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Title IX of the United States Education Amendments: A Gender-Equity Education Intervention Strategy

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It has become increasingly apparent that gender equity in athletics, while in some instances centered on the particulars of Title IX compliance, is about more than that. Gender equity in athletics is about confronting fundamental cultural norms, beliefs and values held by a population who has been historically and traditionally responsible for perpetuating sexism, sex bias and discrimination through a variety of socio-cultural institutions, one of which is the co-curricular activity of school sport.

Historically, the culture of sport, and in particular school sport as a co-curricular part of the American education system, has been male dominated. According to Sadker and Sadker (1994):

Through athletics boys are taught that competition, aggression, and endurance build real men, on the playing field and in the workplace. It was precisely because they intensified traditional notions of masculinity that educators found sport so attractive and incorporated them into the official school program (p.213).

In fact, sport emerged as an official part of the school curriculum in direct response to public perceptions that a largely female teaching force (A result of the departure of men from teaching in response to early periods of war.) would emasculate, or feminize, young men and boys (Sadker & Sadker, 1994). In an effort to preserve and foster "healthy male development" recess games and play activities were co-opted into organized sport, and became for men and boys an official part of the American school curriculum.

In 1972 a Federal civil rights statute, Title IX, was enacted as part of the United States Education Amendments. Title IX was designed to address issues of educational equity. Specifically, Title IX focuses on discrimination on the basis of sex in admission and recruitment policies and practice, educational programs and activities (such as athletics), and employment in educational programs and activities. 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 (United States Department of Health Education and Welfare [HEW], 1979, p. 71413).

Relative to educational institutions and school sport, enacting this law meant that "...institutions could not discriminate on the basis of gender, in any program receiving Federal funds, including athletics" (Hill, 1993, p. 51). This link to Federal financial assistance (i.e., Federal educational support funneled directly to schools and/or indirectly via student support funds, such as student loans), tied Title IX to virtually all public, and most private educational institutions.

According to Indiana Senator Birch Bayh (Democrat), the principal Senate sponsor of Title IX, Title IX was put forth as:

a strong and comprehensive measure [that would] provide women with solid legal protection from the persistent, pernicious discrimination which is serving to perpetuate second-class citizenship for American women (Vargyas, 1994, p. 6).

In other words, Title IX was designed to proactively address the historical wrongs associated with culturally embedded gender discrimination, and thereby ensure gender equity relative to educational opportunities, including educational-athletic opportunities. However, as the history and evolving reality of Title IX and Title IX compliance illustrate, "law only sets general policy" (Scribner & Englert, 1977, p. 19) and, in as much as the consequences for non-compliance can be avoided and/or tolerated, laws cannot and do not compel action.

Following the 1972 legislation of Title IX, the United States Department of Health Education and Welfare (HEW) took three years to draft a specific response (i.e., the Federal Register Rules and Regulations (1975)), and another four to write the Policy Interpretations (1979). These documents provided needed administrative elaboration, and specific compliance requirement guidelines, regarding the rules and regulations, policy interpretations and applications of Title IX. Based on these documents the Office of Civil Rights (OCR) developed the Title IX Athletics Investigator's Manual.

The OCR is the principal government agency charged with the enforcement of Federal statutes that prohibit discrimination on the basis of race, color, national origin, sex, handicap and age, in programs and activities that receive Federal financial assistance. There are four such Federal statutes, one of which is Title IX.

The OCR (1990) Investigator's Manual is the primary resource/tool used to evaluate Title IX compliance.

The Manual is divided into sections that correspond to the thirteen Title IX compliance program components that may be investigated relative to gender equity in interscholastic (typically grades 9-12) and intercollegiate athletic programs.

Title IX Compliance Components

The thirteen Title IX compliance components fall into three categories. These are: (a) the accommodation of interest and abilities, (b) financial aid, and (c) equitable opportunities and accommodations regarding other program areas. Title IX compliance relative to these categories is discussed below.

The Accommodation of Interest and Abilities

Compliance in this category is assessed in one of three ways. The OCR (1990) Title IX Athletics Investigator's Manual states that the three parts or prongs of the interest and abilities compliance test "...may be considered consecutively..." (p. 21). However, it is relevant to note, and often mistakenly understood, that although consecutive compliance assessment via the three prongs is one way to review compliance, it is not required. The three prongs can be reviewed independent of each other, and a finding of compliance in any one of the three satisfies the interest and abilities area of Title IX compliance.

The first part of the three-prong interest and abilities test involves the assessment of substantially proportionate participation opportunities. This means that athletic participation opportunities for women/girls and men/boys must be substantially proportionate to the female/male student body undergraduate enrollment rates at a particular institution. For example, if 50% of the enrolled undergraduate students are female and 50% are male, then the athletic program participation numbers must be substantially proportionate to these percentages (i.e., 50% female and 50% male).

If proportionality is not found to exist, the following two prongs are examined: (a) whether or not an institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the numerically under-represented sex, or (b) whether or not an institution can demonstrate that the interests and abilities of the under-represented sex have been, and/or are being, fully and effectively accommodated by the present program (Cohen v. Brown, 1992).

Typically in American higher education, the under-represented sex in athletics has been, and continues to be, female. Because of this, Title IX compliance relative to the demonstration of a history and continuing practice of program expansion, and/or the full and effective accommodation of interest and abilities, usually involves an assessment of the expansion of women's sport programs, and/or the assessment of the full and effective accommodation of the expressed interest and abilities of female athletes.

Relative to the history and continuing practice prong, during the late 1970's and early 1980's, many higher education institutions added women's sport programs and increased women's sport participation and program support. However, the time line between then and now (i.e., the early to mid 1990's), shows that in large part institutions across the country have not continued this practice. In fact, when participation data from the 1994 National Collegiate Athletic Association (NCAA) membership study was graphed, although there continued to be increases in women's sport participation numbers, the slope of the line

between 1982 and 1992 was found to be relatively flat (Pemberton, 1996). As a result, when Title IX compliance is assessed using this prong, although institutions can often point to a history of expanding women's sport opportunities, and some can show recent trends relative to expanded opportunities, institutions often fall short of being able to show a continuing practice of program expansion and increasing support.

When attempting to assess interest and abilities, the NCAA gender equity guide, Achieving Gender Equity: A Basic Guide to Title IX for Colleges and Universities (1994), suggests that institutions should attempt to identify unmet interest through a participant analysis of potential feeder sport programs, such as on-campus club and intramural sports, as well as off-campus high school, junior college and community club sport teams. However, applying survey methodologies to the assessment of interest and abilities can be both complex and difficult.

Because schools with intercollegiate athletics programs actively recruit student-athletes, surveying the athletic interest and abilities of an existing student body would necessarily reflect disproportionate interest and ability in the sport programs sponsored by a particular institution. For example, it is not likely that a student-athlete interested in swimming competitively at the intercollegiate level would apply to a school that does not sponsor varsity level intercollegiate swimming.

This logic can also be applied in response to the argument put forward by schools who claim that a demonstrated athletic interest, without demonstrated varsity level ability, in and of itself is not sufficient to justify program expansion and/or elevation. Examples of this include requests from club or intramural sport participants to have their sport programs elevated to the varsity intercollegiate athletic level. Given the fact that intramural and/or club sport programs typically lack intercollegiate varsity level program supports (such as facilities, equipment, coaching, recruitment, etc.), it is not surprising that if and when interest and ability is expressed, varsity level ability may be questionable. What is surprising is that, given the lack of varsity level support for club and/or intramural sport programs as well as the gender bias and deprivation that has historically permeated school sport, interest and ability are expressed at all.

With the above in mind, in order for a survey of interest and abilities to be meaningful, the entire statistical universe of potential student-athletes would need to be surveyed, (i.e., all potential student-athletes that could, might, and/or do, apply for admission to a given institution). Obviously, this would be a logistical nightmare if not an impossibility. And even this broad ranging survey methodology would neglect the effects, past, present and future, of the historical gender bias, discrimination and deprivation, that have infused the culture of sport since it first emerged as a co-curricular outlet for male energy and aggression.

In a recent court decision (Pederson et al v. Louisiana State University, 1996), Federal District Judge Rebecca F. Doherty articulated the following relative to surveying student-athlete interests and abilities: "The simplest way [for colleges to determine student athletic interest and abilities] ... may be to include survey questions on applications for admissions" (Blum, 1996, p. A33). However, as discussed above, although this strategy may provide some information about the expressed athletic interest and abilities of students who end up applying to a particular institution, interpreting the survey responses would: (a) be limited by the applicant pool, (b) be affected by institutional recruiting, and (c) fall short of addressing the underlying socio-cultural issues of historic gender bias and discrimination that Title IX was originally legislated to remediate.

As the above discussion makes clear, unless the proportionality prong is met, assessing Title IX compliance relative to the accommodation of interest and abilities is a complex process. Further, despite the fact that the accommodation of interest and abilities is often the most broadly discussed area of Title IX compliance, it is only one of three Title IX compliance areas. The other two areas, athletic financial assistance and equitable accommodations in other program areas, are discussed next.

Athletic Financial Assistance

Athletic financial aid/scholarships must be allocated in proportion to the female and male athletic participation numbers. For example, if 60% of the intercollegiate athletic participants are male and 40% are female, then athletic related financial aid must be allocated in proportion to these participation percentages (i.e., 60% to male sport athletes and 40% to female sport athletes). Title IX compliance assessment in this area is a straight-forward matter of numbers. However, if the likelihood of expanding women's sport participation numbers is related to available scholarship dollars, then the allocation of those dollars in proportion to existing intercollegiate gender ratios would simply act to reinforce a disparate status quo. As with the expression of interest and abilities, given the socio-cultural disincentives associated with women's sport and the persistence of gender biased institutional support barriers, such as disparate athletic scholarship allocations, it is not surprising that women's sport participation numbers are not as high as men's. What is surprising is that they are as high as they are.

Equitable Opportunities and Accommodations/other Program Areas

This category of Title IX compliance is assessed relative to equitable opportunities and accommodations with respect to equipment and supplies, scheduling of games and practice, travel and per diem allowance, tutors, coaches, locker rooms, practice and competition facilities, medical and training facilities, housing and dining facilities, publicity, recruitment of student/athletes, and support services. It is important to note that relative to these other sport related program areas, even given the specificity of the Federal Register Rules and Regulations, the Policy Interpretations (1979), and the OCR (1990) Title IX Athletics Investigator's Manual guidelines, analyzing Title IX compliance is a complex process. This is because, "...different benefits require different analyses" (NCAA, 1994, p. 6). Determining Title IX compliance often requires both an overall approach and a sport specific comparative approach.

An overall approach to Title IX compliance assessment requires "...comparing the benefits provided to all men's teams [male athletes] to the benefits provided to all women's teams [female athletes]" (NCAA, 1994, p. 5). What this means is that if 50% of the male sport participants receive a particular benefit (e.g., shoes), even if all those male athletes are from a single team (e.g., football), then to achieve compliance, 50% of the female athletes should receive a similar benefit. This would be true even if it takes providing the benefit to two or three different women's teams to equal 50% of the female sport participants (NCAA, 1994). It is important to note however, that this compliance assessment is based on a determination of what benefits and services are needed and desired, and does not require equal monetary expenditures, or that money be expended on things that are not needed and/or desired.

As is the case in football programs, the fact that more money may be spent to accommodate the purchase of team uniforms and/or protective padding, and, because of this, more money may be spent per athlete to outfit a large percentage of the male sport participants does not mean that an equivalent amount of money needs to be spent on women's sport participants if similar benefits and services are not required. In other

words, equity does not require identical monetary expenditures. Equity requires the provision of equivalent benefits.

The overall approach "...ignore[s] the nature of particular sports and the fact that some benefits are not needed by some athletes or teams" (NCAA, 1994, p. 7). In cases where certain sports have particular needs, (for example large equipment storage facilities) Title IX compliance involves assessing equity relative to the number of women's and men's sports teams so accommodated.

Finally, Title IX compliance assessment is further complicated by the activities of athletic department booster groups and the fundraising monies they generate. According to Vargyas (1994), The OCR Title IX Investigator's Manual makes clear that: "[W]here booster clubs provide benefits or services that assist only teams of one sex, the institution shall ensure that teams of the other sex receive equivalent benefits and services" (p. 29). This means that regardless of the source of funds, it is incumbent upon the institution to provide equal benefits to both women and men.

Historically and traditionally men's sports have had, and continue to have, more booster support than women's sports. To cope with this situation, institutions have a variety of alternatives. They may: (a) decline to accept gender specific sport donations, (b) accept donations as specified for men's athletics and/or a particular men's sport team, and then provide an equivalent benefit, supported by the institution, to the women's athletic program and/or team, or (c) ask the donor(s) to give to both the women's and men's sport programs/teams, perhaps giving half their originally intended gift to each.

The Gender Specific Value of Sport

Beyond the fact that gender equity, as legislated by Title IX, is the law, sport provides a powerful medium for both females and males to develop and practice proactive patterns of life long health and fitness. It also provides opportunities for participants to experience implicit and explicit life-skill development and socio-cultural education.

For example, Lopiano (1994) reported that: (a) 80% of high school girls who play sports increase their chances of avoiding unwanted pregnancies, (b) 92% are less likely to be involved in drugs than their non-athletic peers, (c) girls who play sports are three times more likely to graduate from high school, (d) a minimum of two hours per week of exercise reduces the risk of breast cancer and osteoporosis for teenage girls, and (e) girls who play sports have higher levels of self-esteem and lower levels of depression, as well as a more positive body image and higher psychological well-being.

The Women's Sports Foundation (1992) concurred with Lopiano (1994). Among the many benefits listed, the Women's Sports Foundation cited statistics from the National Center for Health and reported that "...healthful levels of physical activity appear to be linked to a general sense of well-being, a positive mood, and lower levels of anxiety and depression, especially among women" (p. 1). In addition to physical, psychological, and emotional benefits, important socio-cultural education and expectations can and do occur through sport. In an article on gender bias in sport socialization, Greendorfer (1987) asserted that:

Because sport participation in childhood and adolescence has implications for more full participation in various social spheres of adult life, it is time to devote more research attention to sport as a viable and natural activity for females (p. 339).

According to Lopiano (1994), sports are where "...boys traditionally [have] learned: teamwork, goal setting, excellence in performance pursuit, [and] achievement-oriented behaviors" (p. 282). These and other valued life skills, such as persistence, time management, competition, and risk taking, are critical for "...success in the workplace...[and]...women cannot be less prepared for the highly competitive workplace [and life] than men" (p. 282).

Historically and traditionally, sport, and the inherent life-skill lessons learned and practiced, have been seen as an expressway to socio-cultural access, power, prestige, and success (Cantor & Bernay, 1992). According to Grant (1993), University of Iowa women's athletic director:

Participation in sport by itself justifies the existence of athletics programs, but we are giving them much more than sport; and through these young women we are changing the reception and role of women in general throughout the nation...through sport we shatter into a million pieces the stereotypes portraying women as weak, helpless, dependent and passive. Through sport we produce exactly the opposite type of woman: strong, independent, assertive, competent and confident, with strong self-esteem (p. 5).

Clearly, gender inequities in sport represent physical, emotional, and mental developmental opportunities deprived and/or lost, and send a message to women and girls that they are less important, less valued, and less worthy than men and boys.

Gender Bias in Sport

The ultimate consequence for non-compliance with Title IX is the loss of all Federal funds (this includes Federal grants, student loans, and work study), and is enforceable through the OCR. According to Vargyas (1994), the congressional record shows "...remarkable consensus that sex discrimination in competitive athletics is a serious problem for which Title IX should provide redress" (p. 11). However, in institutions across the country, gender discrimination in athletics persists as the norm, and to date, the OCR has never enforced the ultimate penalty for non-compliance.

According to a CNN Special Report (January, 1994), over 90% of college athletic programs (with football) fail to fully comply with Title IX. And, as reported in a 1992 NCAA gender equity study sponsored by the NCAA Commission on Women in Athletics:

...despite the relatively even distribution of [NCAA] membership undergraduate enrollment by gender, males constituted nearly 70% of intercollegiate athletics participants, and they received nearly 77% of the operating budgets, 70% of scholarship funds and 83% of recruiting dollars (NCAA, 1994, p. 1).

The 1996 General Accounting Office report (GAO), Intercollegiate Athletics: Status of Efforts to Promote Gender Equity, reviewed eight studies on gender equity in intercollegiate athletics. This study showed that although women's sport programs have made some "slight advances since 1992..." (p. 13), they remain behind men's sport programs in most areas of comparison. Specifically, the report showed that: (a) the average number of sports offered to women had risen from 7.1 to 7.6 from 1992 to 1996; and (b) schools in all three National Collegiate Athletic Association (NCAA) divisions had added women's sport programs over the past five years. However, the report also showed that: (a) at NCAA division I schools, women still received less than a third (31%) of the athletic scholarship funds, and less than a quarter (24%) of the total average athletic operating expenses, and (b) although women's sport participation numbers have increased since 1992 (34%), by 1995 women still represented only 37% of all student athletes, despite the fact that women made up, in many cases, more than half of the undergraduate student enrollment (U.S. GAO, 1996).

The report also commented on the recent update by Acosta and Carpenter on what has now become a 19 year longitudinal study on the status of women in intercollegiate sport. According to Acosta and Carpenter (1996), the percent of females coaching women's sport teams is down from 49.4% in 1994 (and a high of 90% in 1972), to 47.7% in 1996. Further, according to Faludi (Faludi, 1991; Faludi cited in Hill, 1993), female coaches are paid significantly less than 99% of their male counterparts. Acosta and Carpenter (1996) also found that the status of women as athletic administrators was also declining. They reported that in 1996, 18.5% of all women's programs were headed by female administrators. This number was down from 21% in 1994.

Concluding Thoughts

Title IX was legislated almost 25 years ago. Specific compliance criteria were detailed through the Federal Register Rules and Regulations and the Policy Interpretations. Numerous studies (Greendorfer, 1987; Lopiano, 1994; The Women's Sports Foundation, 1992) provide evidence that there is gender specific value in sport, and, that sport provides a powerful medium through which participants (both female and male) learn and practice valuable life-skills, and healthy lifestyle habits. The history of sport shows that males have had, and continue to have, more and better sport opportunities than females, and as evidenced by the research cited, gender bias and discrimination in athletics persist, and compliance with Title IX has yet to be achieved (CNN Special Reports, 1994; Faludi, 1991; Hill, 1993; Lopiano, 1994; NCAA, 1994, U.S. GAO, 1996).

During its almost quarter of a century of life, Title IX, as an educational gender equity intervention strategy, "...has been able to influence systems and affect behaviors somewhat. [However], [t]he question of changing people's attitudes and of meeting the spirit of the law has been a more difficult issue" (Flansburg and Hanson, 1993, p. 17). It has become increasingly apparent that gender equity in athletics, while in some instances centered on the particulars of Title IX compliance, is about more than that. Gender equity in athletics is about confronting fundamental cultural norms, beliefs and values held by a population who has been historically and traditionally responsible for perpetuating sexism, sex bias and discrimination through a variety of socio-cultural institutions, one of which is the co-curricular activity of school sport.

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