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## Title IX: Boom or Bust?

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## **Title IX: Boom or Bust?**

Marilyn J. Mather

### **Abstract**

Athletics has been significantly impacted by Title IX through an increase the number of female athletes, the number of teams available, and indirectly, the development of women's professional leagues. However, women in leadership positions in athletics have declined significantly since Title IX was signed into law. A concern about the discontinuation of some men's non-revenue producing sports influenced the Department of Education to form the Commission on Opportunities in Athletics to review Title IX. The process and findings of the Commission are discussed, as well as the possible impact of the Commission's recommendations.

On June 23, 2002, Title IX of the Education Amendments of 1972 celebrated its 30<sup>th</sup> birthday. Title IX applies to all educational institutions that receive federal funding, and to various parts of those institutions. The law has had periods of weakness and strength over its 30-year history, but through the decade of the 90's has shown increasing power and consistency in the court system. Eight of the twelve U. S. Courts of Appeals have ruled in support of the present administrative regulations and Congressional hearings on Title IX have not brought any changes (Bonnette & von Euler, 2003). Although Title IX has positively assisted in an increase of women attending law and medical schools for example, it has most significantly impacted in athletics. It is in this area that this paper will focus.

### ***Participation Increases***

In the year 2000-01, boys continued to participate at a rate of almost 4 million a year in High School Athletics, while girls' participation has skyrocketed to the level of almost 2,750,000. In 1971, 1 in 27 girls participated in high school sports, while in 2000-01, the rate is 1 in 2.5. For boys, the number has remained at 1 in 2. (Women's Sports Foundation, 2002).

A parallel increase of women's participation can be seen in college athletics. Acosta and Carpenter (2002) indicate that in 1970 colleges sponsored an average of 2.5 women's athletic teams. In the mandatory compliance year for Title IX of 1977-78, the average number of teams sponsored had risen to 5.61. In 2002, women's intercollegiate sport sponsorship is at an all time high of 8.35 sponsored teams per school. All three of the National Collegiate Athletic Association (NCAA) Divisions have continued to show increases in women's sport sponsorship.

Acosta and Carpenter (2002) attribute the increase of women's intercollegiate participation to several factors: (a) second generation female athletes, (b) successful Title IX lawsuits, (c) society's greater acceptance of female athletes, (d) greater media time focused on female athletes, and (e) commitment of individuals and organizations to full access for males and females.

Although not directly attributed to Title IX, the boom in participation of female athletes in educational settings has assisted in the development of professional playing opportunities for women. Society has traditionally accepted individual women's sports such as tennis, bowling and golf, and has long offered women the opportunity to make a living playing the games they love. Billiards has now been added to the professional opportunities for women in individual

sports. In recent years, the prize money for women has begun to approach that of men, and is now equal at the U.S. Open Tennis Championship.

Professional team sports for women have now developed in several areas. The backing of the National Basketball Association has provided high visibility for the Women's National Basketball Association (WNBA). The success of the World Cup in the United States has spawned the Women's United Soccer Association (WUSA). Football, the formerly all-male bastion, has been infiltrated by the Women's Professional Football League (WPFL). United States Professional Volleyball (USPV) begins their second season in 2004. Play will be restarted in professional softball in 2003 with the Women's Professional Softball League (WPSL). Salaries of the female team sports athletes do not rival those of major men's sports, but for the first time, women in a number of team sports are being paid to play.

### ***Decline of Women in Leadership Roles***

While the boom of participation has been skyrocketing, a corresponding bust of women in leadership roles has been occurring. Only 44% of the coaches in women's sports on the college level are female. The percentage of women coaching in men's athletics remains under 2%, as it has for the past 3 decades. This translates into less than 25% of all college coaches being female (Acosta & Carpenter, 2002).

When Title IX was enacted in 1972, more than 90% of all women's intercollegiate athletic programs were directed by a female. In 2002, 17.9% of women's intercollegiate athletics programs were directed by a female head administrator. 18.8% of women's athletics programs have no female in the athletic administrative structure. Women hold 40% of the administrative jobs, but only 17.9% of the athletic directorships (Acosta & Carpenter, 2002).

Other positions of leadership in intercollegiate athletic departments include Sports Information Directors and Athletic Trainers. Of the 854 full-time Sports Information Directors, 12.3% are females. 703 institutions provide full-time Athletic Trainers, with 27.8% being female (Acosta & Carpenter, 2002).

After Title IX was signed into law, the consolidation of Men and Women's Athletic Departments accelerated the decline of women in college athletic administration. The title of Athletic Director was most often bestowed upon the former Men's Athletic Director, with the Women's Athletic Director becoming an Assistant. On the High School level, the girls' programs were begun or absorbed into the athletic department with the male Athletic Director in charge.

The reasons for the decline of women in coaching are complex and have no clearly defined rationale. Prior to Title IX, over 90% of the coaches of women athletes were female. An occupation that is conventionally female has lower status in our society than an occupation that is conventionally male (Crampton & Mishra, 1999; Jacobsen & Moore, 1995). Together with reduced prestige, women in traditionally female occupations receive lower wages, less autonomy, less job security and less mobility than men in comparable masculine occupations (Reskin & Roos, 1990). Therefore, the masculinization of female occupations rarely happens (Jacobsen & Moore, 1995; Reskin & Roos, 1990; Williams, 1989).

Williams (1993) has identified situations where men may move into a "women's" occupation. An invasion occurs when large numbers of men enter a job, monopolizing certain specialties and taking top hierarchical positions. Involved is a perception of real economic opportunity and a climate of social or technological change that men can exploit. During the

70's, Title IX was in place to force changes in women's athletics and a general feminist movement for equality occurred. Ironically, these changes helped the invasion of men in women's athletics (Williams, 1993).

The pre-Title IX coach of girls' athletics at the High School level, if indeed there were athletic teams for females, was the Girls' Physical Education Teacher. She was paid little or nothing, had a limited schedule to coach with no post-season opportunities, usually coached all three seasons, even if she had no prior experience with the other sports, and needed to provide juice and cookies for both teams following the home contest (Lopiano, 2003b).

As the impact of Title IX was felt in Women's Athletics, coaching salaries improved, and especially at the High School level, became equal to the Boy's Coaches salaries. The number of contests played became mandated by state associations and moved in line to what the Boys' Teams were playing. The Girls' Teams had the opportunity to play for a state championship. Juice and cookies were no longer served at the end of the contests.

The Association of Intercollegiate Athletics for Women (AIAW) became the collegiate governing body for women's sports in 1971, one year before Title IX was signed into law. The AIAW's Goals and Objectives included: the opportunity for athletes to excel, the continuance of women in leadership roles, the inclusion of many different sports and many different levels of skill, the availability of competitive opportunities at all levels of education, the focus on education, and the rights of the athletes. The popularity of the AIAW's Women's Basketball Championship grew and was recognized by the NCAA. The NCAA started its own championship, and with their economic power, forced the AIAW to terminate operations in 1982.

The loss of the AIAW and the juice and cookies saw the elimination of an alternative model to the dominate male model in sport. The present intercollegiate sport model is one of commercialism and athlete exploitation. The transcendence of the male sports model has created conflict for some women. Although expected to be aggressive and talented, females are still expected to model the ideals of traditional femininity in society (Blinde & Greendorfer, 1992; Dworkin & Messner, 1999; Messner, 2002). Pat Griffin (1998, p. 71) states, "While watching women basketball coaches teeter on high heels and squat in front of the bench while wrapping their skirts around their legs to avoid exposing their underwear, it is easy to see how important appearance is, even at the expense of practicality and comfort." While trying to achieve empowerment through sport, females continue to be subordinate to the males in leadership positions (Blinde & Greendorfer, 1992; Dworkin & Messner, 1999).

A study by Hart, Hasbrook, and Mathes (1986) found that former interscholastic coaches left the profession because of perceived time and role conflicts, while current coaches would leave coaching only if their performance was no longer adequate. This study found that previous and present interscholastic coaches had different sets of values and orientations toward coaching.

A survey of male and female interscholastic coaches investigated whether female coaches were less qualified than their male counterparts and if they had time constraints due to family responsibilities. The results showed that female coaches were more qualified than the male coaches in the areas of coaching experience with female teams, professional teams, and professional experience. Female coaches were as qualified as male coaches when comparing intercollegiate playing experience. Female coaches were less qualified than male coaches with respect to high school playing experience and coaching experience with male teams. Male coaches, however, were more likely to experience time constraints due to family responsibilities than female coaches (Hasbrook, Hart, Mathes & True, 1990). Family responsibilities have

traditionally been projected as an issue for women in athletics, and a barrier for women seeking positions.

The athletes themselves may have a gender bias with regard to their coach. In a study of male and female High School basketball players, a bias was shown for male coaches, even when successful male and female coaches were being compared (Parkhouse & Williams, 1986). In another study of club swimmers, the research found that the gender of the athletes' present coach had a strong effect on whether the athlete preferred a male or a female coach. The female coach has been found to influence the athlete's desire to become a head coach for high school female basketball players (Dibrezzo, Lirgg & Smith, 1994). Athletes may not be experiencing or perceiving females as competent coaches. Women in coaching may be working with female athletes who, through sport culture, already have a bias against them.

Coaches themselves have gender biases in the area of role modeling. Of High School Girls' Basketball Coaches studied, both genders thought that female athletes would prefer being coached by them. Each gender perceived that they were better role models than the other. Differences were also identified in the rankings of various coaching qualities (Molstad, 1993). As male coaches move into administrative roles in athletics, these differences may be perceptions of incompetence in the evaluation process of female coaches.

Attribution theory, the concern to what a person attributes his or her successes or failures, is part of this enigma. Women often think of their gender as being inferior, and have lower expectations for success. Whether successful or not, women attribute their success to external factors such as luck and task difficulty. Women see success as less important and their tasks as easier than men's (Murray & Matheson, 2001). Recent work indicates a change, some women may now perceive their sport success as a skill outcome (Murray & Matheson, 2001).

The issue of perceived competence keeps some women out of leadership positions, even from coaching their own child (Atkin, 1999; Collins, 1997). Mothers are seriously underrepresented in the coaching area, although 85% of all volunteer coaches are parents with children on their team. This void in the volunteer arena has been encouraged by a "C'mon Mom!" kit, that will provide information to move mothers out of the bleachers and into coaching (Clark, 2000).

The issue of homophobia has historically been used as a method of controlling the access of women into male dominated professions. The dominance of men in sport has traditionally put women at risk of being stereotyped as lesbians. Griffin suggests that the culture of silence surrounding homosexuality for women in sport perpetuates fear and discrimination. Homophobia is a concern in the hiring and firing process, as well as the recruitment of athletes. Maintaining an image of heterosexuality is of great concern, and may impact decisions regarding the previously mentioned appearance, the leader's behavior, choice of assistant coaches, or other professional choices (Eisenbarth & Thorngren, 1994; Griffin, 1998; Nelson 1991, 1994; Thorngren, 1990).

Working within the structure of athletics places women in a male dominated culture that operates with a hierarchical structure. The female is expected to modify their behavior to fit the sport culture, as opposed to the sport culture working to make itself more accessible to women (Talbot, 2002). Women who work in coaching and athletic management find workload inequities, men favored with resources, differences in communication particularly with language, tensions with men in their everyday work, while wanting more empowerment, more equitable access to resources and skill development, and shared decision making and power (Danylchuk, Inglis, & Pastore, 2000)

In discussing the price of equality, Grant and Darley (2001) state,

It appears that the women's model of the world, and the behavior the model implies they should engage in, has placed them at a disadvantage when the prevailing model is at odds with theirs. In the short term, a power-based, hierarchical structure which values product over process and status over spirit will suppress those whose priorities and modes of human interaction are kinder and gentler.

Hundreds of thousands of female athletes are competing each year, but very few chose to move into leadership positions in athletics. Since Title IX was signed into law, career options for women have expanded well beyond the traditional women's professions of teaching and nursing (Lopiano, 2003a). Why would young women choose a profession where their athletes don't want to work with them because of their gender, they will be accused of being lesbians, and their socialization has put them at odds with the dominant culture?

Even more startling is the fact that many young female athletes have no knowledge of Title IX. High School and College students do not know what Title IX is, no less what it represents for women in sport. The perspective of young athletes is illustrated by Jennifer Capriotti at the recent US Open Tennis Championship, indicating in response to a reporter's question, "I have no idea what Title IX is" (Sports Illustrated, 2002, p. 30.)

The fact that young women assume their right to equitable participation is one reason for their response. They have not had to fight the battles of their predecessors, and are not aware of what struggles have preceded their opportunities. On the one hand this is a positive sign, but the benefits of Title IX are becoming a piece of lost history. The recent issues regarding the lawsuit brought by the Wrestling Coaches Association, and the response of the Department of Education further emphasize for the strength of Title IX not be assumed by any generation.

### ***Compliance with Title IX***

In athletics, there are three ways in which a school can be in compliance with Title IX:

1. The institution can show that the present program has fully and effectively accommodated the interests and abilities of the members of that sex.
2. The institution can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex, almost always females in this context.
3. The level of participation opportunities for male and female students is provided in numbers substantially proportionate to their respective enrollments. (Carpenter, 2001)

As a method of achieving compliance with the mandates of Title IX, many athletic departments have chosen to cut men's non-revenue producing sports. Cuts have occurred in the sports of wrestling, gymnastics, tennis, and baseball. The revenue producing sports such as football have remained untouched in these situations, despite the fact that only 20% of college football programs produce net profits (Boyce, 2002). In her book *Tilting the Playing Field—Schools, Sports, Sex and Title IX*, Jessica Gavora (2002) directly attributes these cuts to Title IX, and therefore feels that Title IX is discriminating against men.

Gavora, the Independent Women's Forum, and other opponents of Title IX indicate several intertwined arguments:

1. Title IX requires quotas (related to the proportionality prong of the test options).
2. The quotas are based on a higher level of women's interest in sport than exists in reality because females just are not that interested in sport.
3. The quotas force cuts in men's sports (Title IX, 2002).

Those who disagree with this argument continue to indicate that collegiate female athletes are being discriminated against. For example, only 32% of the athletic recruiting money goes to women (Title IX, 2002), male athletes still have 30% more participation opportunities, and men still are getting \$133 million more per year in athletic aid (Smith, 2002).

The participation numbers on the interscholastic level certainly do not indicate that females are not interested in participation. The stereotype of women's lack of interest in sports perpetuates a myth that is no longer reality (Women's Sports Foundation, 2002).

Nancy Hogshead, an attorney and former Olympic swimmer, indicated in an ESPN Town Meeting (Lev, 2002) that the courts, in a number of cases, have consistently upheld the proportionality prong of the test and do not see it as a quota. She indicated that many schools do not use the proportionality test, but choose one of the other options available. Of the last 74 reviews completed by the Office of Civil Rights, only 21 schools used the proportionality prong.

Decisions made on the cutting of teams are due to budgetary issues and not to Title IX (Staurowsky, 1998). Donna Lopiano, Executive Director of the Women's Sports Foundation, states, "What stops opportunities is money. And these are budgetary decisions. When moneys aren't allocated to start new women's teams, that stops progress in terms of opportunities to play sports. That's why there's 41 percent [of women participating at the college level and not a higher number]. If somebody's cutting an existing men's team, it's because of a budgetary decision, not because of Title IX."

She goes on to say, "And schools, instead of giving each sport a smaller piece of the pie, make a philosophical decision that says, 'I want a fewer number of sports. I want to treat them like kings and queens, and I'm just going to cut off the low people on the totem pole because I want this size program.' That is not a function of Title IX. It's a philosophical decision" (Smith, 2002).

The loss of men's intercollegiate teams has been offset by an increase in men's participation in other sports. Between 1981–82 and 1998–99, football participation increased 7,199 which more than balances men's wrestling declines of 2,648, and the decline of outdoor track's 1,405, tennis' 1,706, and gymnastics' 1,022. Several sports gained participants during this time frame, including baseball (5,452), lacrosse (+2,000) and soccer (1,932). Between 1984–88, when the Supreme Court suspended the application of Title IX to college athletics programs, wrestling programs went from 342 to 289 or approximately 13.3 teams per year. In the twelve years that followed, the number went from 289 to 234 or approximately 4.6 teams per year (de Varona & Foudy, 2003).

### ***Challenges to Title IX***

Early in 2002, the National Wrestling Coaches Association brought a suit against the Department of Education contesting the proportionality section of the three-prong test, based

upon the decision of some colleges to drop men's sports. The Department of Education brought forth a motion to dismiss the suit on technical grounds. Reasons included that the National Wrestling Coaches Association did not have the standing to bring the suit, this type of lawsuit should not be brought against the Department of Education but directly against the school, and that the statute of limitations to contest these issues had expired. The filing of the motion by the Department was done without support for the long-standing policies of Title IX, policies that have previously received strong support from both Democratic and Republic administrations (Title IX, 2002).

Shortly after the June anniversary of Title IX in 2002, Education Secretary Paige announced the formation of a Commission on Opportunity in Athletics. The Commission's task was to "collect information, analyze issues, and obtain broad public input directed at improving the application of current Federal standards for measuring equal opportunity for men, women, boys and girls to participate in athletics under Title IX." (National Association for Girls and Women in Sport, 2002, p. 1) "The Commission shall conduct at least three town-hall meetings in different parts of the country to obtain public input. The report is due to the Secretary no later than January 31<sup>st</sup> of 2003" (National Association for Girls and Women in Sport, 2002).

The Commission investigated these questions:

- \* Are Title IX standards for assessing equal opportunity in athletics working to promote opportunities for male and female athletes?
- \* Is there adequate Title IX guidance that enables colleges and school districts to know what is expected of them and to plan for an athletic program that effectively meets the needs and interests of their students?
- \* Is further guidance or other steps needed at the junior and senior high school levels, where the availability or absence of opportunities will critically affect the prospective interests and abilities of student athletes when they reach college age?
- \* How should activities such as cheerleading or bowling factor into the analysis of equitable opportunities?
- \* How do revenue producing and large-roster teams affect the provision of equal opportunities? The Department has heard from some parties that, whereas some men athletes will "walk-on" to intercollegiate teams without athletic financial aid and without having been recruited, women rarely do this. Is this accurate, and if so, what are its implications for Title IX analysis?
- \* In what ways do opportunities in other sports venues, such as the Olympics, professional leagues, and community recreations programs, interact with the obligations of colleges and school districts to provide equal athletic opportunity? What are the implications for Title IX?
- \* Apart from Title IX enforcement, are there other efforts to promote athletic opportunities for male and female students that the Department might support, such as public-private partnerships to support the efforts of schools and colleges in this area? (National Association for Girls and Women in Sport, 2002)

Following the submission of the Commission's report, Secretary Paige indicated that he would take into consideration the recommendations that were unanimously approved. These included:



- The Department of Education should reaffirm its strong commitment to equal opportunity and the elimination of discrimination for girls and boys, women and men.
- The Department of Education's Office for Civil Rights should provide clear, consistent and understandable written guidelines for implementation of Title IX and make every effort to ensure that the Guidelines are understood, through a national education effort. The Office of Civil Rights should ensure that enforcement of and education about Title IX is consistent across all regional offices.
- The Office for Civil Rights should not, directly or indirectly, change current policies in ways that would undermine Title IX enforcement regarding nondiscriminatory treatment in participation, support services and scholarships.
- The Office for Civil Rights should make clear that cutting teams in order to demonstrate compliance with Title IX is a disfavored practice.
- The Office for Civil Rights should aggressively enforce Title IX standards, including implementing sanctions for institutions that do not comply. The Department of Education should also explore ways to encourage compliance with Title IX rather than merely threatening sanctions.
- The Department of Education should encourage educational and sports leaders to promote male and female student interest in athletics at the elementary and secondary levels to encourage participation in physical education and explore ways of encouraging women to walk on to teams.
- The Department of Education should encourage the redesign of the Equity in Athletics Disclosure Act so that it provides the public with a relevant and simplified tool to evaluate the status of Title IX compliance in the nation's post-secondary institutions.
- The Office for Civil Rights should disseminate information on the criteria it uses to help schools determine whether activities they offer qualify as athletic opportunities.
- The Department of Education should encourage the NCAA to review its scholarship and other guidelines to determine if they adequately promote or hinder athletic participation opportunities.
- If substantial proportionality is retained as a way of complying with Title IX, the Office for Civil Rights should clarify the meaning of substantial proportionality to allow for a reasonable variance in the relative ratio of athletic participation of men and women while adhering to the nondiscriminatory tenets of Title IX.
- In providing technical assistance, the Office for Civil Rights should advise schools, as necessary, that walk-on opportunities are not limited for schools that can demonstrate compliance with the second or third parts of the three-part test.
- 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 comparing the ratio of male/ffemale athletic participation at the institution with the demonstrated interests and abilities shown by regional, state, or national youth or high school participation rates or national governing bodies, or by the interest levels indicated in surveys of prospective or enrolled students at that institution.
- The designation of one part of the three-part test as a "safe harbor" should be abandoned in favor of a way of demonstrating compliance with Title IX's participation requirement that treats each part of the test equally. In addition, the evaluation of compliance should include looking at all three parts of the test, in aggregate or in balance, as well as individually.

- The Office for Civil Rights should be urged to consider reshaping the second part of the three-part test, including by designating a point at which a school can not longer establish compliance through this part.
- Additional ways of demonstrating equity beyond the existing three-part test should be explored by the Department of Education.

### ***Minority Report***

Following the submission of the Commission's report, a Minority Report was drafted and submitted by Commission members Donna de Varona and Julie Foudy who requested that the report be officially accepted along with the Commission's Report. Secretary Paige declined to include their report with the Commission's findings. On February 27, 2003, the Minority Report was officially entered into the Senate Congressional Record by Senator Hillary Clinton (Clinton, 2003).

The Minority Report includes findings and recommendations that the authors feel should have been included in the original report, indicates reasons why the Commissioners cannot support key recommendations, and identifies problems with the process of the Commission (deVarona & Foundy, 2003). The findings include:

- Title IX, and the three-part test have promoted great advances for women and girls to participate in sports.
- Despite these advances, discrimination still limits athletics opportunities for girls and women at both the high school and college levels today.
- Enhancing athletic opportunities for young women and girls is of vital importance because of the significant benefits those opportunities provide.
- The fact that women and girls have fewer opportunities in athletics than men reflects the persistent discrimination against them, not lack of interest.
- Advances in opportunities for girls and women have not resulted in a n overall decrease in opportunities for men.
- The three-part test, adopted by the Department of Education in 1979 and in force since that time, is flexible and fair. All three prongs of the test have been used successfully by schools to comply with Title IX, and each is necessary to give schools flexibility in structuring their athletics program while guarding against freezing discrimination in to place.
- The Office for Civil Rights (OCR) has provided extensive guidance on the operation of each prong on the three-part test, but should provide enhanced technical assistance, consistent with the guidance, on the means by which schools can comply with the test. OCR can also do more to ensure consistent interpretation of Title IX by all regional offices.
- The term "safe harbor," used by some courts and the OCR to describe the operation of the first prong of the three-art test, is a legal term of art that does not mean that the first prong is the only effective way to comply with the test. OCR can do more to provide enhanced technical assistance to ensure that educational institutions understand that compliance is possible under prongs one, two or three.
- The lawfulness of the three-part test has been affirmed by every federal appellate court to consider the issue.

- The OCR has never imposed a financial penalty on a school for failing to comply with the three-part test.
- The three-part test does not impose quotas or require preferential treatment.
- Title IX does not require mirror image men's and women's sports programs.
- Title IX does not cause cuts to men's teams.
- To the extent that schools have discontinued men's – and women's – athletic teams since Title IX was passed, there are many reasons for those decision. Most notably, budgetary decisions, the athletics "arms race," excessive expenditures, and philosophical decisions related to the appropriate quality and size of athletic programs have resulted in the loss of opportunities for other sports.
- Rules set by the NCAA could be hampering schools' ability to comply with Title IX.
- "Walk-on" student-athletes cost money and receive the benefits of participating in intercollegiate athletics. To the extent that men walk on more than women, intangible benefits accorded to men's teams and the persistent budgetary barriers that limit the extent to which women's teams can support additional players have been identified as causes.
- The OCR uses flexible guidelines in helping schools determine whether an activity is a sport.
- There is a mechanism by which the Department of Education can systematically monitor participation in athletics and athletic program expenditures at the college levels, the Equity in Athletics Disclosure Act. There is no mechanism in place by which the Department of Education or the public can systematically monitor these variables at the high school level.

The following recommendations were included in the minority report:

- The Department of Education's current Title IX athletics policies, which have promoted advances toward equality for women in sports, should be preserved without change.
- The Department of Education should strongly enforce Title IX standards, including implementing sanctions for institutions that do not comply.
- Using existing guidance, Department of Education staff should undertake an educational campaign to help educational institutions understand the flexibility of the law, explain that each prong of the three-part test is a viable and independent means of compliance, and give practical examples of the ways in which schools can comply.
- In educating schools about current policies, the Department of Education should advise them that nothing in Title IX requires the cutting or reduction of men's teams, and that to do so is disfavored.
- The Department of Education should encourage educational institutions and national athletic governance organizations to address the issue of reducing the escalating costs of intercollegiate athletics, particularly in some parts of the men's athletics programs, and fostering agreement on reforms.
- The Department of Education should encourage educational institutions and national athletic governance organizations to address whether organization rules, such as limitations on the numbers of athletics scholarships, hamper compliance with Title IX participation requirements and, if so, to take corrective action.

- The Department of Education should require secondary schools to compile and report the data currently required of colleges and universities under the Equity in Athletics Disclosure Act (de Varona & Foudy, 2003).

The Minority Report also discussed concerns with the Commission's recommendations. Based on those recommendations, a reduction of athletic opportunities would occur for girls and women. Two of the Commission's recommendations would allow schools compliance with the proportionality test without having achieved equitable opportunity. The use of interest surveys, which have been rejected by the courts, would be authorized as a method of limiting opportunities for girls and women. A loophole could be created that would allow private funds to be used solely for men's teams and not for all athletes. One recommendation would allow the Secretary to create new methods of compliance that may not have been considered by the Commission (de Varona & Foudy, 2003).

The Minority Report further went on to discuss their concerns with the process that the Commission followed:

- The Commission's charge failed to ask the critical question: whether discrimination against girls and women persists, and how it can be remedied.
- The Commission lacked representatives of important constituencies.
- Witnesses selected by the Department of Education testified two-to-one against current policies, and other expert testimony that was requested was not provided.
- The Commission had inadequate time for serious review.
- The Commission was not provided information on, nor therefore was able to consider, the impact of its recommendations.
- The arrangements made for expression of minority views were insufficient. (deVarona & Foudy, 2003)

Supporters of Title IX who closely followed the proceedings also contend that process the Commission followed was seriously flawed. Concerns with the process included: lack of expertise of the panelists, a rush through the process, especially when forming what should have been well-thought out recommendations, a lack of available material for Commissioners to review, both during and between meetings, and an overbalance of Commission membership representing NCAA Div. IA to the exclusion of other NCAA Divisions, 2-year colleges, high schools and middle schools, all of whom are effected by Title IX (Lopiano, 2003b).

The dissenting argument from the Department of Education, the establishment of the Commission, the process the Commission followed, and the exclusion by Secretary Paige of the Minority Report all seem to support that Title IX as we know it is in serious jeopardy. Gavora, who works as a senior policy advisor to the Department of Justice, seems to represent the Administration viewpoint in her book.

### ***Grassroots Mobilization***

The National Coalition of Women and Girls in Education, which includes the National Association of Girls and Women in Sport, the Women's Sports Foundation, the American Association of University Women and the National Women's Law Center, is very concerned that the Bush Administration has chosen not to provide strong support for Title IX, and is working to

mobilize their membership in support of Title IX. Members were asked to attend and speak at the town meetings for Title IX, and are carrying on a campaign to contact their representatives with the support of a web page save Title IX (Lopiano, 2003a).

The National Coalition has also developed a Strategic Plan in support of Title IX. includes: pressuring the administration thus creating a politically negative atmosphere, delaying the Secretary's action, educating the public (a media campaign targeting moderate Republicans, using male and female celebrities, quick responses to conservative Republicans, aggressive field efforts, where Republicans may not get elected), using volunteers and activating the public, enlisting the support of moderate Republicans in Congress, going beyond the sport coalition, and fundraising (Lopiano, 2003a).

The boom in participation over the past thirty years, the increased visibility of women in sport, and the continued growth of opportunity are all because of Title IX. When supports for Title IX were withdrawn, as with the Grove City court decision, women regressed in the progress towards athletic equality. The detractors of Title IX believe that all the needs of women in sport have been achieved, and that further equality will just cause the increasing discrimination of men.

The choices made by the predominantly male athletic directors and coupled with some of the NCAA rules continue to sustain extremely high levels of funding for premiere sports. The philosophical decisions being made are based upon treating these programs as "kings and queens," as Donna Lopiano so aptly stated. The athletic directors are choosing not to reallocate the resources of these "royalty" programs for the sake of all of their teams.

An example of this treatment was presented at the ESPN Town Meeting held in June of this year. The roster spots for football in the 2000 season were listed as: Nebraska 202, Alabama 176, Mississippi 165, Kentucky 156, Houston 151 and the eventual national champion Oklahoma 127. The NCAA allows a maximum number of scholarships at this level of 85 (Lev, 2002). At a minimum, those scholarship and non-scholarship athletes must be provided practice gear, changing facilities and practice space.

### ***Options for Change***

What other options do we have besides changes in the administrative regulations for Title IX? Develop minor leagues for football and basketball that are similar to those for baseball. Athletes whose goal is really to pursue a professional career can be drafted into the minor league system following high school, while those athletes interested in a college education can go on to school. This system has worked well for Major League Baseball and puts the financial responsibility for a professional feeder system on the professional organizations, not colleges and universities.

College Athletic Directors and Coaches are under tremendous pressure to have winning programs. The pressures are monetarily based, and include such things as TV contracts, sponsorship agreements, corporate donations, alumni support and sell-out contests. The model for big-time college sports has become entertainment, not education (Sokolove, 2002). The philosophical decisions concerning budget allocations are based upon the reality of these pressures. College Presidents, in conjunction with the NCAA, need to work to alleviate some of the pressure placed upon the Athletic Departments in order to reclaim an educational focus.

An idea attributed to Donna Lopiano is that the NCAA should import Australian Rules Football to the US to be played by women. It is a different form of football where the emphasis

is on running, jumping, marking, and kicking rather than tackling. A large number of players are required, so it could be used to balance out the large squad sizes of football (Burton, 2002).

Stereotypes of women in sport, such as lesbianism, need to be fought. The fight can be at the administrative level with expanded policies of tolerance and a dialogue to increase visibility of these issues. Most importantly, the fight needs to occur on the field, courts, pool, and stands. Coaches, teams, and spectators need to participate in environments of tolerance (Griffin, 1998).

Support needs to be provided for women working in predominately male athletic environments. Mentoring women as they enter a profession can be helpful. Continuing to hire females into that environment can help to create a supportive women's network. Within the hiring process, the identification of qualified female candidates and the creation of external networks to assist in the identification of those candidates are key.

If we are to increase the number of women in leadership positions, then those interested younger women need to be supported and encouraged in their pursuit of a sport career. Certainly, female role models are important, but we must work with male allies and call upon them to work positively with younger women wanting to move into a sport career.

The media needs to continue to expand its coverage of women athletes. The media does not provide equitable coverage of women in sport both in terms of the amount of time and the quality of coverage. The sportscasters language portraying women athletes continues to marginalize and sexualize them (Cohen, 2001; Messner, 2002).

The female athletes who have experienced the successes of Title IX need to be educated about the opportunities that they have been afforded through this legislation. Those who have gone through the struggles to move equality forward should not assume that those coming after know the history. The lack of female role models available to pass on this history makes it all the more important for all women and male allies to take on this responsibility.

## **Conclusion**

Title IX has achieved a boom of participation for women in sport, but has been accompanied by a bust of women in leadership roles and the accusation of causing the decline of men's intercollegiate sports. Women at all levels have not yet achieved equality in sport. Perhaps when 50% of the coaches of women and men are female, and women are equally represented in all leadership positions, can we say that equality has been achieved in athletic leadership.

Women in sport leadership positions have experienced the strength of Title IX since the Civil Rights Restoration Act (Carpenter, 2001). Entering this new phase of uncertainty for Title IX should be of concern for the future strength of the administrative regulations of the law, and of concern for those who will be impacted by any changes. The women involved in athletics should monitor the situation and be ready to adapt when the changes that some believe are inevitable are implemented. Until that time, participation in National Coalition activities should be considered as a method of supporting Title IX in its' present form. Sport leaders should also recognize that until changes occur, Title IX remains strongly enforceable with the three-prong test still firmly accepted by the courts.

The strength of a continuing movement of women in sport toward equality is contingent upon a strong Title IX. The work of the Commission, their January report and subsequent actions by the Bush Administration will possibly usher in a new era of Title IX. From many indications, a lessening of the strength of Title IX may well retard continuing progress towards equality for women in sport.

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