



Title IX: Equity in School Athletics

Title IX of the Education Amendments of 1972, the statute prohibiting sex discrimination in educational institutions that receive federal funds, protects against discrimination in college and high school athletics. The American Association of University Women strongly supports Title IX and opposes any efforts that would weaken its effectiveness. AAUW's 2009-2011 Public Policy Program advocates "vigorous enforcement of Title IX and all other civil rights laws pertaining to education."¹ Since the law's enactment, girls' and women's participation, scholarships, and share of athletics budgets have grown substantially.

Title IX's impact on women's athletic participation is one of the country's greatest civil rights success stories, changing the playing field dramatically for girls and women in sports. In 1971, 8 percent of high school athletes were young women.² But by the 2008-2009 academic year, 41 percent of high school athletes—over 3 million—were young women.³ In 1972, fewer than 32,000 women competed in intercollegiate athletics. Women received only 2 percent of schools' athletic budgets, and athletic scholarships for women were nonexistent.⁴ In recent years, women comprised 57 percent of the college student population.⁵ Yet they received just 43 percent of the opportunities to play intercollegiate sports, and 3 percent of recruitment funds.⁶ Between 2006-2007 and 2007-2008, the participation of female college athletes at NCAA institutions increased by 3,550 while men's participation increased by 6,431.⁷

Evidence from the Government Accountability Office supports the claim that Title IX has had positive effects on athletics for women and girls. From 1991-92 to 2004-05, both girls and boys experienced increases in numbers of teams and participants, yet the gains in both cases were greater for girls. Research also shows that women's teams have outnumbered men's teams since the mid-to-late 1990s. Nevertheless, men's participation continued to exceed women's, in raw numbers and in proportion to enrollment.⁸

Women and Girls Benefit from Athletic Participation

AAUW believes that expansion of athletic opportunities for girls and women must continue at both the high school and college levels, because it is important not only for the participants themselves but for the benefit of the greater community as well. Studies repeatedly show:

- Girls thrive when they participate in sports and are less likely to suffer from obesity or mental illness, have unprotected sex,⁹ get pregnant, drop out of school, do drugs, smoke, commit suicide or develop cancer, heart or bone disease.¹⁰
- Girls who participate in sports develop a more professional work ethic, improved cognitive skills, higher self-esteem, good school habits and stronger college aspirations. College graduation rates are significantly higher for female athletes¹¹ (72 percent) than for students in general (62 percent).¹² Female high school athletes of all races and ethnicities tend to have higher grades and significantly higher graduation rates than non-athletes¹³, in addition to fewer disciplinary incidents¹⁴.

- Participation in sports teaches women important professional lessons that have lifelong influence. For example, 80 percent of women identified as key leaders in Fortune 500 companies participated in sports while growing up.¹⁵ Furthermore, 82 percent of executive businesswomen played sports, with the majority saying lessons learned on the playing field contributed to their success.¹⁶
- Athletics offers many students a ticket to higher education, since the opportunity to play sports helps many middle and low-income students—who may otherwise be unable to attend college—gain access to higher education.
- Organized sports enhance the educational experience by providing opportunities for leadership, teamwork, and competition.
- Organized sports offer personal contacts with adult role models who can provide guidance and support, which are beneficial at both secondary and postsecondary levels.
- Studies reflect that young women’s participation in athletics promotes a more positive attitude towards science and math, as well as increased access and academic success in these subjects.¹⁷

Enforcement

AAUW believes the U.S. Department of Education’s Office for Civil Rights must receive adequate funding and strengthen its efforts to enforce Title IX, not only by the thorough investigation of complaints but also through proactive compliance reviews at educational institutions. AAUW was pleased with the Department of Education’s announcement in March 2010 that OCR will be conducting an expanded list of compliance reviews of schools and districts across the country and issuing updated guidance with respect to equity issues.¹⁸ OCR should also be a reliable resource for technical assistance regarding implementing Title IX, providing regular training through the department’s regional offices as well as useful reference materials via the web and other avenues. OCR must resist pressure from some members of Congress and other Title IX opponents to weaken the regulations used to implement Title IX. AAUW believes that the three-prong test used to determine Title IX compliance in athletics is reasonable and flexible, particularly since schools have to meet only one of the following tests to comply:

1. Provide athletic opportunities to male and female students in proportion to their overall enrollment at the institution; or
2. Demonstrate a history of continually expanding athletic opportunities for the underrepresented sex; or
3. Demonstrate that the available opportunities meet the interests and abilities of the underrepresented sex.

A review of Title IX complaints filed with OCR from January 2002 through December 2006,

conducted by the National Women's Law Center, showed that 90 percent of discrimination claims were made on behalf of women, with 60 percent citing inequitable treatment of women's teams and 30 percent alleging inadequate participation opportunities for women. Although OCR conducted 59 compliance reviews during this time period, only eight investigated substantive Title IX requirements and only one considered athletics.¹⁹

Title IX's Unfinished Business

While great strides have been made, evidence suggests there is still work to be done to achieve equality of opportunity for girls in sports, especially at the high school level. High school girls face continued discrimination in scheduling, equipment, facilities, and overall participation opportunities.

AAUW will continue the work started by the bipartisan Congressional Caucus for Women's Issues and support efforts like the High School Sports Information Collection Act/High School Athletics Accountability Act. This measure would require high schools to report basic data on the number of female and male students in their athletic programs and the expenditures made for their sports teams. Better information can help high schools enhance compliance with Title IX and aid in fostering the continued expansion of athletic opportunities. Unlike colleges, high schools are not currently required to disclose any data on equity in sports, making it difficult for high schools and the communities they serve to assess their compliance with Title IX and the status of girls' access to athletic opportunities. This is important because while girls comprise 49 percent of the high school population, they receive only 41 percent of all athletic participation opportunities, which is 1.3 million fewer participation opportunities than male high school athletes.²⁰

While women's participation in college sports is increasing at a higher rate than it has previously, it still lags behind men's participation. In 2007-2008, there were 62,000 more men than women participating in intercollegiate sports.²¹ Based on 2004-05 participation levels, the number of female athletes would have had to increase by 151,149 in order to accurately reflect the proportion of enrolled female undergraduates that year.²² Gains in women's sports participation have also slowed in recent years, with 85 percent of the increase in female collegiate athletes from 1995-2005 occurring prior to 2001.²³

Despite the gains women have made under Title IX, resources for women's sports have never risen to the level of resources allocated for men's sports. Further, most colleges and universities still fail to provide equitable athletic opportunities as required by Title IX. According to the *2005-2006 NCAA Gender Equity Report*, women's teams receive 32 percent of recruiting dollars (or \$50 million less than men's teams), 37²⁴ percent of athletic operating dollars (or \$1.55 billion less), and 45 percent of college athletic scholarship dollars (or \$166 million less).²⁵ The *2005-2006 NCAA Gender Equity Report* found that recruiting expenses for women's teams is \$115,900 per institution while men's teams receive \$247,300 per institution.²⁶

Scapegoating Title IX

Meanwhile, in recent years, opponents of Title IX have voiced concern that women's athletic

participation has increased at the expense of men's opportunities. Yet statistics show that throughout the history of Title IX, men's participation rates in collegiate sports and the amount of money spent for men's athletic teams have been out of balance in favor of male athletes. Even in recent years this holds true. For example, in the 2004-05 school year, women's college athletic expenditures were on average only about 55 cents for every dollar of men's college athletic expenditures.²⁷

Title IX opponents have long argued that men's sports are declining as a result of the misapplication of Title IX, particularly as a result of the proportionality prong, citing misleading statistics showing declines in some men's athletics such as gymnastics and wrestling. However, a 2001 GAO report clearly demonstrates that men gained both in numbers of teams and numbers of participation opportunities between 1984 and 2000.²⁸ Meanwhile, Title IX opponents typically fail to disclose that numerous women's teams were dropped during the same time period. Thus, it is misleading and one-dimensional to argue that Title IX is responsible for losses in men's sports. Notably, the 2001 GAO report found that the most frequent reason for discontinuing a men's team was due to lack of student interest in that sport. In addition, it is important to note that 72 percent of all schools that added women's sports did not drop any sport.²⁹

More recent statistical evidence continues to support the fact that men's sports participation opportunities have not declined as a result of Title IX. NCAA male sports participation has increased from 169,800 in 1981-1982 to 240,261 in 2007-2008.³⁰ From 1988-1989 to 2006-2007, NCAA member institutions added 2,678 men's sports while dropping 2,484 during that same period—for a net gain of 194.³¹ During the same period, NCAA member institutions added 3,978 women's sports programs and dropped 1,690—for a net gain of 2,288.³²

Thus AAUW is concerned that some universities are using Title IX as a convenient scapegoat to avoid admitting that the real reason for athletic department cuts is budget priorities, not gender bias. In reality, Title IX is a flexible law that allows a number of ways for schools to comply. In fact, nothing in the law requires the elimination of teams, and every court that has looked at the question has agreed that Title IX does not require such cuts, pointing out that schools decide which teams to sponsor based on a variety of factors.

By blaming Title IX, colleges and universities not only actively misdirect student and alumni anger, but also unnecessarily undermine one of the nation's most successful civil rights laws. Properly administered and enforced, Title IX has helped women and girls make great strides on and off the athletic field.

Attacks on Title IX

Instead of working with colleges on their policies to expand sports opportunities for all students, opponents of Title IX continue to attack the law and OCR's enforcement policies for unsubstantiated disservice to men's sports. Meanwhile, courts continue to uphold the merits of both Title IX and its enforcement mechanisms.

Lawsuits: In February 2002, the National Wrestling Coaches Association, College Gymnastics Association, U.S. Track Coaches Association, and several other groups representing male athletes and alumni of wrestling programs at universities including Bucknell, Marquette, and Yale filed suit against the U.S. Department of Education, alleging that Title IX regulations and policies are unconstitutional. In May 2002, the U.S. Department of Justice filed a motion to dismiss the claim on procedural grounds. On May 14, 2004, the District of Columbia Circuit Court of Appeals agreed with a lower court ruling and dismissed the case, stating that there were no grounds for suing the U.S. Department of Education. The wrestlers argued that Title IX unfairly required many schools to eliminate athletic opportunities for men in order to provide adequate opportunities for women. The court found that the wrestlers never proved Title IX caused the elimination of some men's athletic teams, or that by changing Title IX regulations those men's teams would be reinstated. AAUW joined the National Women's Law Center in filing an amicus brief requesting the case be dismissed and was pleased that the DC Circuit Court recognized Title IX's intent and importance.

Commission on Opportunity in Athletics: In a separate development, in June 2002, then-Secretary of Education Rod Paige announced the establishment of the Commission on Opportunity in Athletics to "examine ways of strengthening enforcement and expanding opportunities to ensure fairness for all college athletes." The Commission held four town hall meetings around the country and was charged with determining recommendations for changes to Title IX. On Feb. 26, 2003, the Commission released its official report, "Open to All: Title IX at 30."³³ That same day, Commissioners Julie Foudy and Donna deVerona issued a minority report, not accepted by the U.S. Department of Education, outlining their concerns that their voice was not adequately represented in the Commission report. The proposals that Foudy and deVerona objected to were so vaguely worded they could be interpreted in ways that undercut athletic opportunities for women and girls.

The Commission made a series of negative recommendations that would have weakened Title IX, but pulled back after significant public outcry. On July 11, 2003, the Assistant Secretary in the Office for Civil Rights, Gerald Reynolds, issued a letter in which the U.S. Department of Education reaffirmed Title IX and the three-part test.³⁴ This "Dear Colleague" letter to all schools effectively restated current policies on Title IX and was a huge victory for women and girls. The three-page letter reaffirmed the three-prong test as well as the weight and validity of each prong in complying with the law. Significantly, the letter also acknowledges that, "nothing in Title IX requires the cutting or reduction of teams in order to demonstrate compliance with Title IX."³⁵ The U.S. Department of Education did state that it will undertake an education campaign to better educate schools on how to comply with on Title IX.

However, efforts to weaken Title IX continue despite overwhelming public support of Title IX. A USA Today/CNN/Gallup poll done in January 2003 found that seven of ten adults familiar with Title IX think the law should be strengthened or left alone.³⁶ Indeed, the current policies have been in place through Republican and Democratic administrations and have been uniformly upheld by all of the federal appeals courts that have considered them.

2005 Prong Three Clarification: 2005 Prong Three Clarification: On March 18, 2005, the U.S. Department of Education issued new Title IX policy guidance, “Additional Clarification of Intercollegiate Athletics Policy: Three-Part Test — Part Three.”³⁷ The clarification was a dramatic departure from the previous standards under which schools could demonstrate compliance with Title IX. The rule lowered the bar for schools, making it easier for schools to prove compliance by using a less rigorous and thorough e-mail-based survey method, and jeopardized the number of athletic opportunities that will be available to women on campus.³⁸ AAUW actively worked with coalition partners, allies in Congress, and new leadership at the Department of Education to rescind this clarification. On April 20, 2010, OCR issued new guidance rescinding the 2005 clarification and returned to the previous standard. Under this new guidance, schools are again required to take into consideration factors such 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 sports among girls and women.

AAUW believes that the 2005 guidance was an under-the-radar attack on Title IX and meant to undermine the law and the 35 years of progress made by women and girls as a result of this landmark legislation. More broadly, the issuance of the 2005 policy guidance was part of a series of attempts by the Bush administration to weaken Title IX. Notably, it came on the heels of the administration’s controversial judicial nomination and subsequent confirmation of a stalwart Title IX opponent, Thomas Griffith, who proposed dramatic changes to Title IX while a member of the Commission on Opportunity in Athletics. Griffith now sits on the Circuit Court of Appeals for the District of Columbia. AAUW applauds OCR for rescinding the 2005 policy and will continue to urge the Obama administration to strengthen and enforce Title IX.

Title IX Whistleblower Victory

In June 2001, Roderick Jackson, a teacher and coach at Ensley High School in Birmingham, Alabama, sued the Birmingham Board of Education under Title IX of the Education Amendments of 1972, alleging that he was retaliated against for protesting sex discrimination against his girls’ basketball team. The District Court for the Northern District of Alabama dismissed Jackson’s complaint. In dismissing the lawsuit, the court relied on the U.S. Supreme Court decision in *Alexander v. Sandoval*, which held that individuals may not vindicate their rights in court under Title VI if those rights stem from regulations that go beyond the language of the statute. Applying this decision to Jackson’s Title IX case, the 11th Circuit Court of Appeals held that because retaliation is mentioned in the Title IX regulations, but not in the language of the statute itself, Jackson had no right to sue in court for retaliation under Title IX.

The U.S. Supreme Court heard oral arguments in the case on Nov. 30, 2004. The issue presented revolved around whether Jackson had a private right of action under Title IX to challenge the retaliation against him. The U.S. Department of Justice filed a brief in support of Jackson; AAUW joined a separate amicus brief in support of his case, and AAUW’s Legal Advocacy Fund provided case support to Jackson. On March 29, 2005, the U.S. Supreme Court ruled (5-4) in favor of Jackson, holding that individuals who complain about sex discrimination have a private right of action for retaliation under Title IX.

Resources for Advocates

AAUW remains strongly committed to preserving the protections of Title IX and advocates its strong enforcement. AAUW also continues efforts to educate the public about the impact of this landmark civil rights law, and the benefits for the community and the nation when it is implemented appropriately. It is AAUW advocates across the country who speak their minds on issues important to them that truly advance AAUW's mission. Stay informed with updates on Title IX and other issues by subscribing to AAUW's Action Network. Make your voice heard in Washington and at home by using AAUW's Two-Minute Activist to urge your members of Congress to support Title IX and oppose efforts that would weaken its effectiveness or undermine its enforcement. Write a letter to the editor of your local paper to educate and motivate other members of your community. Attend town hall meetings for your members of Congress, or set up a meeting with your elected official's district office near you to discuss these policies. AAUW members can also subscribe to *Washington Update*, our free, weekly e-bulletin that offers an insider's view on the latest policy news, resources for advocates, and programming ideas. For details on these and other actions you can take, visit www.aauw.org/takeaction. For more information, read AAUW's related position papers on Title IX, single sex education, and sexual harassment, and AAUW's research, including *Where the Girls Are: The Facts About Gender Equity in Education*. You can find these and other resources on our website at www.aauw.org.

Conclusion

AAUW remains strongly committed to preserving the protections of Title IX and advocates its strong enforcement. AAUW also continues efforts to educate the public about the impact of this landmark civil rights law, and the benefits for the community and the nation when it is implemented appropriately.

For more information, call 202/785-7793 or e-mail VoterEd@aauw.org.

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