

Title IX: the Female Intercollegiate Athletic Sphere

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"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance"- Title IX.

Introduction

Title IX consists of just thirty-seven words, and it is these words that have transformed the dynamics of the female athletic sphere in the United States. Although the federal law was initially envisioned to assist women in academia, it is currently renowned for its profound impact on American sports [12]. It is an irrefutable fact that Title IX has vastly increased women's participation in sports, reportedly increasing female participation rates within colleges six-fold from 1972—the year it was passed—to today [3]. Yet, despite the progress made by Title IX, it faces deep challenges in its quest to achieve true equality. Women's participation rates in sports still lag far behind men, and one cannot ignore this troubling reality that persists in the United States[5]. Thus, the question as to whether or not Title IX has achieved gender equity is highly debatable. This paper intends to illuminate the shortcomings of Title IX's goal in attaining true equality through analysis of its limitations. Specifically, the essay will first discuss the historical attitudes towards women in sports before Title IX and the structure of the federal law. It will then explore the issues inherent in Title IX, such as the continuation of male preservation, the reduction of men's sports, and sexual harassment. The scope of this essay will focus mainly on intercollegiate sports.

Historical Attitudes Pre-Title IX

Prior to the passing of Title IX in 1972, women were generally not valued in the world of intercollegiate sports. As part of the educational

experience, schools provided physical education classes to gently enhance the health of a woman. Colleges dedicated a mere 2% of their athletic budgets to female athletic programs, and female athletic scholarships were nearly nonexistent. According to Susan Ware, a feminist biographer, the idea of extending competition in sports for women was disconcerting for athletic administrators. In her book *Title IX: A Brief History with Documents*, she proclaims that “competitive athletics were seen as [unnatural or] illegitimate for women” [12]. One example that overtly demonstrates this perception is the decision of the National Collegiate Athletic Association in 1910 to alter the general rules of games for women to make sure they were “safe” for them. This action promoted the concept that society should seek to protect women from sports rather than encourage them to engage in it. The National Amateur Athletic Federation later released a statement in 1923 discouraging the participation of female athletes in competitions on the basis that it could result in adverse health effects and potentially impact their menstrual cycle or ability to bear children. It also refused to lobby for the integration of females in intercollegiate athletics, thereby undercutting the cause of women in sport. Female physical education programs “focused almost exclusively on health benefits and did not evolve into intercollegiate athletics until the 1970s.” The 1960s women’s movement worked to transform conventional attitudes, and health programs transformed into women’s intercollegiate athletics programs [8]. The enactment of Title IX in 1972 worked to further equalize the playing field. For the first time, many universities finally established a female intercollegiate athletic program.

It is clear that, before Title IX, sports were considered to be detrimental to the ideal femininity of women. Women were not part of the world of intercollegiate athletics, especially during a time in which the belief that intense exercise endangered the female apparatus was prevalent [8]. Sports appeared to jeopardize two central goals that society believed women had to fulfill: “getting married and having children.” The case of Susan Hollander illustrates just how deeply ingrained this concept was in society. In 1971, Hollander sued her school after they denied her the opportunity to play on the men’s cross-country team; it should be noted that no women’s team existed at her school. The judge of her trial

responded by denying her request, claiming that “athletic competition builds character in our boys. We do not need that kind of character in our girls” [12]. This incident, occurring just a year before Title IX came into play, constitutes an accurate portrayal of how society viewed women in sports.

Brief Structural Overview of Title IX

Title IX is a brief, one-sentence statement within the Education Amendments Act of 1972 that was designed to provide educational equity for women. The federal law also applies to the various components that form an educational institution, including athletic programs [12]. At its core, Title IX requires that men and women have an equal opportunity to participate in sports. It also necessitates that “college female and male student-athletes receive athletic scholarship dollars proportional to their participation...[along with] the equal treatment of female and male student-athletes in the provisions of: (a) equipment and supplies; (b) scheduling of games and practice times; (c) travel and daily allowance/per diem; (d) access to tutoring; (e) coaching, (f) locker rooms, practice and competitive facilities; (g) medical and training facilities and services; (h) housing and dining facilities and services; (i) publicity and promotions; (j) support services and (k) recruitment of student-athletes” [4].

To assess compliance with this federal law, Title IX provides schools with three options to prove their adherence. The first option entails that participation opportunities be proportionate to their enrollment in the school [12]. For example, consider Columbia University, which consists of 49% women and 51% men; Title IX would require that 49% of participation opportunities are dedicated to females and 51% to males. The other route would be demonstrating through records a school’s history and continued enforcement of expanding athletic programs for women. The third alternative, which is quite similar to the second option, entails a school displaying full accommodation to women in its athletic programs [12]. Moreover, compliance with Title IX is analyzed through comparison of the entity of each gender’s programs; simply put, men are compared to women, not a women’s lacrosse team compared to the men’s lacrosse team. In this way, “the broad comparative provision was

intended to emphasize that Title IX does not require the creation of mirror image programs” [4]. Both sexes can engage in different sports that correlate with their respective interests. In addition, Title IX is considered a flexible law in that it is not an “affirmative action law”; schools themselves are responsible for complying with Title IX and with federal laws in general (Ware). However, the Office for Civil Rights, an agency within the U.S. Department of Education, enforces Title IX through regulation. It oversees the schools by conducting annual compliance reviews and investigating any complaints [4].

In terms of changing the playing field, statistics prove that Title IX has certainly made an impact. In the 1971-1972 school year, just 29,977 women participated in intercollegiate sports. Today, over 150,916 women compete in college sports, constituting 43% of college athletes; this is an impressive increase of 403% from 1971 [5]. Figure 1 and 2 below engage in a visual representation of how women’s participation rates in college sports nearly skyrocketed after the passing of Title IX [10].

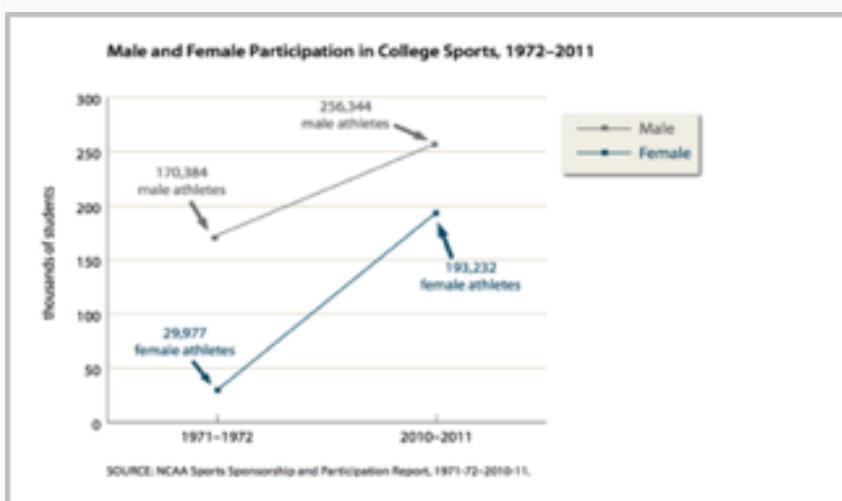


Figure 1. Male and female participation in college Sports, 1972-2011 from: “National Coalition for Women and Girls in Education.” *Title IX at 30*. Report, Washington, DC: National Coalition for Women and Girls in Education, 2002, Print.

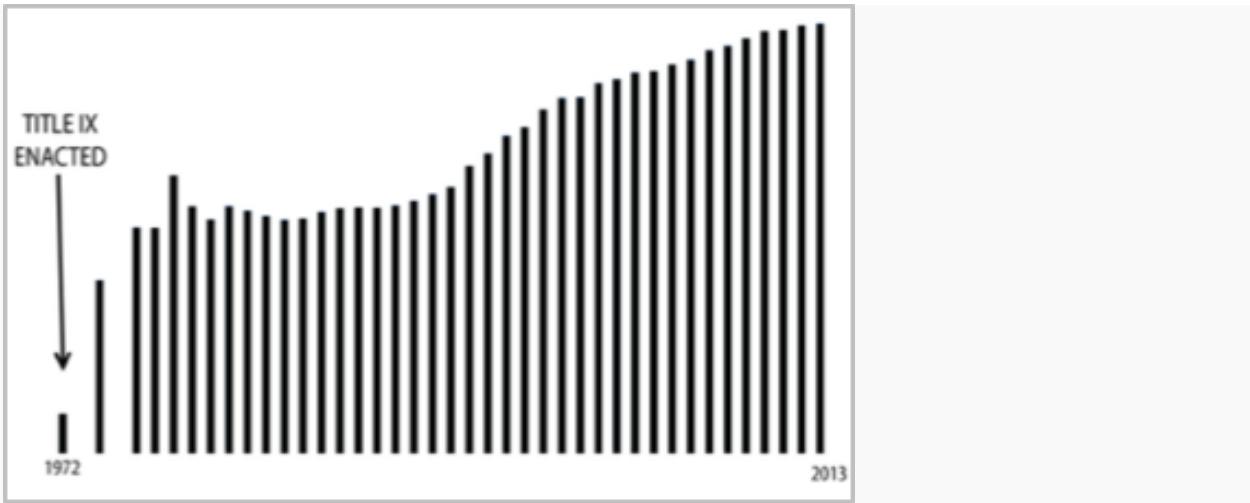


Figure 2. Rise in number of women competing in high school sports, 1972-2013, from: Sinha, Smriti. “One Chart Shows the Tremendous Impact of Title IX on Women in America,” *Mic*, Mic, 24 June 2014, Web.

Nonetheless, statistics also show that these gains in intercollegiate sports still fall short of providing full gender equity. Male athletes currently receive 36% more intercollegiate athletic scholarships than women. Moreover, colleges spend a reported average of \$3,786 on each male athlete; in contrast, they spend \$2,983 on each female athlete [5]. Such gender discrepancies are defended by Title IX’s Javits Amendment, which claims that “legitimate and justifiable discrepancies for non-gender related differences in sports could be taken into account (i.e., the differing costs of equipment or event management expenditures)” [4]. The ambiguous nature of this regulation leads to deference given to the body that administers the execution of Title IX, which tends to be male athletic administrators. Ultimately, this compiled evidence indicates that the gap between women and men in intercollegiate sports has not closed completely.

Title IX: a Failure or Success?

Determining whether Title IX is a failure or a success in achieving gender equity requires deeper analysis that goes beyond the statistics. Through exploration of leadership structures, cuts in men's sports, and sexual harassment, it is evident that various challenges severely limit the effect of Title IX.

To begin, Professor Deborah L. Brake, a professor at the University of Pittsburgh School of Law, points out that college sports have maintained inequality by "preservation through transformation" [1]. Colleges have essentially used Title IX to preserve male privilege in sports. In particular, Professor Brake emphasizes that the federal law coincides with the continued existence of the gender pay gap, along with the alarming decrease in women in coaching and athletic administration. Before Title IX, when the athletic departments for men and women were separately managed, 90% of women's college teams were led by female coaches; this percentage witnessed a dramatic drop after passing of Title IX, with only 44% of women's teams being coached by females in 2001 [6]. The law does not mention the representation of females in leadership roles, and it is this blindness that reinforces the gender divide[1]. The noticeable rarity of women coaching men's teams is even more unnerving. Females are seemingly viewed as incapable of taking on athletic leadership roles, and the supremacy of men over women is marked through the social repercussions of having more male coaches [8]. Title IX also does not directly address the current salary devaluation of female coaches in comparison to male coaches [12]. At the intercollegiate level, men's basketball coaches make a reported annual earning of \$149,700, whereas women's basketball coaches average at just \$91,300 [6]. This apparent disparity that exists between the salaries of the two sexes, especially within the 21st century, is disturbingly conspicuous and promotes male dominance within intercollegiate athlete programs. Title IX's failure to tackle this issue only endorses the cultural implications of this situation.

In addition, Title IX compliance regulations have allegedly led to the reduction of men's sports. Although these claims are "overstated, it is true that some institutions have chosen to cut or cap men's opportunities in the so-called non-revenue as part of a plan to comply with Title IX,

rather than choosing the path to compliance that adds new athletic opportunities for women” [1]. In other words, some schools have cut what are seen as non-revenue sports, such as cross-country, for high-profile sports, such as football [8]. In doing so, they are essentially tricking the system. This action, although the Office for Civil Rights deemed it a “disfavored route,” has not been disproven or banned by Title IX [12]. Since the structure of Title IX accepts the reduction of certain male athletic programs as a way of abiding by its rules, the law inadvertently suggests that women’s athletic programs are not worthy enough of being streamlined towards revenue generating sports [1]. Men’s high-revenue sports are accordingly rendered to be of utmost importance.

It is also important to note that the viral media focus on the reduction of certain male intercollegiate sports further impairs the goal of Title IX by overshadowing and marginalizing the gender-equity cause. Lynette Labinger, an attorney who was involved in a major Title IX case, asserted that cutting men’s teams in order to adhere to the rules of Title IX “creates hard feelings and it causes people to assess blame” [12]. The media’s exaggeration of the few cases in which male sports teams were cut has led to women being perceived as the cause of these issues, which furthers the negative depiction of women in a male-dominated athletic arena.

However, neither women nor Title IX is to blame for these cuts. Rather, the root of the issue lies within the “lavish spending” evident in the game of football, which has been viewed as the “fat man tipping the canoe of Title IX.” In 2002, it was reported that 91 out of the 115 colleges engaged in Division 1 football spent more money on their football team than women’s sports combined. To this day, it appears that college football programs are immune to any form of budget ramifications [13]. Some opponents of Title IX suggest that football “pays for everything,” meaning that the football revenue supports the survival of other team sports [8]. Yet, this claim is typically grossly exaggerated and/or invalid. Football is incredibly expensive in terms of equipment and team recruitment size, and the revenue gained often does not counterbalance the expenses. Instead, football typically strains the athletic department’s budget [8].

Due to the compensation required to sustain the sport's large administrative support, recruiting costs, and equipment fees, the expenditures for football are usually much higher than cross-country or lacrosse. Many athletic departments are then forced to divide the remaining budget left among women's teams and low-revenue men's teams, and the media tends to embellish the slight advantage that Title IX provides women's teams over low-revenue sports [1]. Such actions by the media could potentially encourage the public to feel sympathy for men's teams rather than for the women who simply want to play on the field. This mindset harms the livelihood of Title IX and places the cause of men over that of women.

Title IX also assumes that an athlete has the choice to either accept or deny a coach's advances, fully ignoring the position of power that a coach has over an athlete. To explain, only "unwelcome sexual conduct" violates Title IX; sexual relationships between coaches and their athletes are thus not a violation of Title IX. This "unwelcome" factor implies that such relationships are typically consensual and acceptable, which is not the case [11]. In this light, Title IX may prohibit sexual harassment, but it does not do so effectively. It is perilous to endorse an idea that psychologically suggests that coaches and athletes can casually engage in relationships and that it is okay for a coach to make advances on a student. Sports sociologist Helen Lenskyj has noted that the "differential power relationship between coaches and athletes presents great potential for sexual harassment and sexual abuse...in college, athletic scholarships are renewed each year, giving the coach enormous power and control over each athlete's future. Rejecting a coach's sexual innuendos and sexual advances, therefore, could mean the end of a young athlete's career" [13].

Some may insist that sexual harassment isn't a gender equity issue, yet such a statement is weak. Although there are no sexual assault statistics comparing intercollegiate athlete men and women, women are more subject to sexual assault in college than men are: approximately 20% of women and 6.25% men are sexually assaulted in college [7]. Moreover, the majority of sexual assault is done by men towards women. Since men tend to dominate the athletic sphere, both in terms of number and

power, one can extrapolate that female athletes are at higher risk of sexual assault than male athletes. Title IX thus fails to adequately prevent and protect female student-athletes from experiencing a potential abuse of power. The law's approach to sexual harassment overlooks the intrinsic power disparity in the relationship that makes true consent, and eventual indictment due to lack of consent, nearly impossible[11]. Title IX has certainly opened up access to sports for female athletes, yet it has not resolved the deep gender equity issue that exists within the intercollegiate athletic sphere.

Conclusion

Title IX was passed in Congress forty years ago, forever changing the dynamic of intercollegiate athletics within America. Although the inherent goal of Title IX dealt with gender equality, the resulting social effects display a different reality: women are still not on the same playing field as men. Various factors continuously challenge the implementation of this federal law, both structurally and socially, and the progress made under Title IX consequently falls short of complete gender equity. The Office of Civil Rights must address these limitations by increasing its standards of enforcement and being highly proactive [6]. For example, compliance reports could be conducted every three months rather than annually. These evaluations should also be more detailed, collecting data concerning the employment, salary rates, sexual harassment, and gender discrimination of women in intercollegiate sports. Many women may not even know their rights in sports or that they are experiencing a case of gender inequality. Thus, such reviews will enable the Office of Civil Rights to efficiently address and resolve any cases of noncompliance or discrimination by universities. However, until the Office of Civil Rights successfully rectifies the issues of Title IX, women will continue to face gender-based barriers within the world of intercollegiate sports. As a whole, the federal law is somewhat of a paradox—a mixed success [1]. Title IX has ultimately left a legacy in which its accomplishments are intermingled with unforeseen consequences.

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