE ASSISTANT SECRETARY

July 11, 2003

Dear Colleague:

It is my pleasure to provide you with this Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance.

Since its enactment in 1972, Title IX has produced significant advancement in athletic opportunities for women and girls across the nation. Recognizing that more remains to be done, the Bush Administration is firmly committed to building on this legacy and continuing the progress that Title IX has brought toward true equality of opportunity for male and female student-athletes in America.

In response to numerous requests for additional guidance on the Department of Education's (Department) enforcement standards since its last written guidance on Title IX in 1996, the Department's Office for Civil Rights (OCR) began looking into whether additional guidance on Title IX requirements regarding intercollegiate athletics was needed. On June 27, 2002, Secretary of Education Rod Paige created the Secretary's Commission on Opportunities in Athletics to investigate this matter further, and to report back with recommendations on how to improve the application of the current standards for measuring equal opportunity to participate in athletics under Title IX. On February 26, 2003, the Commission presented Secretary Paige with its final report, "Open to All: Title IX at Thirty," and in addition, individual members expressed their views.

After eight months of discussion and an extensive and inclusive fact-finding process, the Commission found very broad support throughout the country for the goals and spirit of Title IX. With that in mind, OCR today issues this Further Clarification in order to strengthen Title IX's promise of non-discrimination in the athletic programs of our nation's schools.

Title IX establishes that: "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."

In its 1979 Policy Interpretation, the Department established a three-prong test for compliance with Title IX, which it later amplified and clarified in its 1996 Clarification. The test provides that an institution is in compliance if 1) the intercollegiate-level participation opportunities for male and female students at the institution are "substantially proportionate" to their respective full-time undergraduate enrollments, 2) the institution has a "history and continuing practice of program expansion for the underrepresented sex, or 3) the institution is "fully and effectively" accommodating the interests and abilities of the underrepresented sex.

First, with respect to the three-prong test, which has worked well, OCR encourages schools to take advantage of its flexibility, and to consider which of the three prongs best suits their individual situations. All three prongs have been used successfully by schools to comply with Title IX, and the test offers three separate ways of assessing whether schools are providing equal opportunities to their male and female students to participate in athletics. If a school does not satisfy the "substantial proportionality" prong, it would still satisfy the three-prong test if it maintains a history and continuing practice of program expansion for the underrepresented sex, or if "the interests and abilities of the members of [the underrepresented] sex have been fully and effectively accommodated by the present program." Each of the three prongs is thus a valid, alternative way for schools to comply with Title IX.

The transmittal letter accompanying the 1996 Clarification issued by the Department described only one of these three separate prongs - substantial proportionality - as a "safe harbor" for Title IX compliance. This led many schools to believe, erroneously, that they must take measures to ensure strict proportionality between the sexes. In fact, each of the three prongs of the test is an equally sufficient means of complying with Title IX, and no one prong is favored. The Department will continue to make clear, as it did in its 1996 Clarification, that "[i]nstitutions have flexibility in providing nondiscriminatory participation opportunities to their students, and OCR does not require quotas."

In order to ensure that schools have a clear understanding of their options for compliance with Title IX, OCR will undertake an education campaign to help educational institutions appreciate the flexibility of the law, to explain that each prong of the test is a viable and separate means of compliance, to give practical examples of the ways in which schools can comply, and to provide schools with technical assistance as they try to comply with Title IX.

In the 1996 Clarification, the Department provided schools with a broad range of specific factors, as well as illustrative examples, to help schools understand the flexibility of the three-prong test. OCR reincorporates those factors, as well as those illustrative examples, into this Further Clarification, and OCR will continue to assist schools on a case-by-case basis and address any questions they have about Title IX compliance. Indeed, OCR encourages schools to request individualized assistance from OCR as they consider ways to meet the requirements of Title IX. As OCR works with schools on Title IX compliance, OCR will share information on successful approaches with the broader scholastic community.

Second, OCR hereby clarifies that nothing in Title IX requires the cutting or reduction of teams in order to demonstrate compliance with Title IX, and that the elimination of teams is a disfavored practice. Because the elimination of teams diminishes opportunities for

students who are interested in participating in athletics instead of enhancing opportunities for students who have suffered from discrimination, it is contrary to the spirit of Title IX for the government to require or encourage an institution to eliminate athletic teams.

Therefore, in negotiating compliance agreements, OCR's policy will be to seek remedies that do not involve the elimination of teams.

Third, OCR hereby advises schools that it will aggressively enforce Title IX standards, including implementing sanctions for institutions that do not comply. At the same time, OCR will also work with schools to assist them in avoiding such sanctions by achieving Title IX compliance.

Fourth, private sponsorship of athletic teams will continue to be allowed. Of course, private sponsorship does not in any way change or diminish a school's obligations under Title IX.

Finally, OCR recognizes that schools will benefit from clear and consistent implementation of Title IX. Accordingly, OCR will ensure that its enforcement practices do not vary from region to region.

OCR recognizes that the question of how to comply with Title IX and to provide equal athletic opportunities for all students is a challenge for many academic institutions. But OCR believes that the three-prong test has provided, and will continue to provide, schools with the flexibility to provide greater athletic opportunities for students of both sexes.

OCR is strongly reaffirming today its commitment to equal opportunity for girls and boys, women and men. To that end, OCR is committed to continuing to work in partnership with educational institutions to ensure that the promise of Title IX becomes a reality for all students.

Thank you for your continuing interest in this subject.

Sincerely,

Gerald Reynolds
Assistant Secretary for Civil Rights

[Top](#)

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Last Modified: 12/20/2006

Appendix:

US Department of Education, Office for Civil Rights, Requirements Under Title IX of the



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Requirements Under Title IX of the Education Amendments of 1972

U.S. Department of Education
Office for Civil Rights
Washington, D.C. 20202-1328

INTRODUCTION

Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) prohibits discrimination on the basis of sex in education programs receiving Federal financial assistance. Athletics are considered an integral part of an institution's education program and are therefore covered by this law. It is the responsibility of the Department of Education (ED), Office for Civil Rights (OCR), to assure that athletic programs are operated in a manner that is free from discrimination on the basis of sex.

The regulation (34 C.F.R. Part 106) implementing Title IX contains specific provisions relating to athletic opportunities. It also permits individual institutions considerable flexibility in achieving compliance with the law.

To clarify the athletic requirements contained in the Title IX regulation, a Policy Interpretation was issued to provide colleges and universities with more guidance on how to comply with the law. The Policy Interpretation, which explains the standards of the regulation, clarifies the obligations of colleges and universities in three basic areas:

- student interests and abilities;
- athletic benefits and opportunities; and
- financial assistance.

While designed specifically for intercollegiate athletics, the general principles and compliance standards set forth in the Policy Interpretation will often apply to inter-scholastic athletic programs operated by elementary and secondary school systems, and to club and intramural athletic programs.

STUDENT INTERESTS AND ABILITIES

The athletic interests and abilities of male and female students must be equally and effectively accommodated. Compliance with this factor is assessed by examining a school's: (a) determination of the athletic interests and abilities of its students; (b) selection of the sports that are offered; and (c) levels of competition, including opportunity for team competition.

Measuring Athletic Interests

Colleges and universities have discretion in selecting the methods for determining the athletic interests and abilities of their students, as long as those methods are nondiscriminatory. The only requirements imposed are that institutions used methods that:

- take into account the nationally increasing level of women's interests and abilities;
- do not disadvantage the underrepresented sex (i.e., that sex whose participation rate in athletics is substantially below its enrollment rate);
- take into account team performance records of both male and female teams; and
- respond to the expressed interests of students capable of intercollegiate competition who belong to the underrepresented sex.

Selection of Sports

A college or university is not required to offer particular sports or the same sports for each sex. Also, an institution is not required to offer an equal number of sports for each sex. However, an institution must accommodate to the same degree the athletic interests and abilities of each sex in the selection of sports.

A college or university may sponsor separate teams for men and women where selection is based on competitive skill or when the activity is a contact sport. Contact sports under the Title IX regulation include boxing, wrestling, rugby, ice hockey, football, basketball and other sports in which the purpose or major activity involves bodily contact.

Equally effective accommodation also requires a college or university that sponsors a team for only one sex to do so for members of the other sex under certain circumstances. This applies to contact and non-contact sports. For example, a separate team may be required if there is sufficient interest and ability among members of the excluded sex to sustain a team and a reasonable expectation of competition for that team. Also, where an institution sponsors a team in a particular non-contact sport for members of one sex, it must allow athletes of the other sex to try-out for the team if, historically, there have been limited athletic opportunities for members of the other sex.

Levels of Competition

Colleges and universities must provide opportunity for intercollegiate competition as well as team schedules which equally reflect the competitive abilities of male and female athletes. An institution's compliance in this area may be assessed in any one of the following

ways:

- the numbers of men and women participating in intercollegiate athletics are substantially proportionate to their overall enrollment; or
- where members of one sex are underrepresented in the athletics program, whether the institution can show a continuing practice of program expansion responsive to the developing interests and abilities of that sex; or
- the present program accommodates the interests and abilities of the underrepresented sex.

In considering equivalent opportunities for levels of competition, compliance will be assessed by examining whether:

- male and female athletes, in proportion to their participation in athletic programs, are provided equivalently advanced competitive opportunities; or
- the institution has a history and continuing practice of upgrading the competitive opportunities available to the historically disadvantaged sex as warranted by the developing abilities among the athletes of that sex

Colleges and universities are not required to develop or upgrade an intercollegiate team if there is no reasonable expectation that competition will be available for that team within the institution's normal competitive region. However, an institution may be required to encourage development of such competition when overall athletic opportunities within that region have been historically limited for the members of one sex.

Discriminatory rules established by a governing athletic organization, or league do not relieve recipients of their Title IX responsibilities. For example, a college or university may not limit the eligibility or participation of women based on policies or requirements imposed by an intercollegiate athletic body.

ATHLETIC BENEFITS AND OPPORTUNITIES

In determining whether equal opportunities in athletics are available, the Title IX regulation specifies the following factors which must be considered

- accommodation of athletic interests and abilities (which is addressed separately in the section above);
- equipment and supplies;
- scheduling of games and practice time;
- travel and per diem allowances;
- opportunity for coaching and academic tutoring;
- assignment and compensation of coaches and tutors;
- locker rooms and other facilities;
- medical and training services;
- housing and dining services; and
- publicity.

The Title IX regulation also permits OCR to consider other factors in determining whether there is equal opportunity. Accordingly, the Policy Interpretation added recruitment of student athletes and provision of support services, since these factors can affect the overall provision of equal opportunity to male and female athletes.

The Policy Interpretation clarifies that institutions must provide equivalent treatment, services, and benefits regarding these factors. The overall equivalence standard allows institutions to achieve their own program goals within the framework of providing equal athletic opportunities. To determine equivalency for men's and women's athletic programs, each of the factors is assessed by comparing the following:

- availability;
- quality;
- kind of benefits;
- kind of opportunities; and
- kind of treatment.

Under this equivalency standard, identical benefits, opportunities, or treatment are not required. For example, locker facilities for a women's team do not have to be the same as for a men's team, as long as the effect of any differences in the overall athletic program are negligible.

If a comparison of program components indicates that benefits, opportunities, or treatment are not equivalent in quality, availability, or kind, the institution may still be in compliance with the law if the differences are shown to be the result of nondiscriminatory factors. Generally, these differences will be the result of unique aspects of particular sports or athletic activities, such as the nature/replacement of equipment and maintenance of facilities required for competition. Some disparities may be related to special circumstances of a temporary nature. For example, large disparities in recruitment activity for any particular year may be the result of annual fluctuations in team needs for first-year athletes. Difficulty in compliance will exist only if disparities are of a substantial and unjustified nature in a school's overall athletic program; or if disparities in individual program areas are substantial enough in and of themselves to deny equality of athletic opportunity. This equivalency approach allows institutions great flexibility in conducting their athletic programs and maintaining compliance without compromising the diversity of athletic programs among institutions.

FINANCIAL ASSISTANCE

To the extent that a college or university provided athletic scholarships, it is required to provide reasonable opportunities for such awards to members of each sex in proportion to the participation rate of each sex in intercollegiate athletics. This does not require the same number of scholarships for men and women or individual scholarships of equal value.

However, the total amount of assistance awarded to men and women must be substantially proportionate to their participation rates in athletic programs. In other words, if 60 percent of an institution's intercollegiate athletes are male, the total amount of aid going to male athletes should be approximately 60 percent of the financial aid dollars the institution awards.

Disparities in awarding financial assistance may be justified by legitimate, nondiscriminatory (sex-neutral) factors. For example, at some institutions the higher costs of tuition for out-of-state residents may cause an uneven distribution between scholarship aid to men's and women's programs. These differences are nondiscriminatory if they are not the result of limitations on the availability of out-of-state scholarships to either men or women. Differences also may be explained by professional decisions college and university officials make about program development. An institution beginning a new program, for example, may spread scholarships over a full generation (four years) of student athletes, thereby, awarding fewer scholarships during the first few years than would be necessary to create proportionality between male and female athletes.

ACHIEVING EQUAL OPPORTUNITY

Before the enactment of Title IX, most colleges and universities traditionally emphasized sports for male students, and the benefits and educational opportunities in athletic programs generally were limited for women. Title IX has helped focus attention on meeting the needs of women interested in athletics and helped education officials to recognize their responsibilities regarding the provision of equal athletic opportunity. The result has been increased involvement of girls and women in sports at all levels. OCR supports the efforts of education officials to comply with the requirements of Title IX by offering a program of technical assistance to institutions receiving Federal funds as well as to beneficiaries of those funds. OCR's technical assistance program is designed to provide education officials with the skills and knowledge necessary to apply the laws to their own circumstances and thereby facilitate voluntary compliance. OCR's principle enforcement activity is the investigation and resolution of discrimination complaints.

Anyone wishing additional information regarding the compliance and technical assistance program may contact the OCR regional office serving his or her state or territory. Copies of the Title IX law, regulation, and Policy Interpretation are available upon request.

[Top](#)

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Last Modified: 03/14/2005