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# The Impact of Title IX on Athletics Development in the United States

## 美國教育修正法案第IX條款對體育運動發展的影響

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### Abstract

Nothing has had as much of an impact in the history of public education as Title IX of the Education Amendment of 1972. The increase in the popularity of collegiate sports, especially the revenue sports (football, basketball), has made Title IX and Athletics a hot topic. However, many members of the Title IX generations do not have a clear picture or fully understand the true meaning behind Title IX. This paper tries to close this gap by explaining the relationship between Title IX and Athletics in a timeline format: the birth of Title IX in 1972; Title IX and Athletics in the 1970s; Policy Interpretation and the three-part compliance test applied by H.E.W. to intercollegiate athletic in 1979; three important court cases in the 1990s; and the current progress of Title IX in Athletics.

### 摘要

1972年頒布的教育修正法案第IX條款在公共教育方面的影響是無法比擬的。隨著學院運動項目的越來越普及，尤其是有收益的學院運動項目如美式足球、籃球，使第IX條款成為體育運動的熱門話題。然而在第IX條款頒布後出生的新一代成員中很多人並沒有充分認識和理解其背后的真正意義。這篇文章旨在彌補這種代溝，通過以時間發展線索來解釋第IX條款和體育運動的關係，揭示第IX條款的內涵，給人們清晰畫面。內容包括：第IX條款的誕生；二十世紀七十年代的體育運動和第IX條款的關係；政策的解釋和1979年H.E.W應用在學院體育運動中的三個部分的測試；九十年代三個重要的法庭案例；以及第IX條款在目前體育運動方面的發展和前景。

### Introduction

Nothing has had as much impact in the history of public education as Title IX of the Education Amendment of 1972. Title IX is the Federal Civil Rights statute to prohibiting gender discrimination in educational programs. Title IX regulations address areas including student activities, school admissions, academic advising, counseling, health services, access to classes, athletics, and institutional policies throughout public educational programs. The increase in the popularity of collegiate sports, especially the revenue sports (football, basketball), has made Title IX and Athletics a hot topic. Astonishingly, I encounter many among the post Title IX generations (Generation X, Generation Y and Generation Z) who are unclear about the

true meaning behind the Title IX. This paper seeks to close this gap by presenting a general picture and explain the relationship between Title IX and Athletics in a timeline basis: (a) the birth of Title IX; (b) Title IX and Athletics in 1970; (c) Title IX and Athletics in the 1980s, (d) Title IX and Athletics in the 1990s and 2000s; (e) the Current Progress of Title IX in Athletics and (f) Conclusion.

### The Birth of Title IX

Title IX evolved out of the Education Amendments to the Civil Rights Act of 1964. Prior to the adoption of Title IX, many colleges and universities discriminated against female students in a number of educational aspects. In 1970, the

House Special Subcommittee on Education held extensive hearings and found “massive, persistent patterns of discrimination against women in the academic world” (118 Cong. Rec. 5804, 1972). On June 23, 1972, President Richard M. Nixon signed Title IX into law to end gender discrimination in publicly funded educational programs and activities.

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 (Title IX, Education Amendments of 1972 of 1988)

Under the law, every federal agency that funds educational programs or activities must enforce Title IX. To enforce the Title IX, Congress approved the Javits amendment in 1974, which recognized the U.S. Department of Education’s Office for Civil Rights (OCR) as the primary agency charged with making Title IX’s anti-discrimination mandate a reality. On November 11, 1975, the Department of Health, Education, and Welfare (H.E.W.) publicized federal regulations to enforce the law (U.S. Department of Education, 1975).

### **Title IX and Athletics in 1970**

Soon after the federal regulations were publicized in 1975, several lawmakers tried to amend or even repeal Title IX. Organizations like the National Collegiate Athletic Association (NCAA) and the College Football Coaches Association (CFCA) strongly opposed its application to athletics or at least to men’s “revenue producing” sports. H.E.W. Secretary Caspar Weinberger defended the law, noting that Title IX made no exceptions for athletics or any other educational programs.

I had not realized....that athletics is the single most important thing in the United States....

The bemused reaction of Secretary of H.E.W. Caspar Weinberger to the fury kicked off the circulation of draft Title IX regulating in 1975 (H.E.W. Head Says, 1975).

Not until 1979, through a Policy Interpretation by the H.E.W., did intercollegiate athletic have any extended regulations in respect to Title IX. The Policy Interpretation included a three-part compliance test, investigating: (1) Athletic Financial Assistance (Scholarships); (2) Equivalence in other Athletic Benefits and Opportunities; and (3) Effective Accommodation of Student Interests and Abilities (44 Fed. Reg. 71413, 71413-71423, Dec. 11, 1979).

### **Athletic Financial Assistance**

To comply with the “Athletic Financial Assistance” requirement, financial assistance must be awarded based on the number of male and female athletes. The total amount of athletic aids must be substantially proportionate to the ratio of male and female athletes. For example, if a college gave \$500,000 of athletic scholarships and had 300 male and 200 female athletes, then \$300,000 would go to the male athletes and \$200,000 would go to the female athletes.

### **Equivalence in other Athletic Benefits and Opportunities**

The “Equivalence in other Athletic Benefits and Opportunities” is commonly known as “the laundry list.” Title IX specifically looks at the following program components: (1) whether the selection of sports and levels of competition effectively accommodate[d] the interests and abilities of members of both sexes; (2) the provision of equipment and supplies; (3) scheduling of games and practice; (4) travel and per diem allowance; (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 facilities and services; (9) provision of housing and dining facilities and services; [and] (10) publicity (34 C.F.R. 106.41 (c) (1)-(10)).

### **Effective Accommodation of Student Interests and Abilities**

The Policy Interpretation allowed institutions to demonstrate “Effective Accommodation of Student Interests and Abilities” in one of the three ways: (1) by showing that the rate of participation in athletic programs by members of the under-represented sex is substantially proportional to their rate of undergraduate enrollment; (2) by producing evidence of a history and “continuing practice” of program development for members of the under-represented sex; or (3) by producing evidence that the existing program “fully and effectively” accommodates the interests and abilities of both sexes (44 Fed. Reg. 74, 415-17, 1979)

### **Title IX and Athletics in the 1980s**

In the 1980s, many schools argued that Title IX applied only to educational programs that actually received federal funds and not to all educational programs simply because the schools themselves received general federal monies. In 1984, the Supreme Court voided H.E.W.’s interpretation of

Title IX in *Grove City College v. Bell* (1984). Four years after the *Grove City College v. Bell* (1984), Congress responded by broadening the scope and impact of Title IX when it passed the Civil Rights Restoration Act (CRRRA) over President Reagan's objection (Pub. L. No. 100-259, 1988 codified at 20 U.S.C. 1687, 1988).

### **Title IX and Athletics in the 1990s and 2000s**

For the first 20 years, there were not many changes following the passage of Title IX, as H.E.W. made only token efforts at enforcement (Ferrier, 1995; Porto, 1997; Snow, & Thro, 1996). However, in 1992 the important *Cohen v. Brown University* (1993) case set the stage for future changes.

#### ***Cohen v. Brown University* — 1992**

In 1992, Brown University planned to drop four sports: women's volleyball and gymnastics, and men's golf and water polo were scheduled for elimination under pending budget cuts. Amy Cohen was the plaintiff who brought the lawsuit on behalf of "all present and future Brown University women students and potential students, who participate, see to participate, and/or are deterred from participating in intercollegiate athletics funded by Brown" (*Cohen v. Brown University*, 1993). Amy Cohen pointed out that women athletes at Brown comprised just 36.7% of the total athletes when women made up 48% of the Brown's student body.

The court in *Cohen v. Brown University* (1993) used the three-part compliance test by H.E.W. Policy Interpretation to determine if Brown University complied with Title IX. The First Circuit held that Brown University did not meet the substantial proportionality threshold (*Cohen v. Brown University*, 1993). Although Brown University pointed to impressive growth in its women's athletic program in the 1970s, Brown had not continued the growth in 1980s and 1990s (*Cohen v. Brown University*, 1993). On this basis, the court concluded that Brown University failed the second prong of the compliance test. Finally, the court found that Brown would not be able to fully accommodate its women athlete's interest and talent following the cuts.

After a series of appeals by Brown University, the Supreme Court refused to review the First Circuit's ruling in *Cohen v. Brown University* (1993). The appellate court's ruling in *Cohen v. Brown University* (1993) changed the landscape of college athletics dramatically. The college and universities begin to take the mandate of Title IX seriously.

#### ***Favia v. Indiana University of Pennsylvania* — 1993**

Similar to Brown University, Indiana University of Pennsylvania (IUP) eliminated two women's and two men's teams as a part of university budget cuts. At that time, women athletes only comprised 36% of the total athletes while females comprised 56% of the student body at IUP. IUP protested that "to achieve total equity in sports at the university, they have to cut the number of men's teams to four" (*Favia v. Indiana University of Pennsylvania*, 1993). The court held that IUP was not in compliance with Title IX and issued an injunction reinstating the women's teams. IUP attempted to obviate the injunction by replacing gymnastics with soccer. This replacement would result in a net gain for the number of women athletes (*Favia v. IUP*, 1993). The rulings of the district and circuit courts in *Favia v. IUP* (1993) demonstrated that it was the numbers of athletes that mattered.

#### ***Roberts v Colorado State Board of Agriculture* — 1993**

In 1992, Colorado State University (CSU) eliminated its women's softball and men's baseball teams. After the elimination, the disparity between enrollment and athletics participation for women at CSU was 10.5 percent. CSU thus failed to comply with two prong tests but argued that 10.5% qualified as substantial proportionality (*Roberts v. Colorado State Board of Agriculture*, 1993). The courts failed to define substantial proportionality and shifted responsibility onto the OCR to provide institutions with guidelines. The OCR determined that a school has reached substantial proportionality when it can no longer move any closer to actual proportionality by adding a viable sport (U.S. Department of Education, 2004).

Nevertheless, for the next several years Congress battled numerous attempts to weaken Title IX and its 1975 regulations. Examples include:

- ◆ *Kelley v. Board of Regents the University of Illinois* (1994)
- ◆ *Boulanis v. Board of Regents of Illinois State University* (1999)
- ◆ *Neal v. Board of Trustees of California State Universities* (1999)
- ◆ *Pederson v. Louisiana State University* (2000)
- ◆ *Chalenor v. University of North Dakota* (2002)
- ◆ *Miami University Wrestling Club v Miami University of Ohio* (2002)

However, each attempt failed. In 1993 and 1995 CFCA turned to the courts to challenge the decisions of some schools to decrease opportunities for males rather than increase opportunities

to females. Courts universally rejected these challenges. When the congressional and judicial challenges failed, opponents turned to the executive branch, convincing the secretary of education to establish a commission on opportunity in Athletics. The Commission issued a 2003 report that recommended numerous regulatory changes that would have substantially weakened Title IX enforcement. Eventually, with public pressure mounting, the secretary issued a July 2003 letter that made no major changes. After losing in all three branches of government, National Wrestling Coaches Association (NWCA) filed a lawsuit against the Department of Education. Although NWCA lost in the district court, the matter is now before the U.S. Court of Appeals for the District of Columbia. Meanwhile, the College Sports Council challenged the secretary's July 2003 letter as well as the accuracy of the athletic participation studies performed by the Government Accounting Office.

## Current Progress of Title IX in Athletics

### The Myth

The myth that women do not like sports has been proven to be false. Statistics showed an increasing number of females participate in sports. In 1971-1972, there were only 7.4% (n=294,015) female high school athletes and 15.0% (n=29,972) female college athletes when compare to 92.6% (n=3,666,917) male high school athletes and 85% (n=170,384) male college athletes. After thirty years, in 2000-2001, female athletes accounted for 41.5% (n=2,784,154) in high schools and 42.0% (n=150,916) in colleges (NCAA 2004, National Federation of State High School Associations, 2001).

### Fall Short of Title IX in Athletics

Title IX has made great accomplishments since 1972. But the gap is still significant and is closing much too slowly. According to the 2002 report, "Title IX at 30 Report Card on Gender Equity," by the National Coalition for Women and Girls in Education (NCWGE), inequalities continued to persist in athletic programs. In 1999: (1) male sports received 15 cents more out of every new dollar going into athletics at the Division I and II levels; (2) every year male athletes receive 36% (\$133 million) more athletic scholarships than female athletes in NCAA member institutions; and (3) colleges spend an average of \$803 (27%) more per male than per female athlete.

## Conclusion

Title IX is still an issue that has to be worked on. It is true that Title IX has clearly explained that females must be given the same civil rights as males to participate in athletics. However, after more than 30 years, many schools and institutions are still working towards equality. On the other hand, opponents continue to try to weaken Title IX enforcement even after the congressional and judicial challenges failed.

Today, parents expect equal opportunity and equal treatment for both their sons and their daughters. Parents agree sports participation is beneficial to young people and can work as a building block in young people's personal development. I hope that one day everyone will be able to experience the excitement of athletics on an equal playing field and enjoy their civil rights freely.

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