

# Title IX and Its Effect on Men's Collegiate Athletics

BY KAREN OWOC

**Title IX: The Law** Title IX prohibits sex discrimination against students and employees of educational programs and activities at both public and private institutions that receive federal funds. Almost all private colleges and universities must abide by Title IX regulations because they receive federal funding through federal financial aid programs used by their students. This education law prevails upon all curricular and extracurricular offerings from medicine, math and science to music, dance and athletics.

**"...no person in the United States shall, on the basis of sex, be excluded from participation in, or denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance..."**

**– Title IX of the Education Amendments of 1972**

In passing Title IX, Congress had two objectives:

- 1) To avoid the use of federal resources to support discriminatory practices.
- 2) To provide individual citizens with effective protection against those practices.

In 1975 the final regulation of Title IX was signed into law and included provisions prohibiting sex discrimination in athletics. 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.

**The Losses to Men's Athletics** More than 2,200 men's athletic teams have been eliminated

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since 1981 to comply with the proportionality prong of the 1979 Title IX Policy Interpretation (a rigid affirmative action quota system). Thousands of male athletes have been prohibited from participating in collegiate sports while men's athletic scholarships and coaching positions have evaporated. The law, which was designed to end discrimination against women, is now discriminating against men. For example:

- **Boston University dropped its football program due to Title IX pressures after 91 years.**
- **University of San Francisco cut football after 64 years.**
- **Colgate University eliminated men's baseball after 107 years.**
- **Cornell University's men's fencing team was discontinued after 98 years.**
- **Princeton University ended its wrestling program for fear of litigation due to an inability to satisfy "proportionality".**
- **UCLA dropped its swimming and diving team in 1994 that had produced 16 Olympic Gold Medalists, 41 individual national titles, and a team title in 1982.**

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- UCLA abandoned its men's gymnastics team ten years after it had produced half of the United States team that won the gold medal in the 1984 Olympics.
  - Since 1982, over 64 schools have discontinued swimming and diving programs.
  - 212 men's gymnastics teams have been dropped since 1969 (2,544 roster positions lost); only 18 NCAA programs remain (216 roster positions).
  - 355 men's college wrestling teams (22,000 roster positions) have been eliminated over the past decade.
  - James Madison University dropped men's archery, indoor track, outdoor track, cross country, gymnastics, swimming and wrestling in 2006.
  - Rutgers University eliminated men's light weight crew, heavy weight crew, swimming, tennis, diving, and fencing in 2007.
- Men's Olympic sports in colleges (such as, gymnastics, baseball, swimming, track and field, water polo, volleyball, soccer, tennis and wrestling) are disappearing under pressure to achieve "gender equity" under Title IX. Consequently, the pool of U.S. Olympic talent has diminished due to the tremendous loss of men's Olympic sports in colleges. These cuts inevitably affect high school participation in that sport as well.

For example, in 1969 over 40,000 high school boys participated in gymnastics in the U.S. with over 230 NCAA schools sponsoring men's gymnastics. Since that time, the sport has lost 92% of its varsity programs (2,544 college roster positions eliminated) and 75% of its participating boys. Only 18 schools sponsoring men's gymnastics remain today and only two schools exist west of the Rockies - Stanford and UC Berkeley.

- In the 2000 Summer Olympics, the U.S. sent 338 men and 264 women to compete. In 2004, nearly equal numbers of men and women – an estimated 282 men and 263 women – represented the United States in 2004. Consider a Washington Post Olympic preview entitled "Female Athletes Continue to Gain Ground" written in April 2004. The article celebrated the equality in these numbers as evidence of progress for women, but the number of women competing was essentially unchanged. The so-called victory for women was the elimination of more than 50 male athletes from the U.S. roster.

### **Title IX and Athletics: Equal Athletic Opportunity**

To help clear up the confusion from the broad proscriptive language of the statute, Congress directed the Office of Civil Rights (OCR) to provide regulations for the enforcement and application of Title IX. Thus, the OCR produced the 1979 Intercollegiate Athletics Policy Interpretation of Title IX. The Policy Interpretation identified three basic parts (Sections) of Title IX as it applies to equal opportunities in athletic programs, whereas institutions must meet all of the requirements in order to be in compliance with Title IX. These requirements encompass the following:

- A. Athletic Financial Assistance (Scholarships)**
- B. Equivalence in Other Athletic Benefits and Opportunities**
- C. Effective Accommodation of Student Interests and Abilities** Title IX requires "institutions to accommodate effectively the interests and abilities of students to the

extent necessary to provide equal opportunity in the selection of sports offered and levels of competition available to members of both sexes". Title IX does not require institutions to offer identical sports but an equal opportunity to play. This section (Section C) has become the focus of the 1979 Title IX Policy Interpretation and its Three-Prong Test.

### **Effective Accommodation of Student Interests and Abilities: The Three-Prong Test**

The 1979 Intercollegiate Athletics Policy Interpretation of Title IX established three means by which institutions can demonstrate compliance of Section C – Effective Accommodation of Student Interests and Abilities. They are collectively known as the “Three-Prong Effective Accommodation Test” (Three-Prong Test) or alternatively, as the “Three-Part Test”. Compliance by an institution is assessed in any one of the following ways:

**Prong 1.** Substantial Proportionality where intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective full-time undergraduate enrollments. *In other words, if a school is 54% female, about the national average, then about 54% of its athletes should be female.*

**Prong 2.** Program Expansion where the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the underrepresented sex (female students). *That means, if a school has added teams for*

*women or girls recently and over the years, it is probably in compliance – although only for a period of time.*

### **Prong 3. Interest and Abilities**

Accommodation where the institution can demonstrate that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

### **The Interpretations of the Three-Prong Test**

The federal courts’ interpretations of Title IX require women’s interests and abilities to be met at a higher degree than those of men and as a result, a rigid affirmative action quota system was created out of Prong 1 that nullifies men’s equal protection rights. Universities have attempted to comply with Title IX legislation by creating, upgrading or reinstating women’s teams; however, they have done so by eliminating men’s teams.

- Many of the courts (*Cohen v. Brown University*; *Roberts v. Colorado State University*; *Favia v. Indiana University of Pennsylvania*) have held that Prong 1 (quota system) of the Three-Prong Effective Accommodation Test carries the most weight in the analysis of compliance.
- Many colleges and universities have supposedly “complied” with Prong 1 by essentially cutting men’s teams in order to create the illusion of gender equity (proportionality). This means that many women’s teams have not been helped, but rather, men and men’s teams have been hurt.
- Although the OCR enforcement policy does not require or encourage schools to cut men’s teams to establish compliance with Title IX, the federal

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courts have set this precedent by their judicial interpretations and decisions. In the pivotal, precedent-setting gender-based discrimination lawsuit, *Cohen v. Brown University*, the federal courts' interpretations of Title IX validated the Three-Prong Effective Accommodation Test promoting a rigid affirmative action quota system which has changed how Title IX dictates the way college athletics should be run (*1996 Clarification of Intercollegiate Athletics Policy Guidance*).

**The Solutions** Title IX has become a complex issue due to the problems that have evolved over its interpretation. Change requires clarification and redefinition of the Title IX language used in its Policy Interpretation. It is quite clear that in order to save men's sports programs from further demise, the Title IX Three-Prong Test must be revised with the law's original intent restored.

**Conclusion** Congress' intent for the nondiscrimination statute has been distorted and it is difficult to embrace such a statute based on the *Cohen* opinion. Title IX has greatly expanded opportunities for women across the United States, but through misinterpretation and misapplication of the statute and its regulatory tools through courts like *Cohen*, many uni-

versities are ultimately forced to discriminate against men.

With revisions in the Policy Interpretation and with additional clarification, universities can comply with Title IX and accommodate women and men's interests to the same degree. Eliminating sports was never the intent of Title IX, however, out of the fear of being non-compliant, institutions have seen no other solution.

It is important to note that gender proportionality is not enforced under Title IX in other educational curricular and extracurricular offerings, such as, chemistry, economics, drama, or marching band; therefore, gender ratios should not be engineered in sports. Measuring equality through exact proportionality (a quota system), as the *Cohen* courts and the Title IX 1996 Clarification suggest, without regard to individual student interests and abilities is both illogical and discriminatory. Fairness in sports is about effective accommodation, awareness, and equal opportunity and is first, and foremost, a human right.

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