

February 26, 2013

Kate Mullan
Acting Director, Information Collection Clearance Division
U.S. Department of Education
400 Maryland Avenue, SW, LBJ, Room 2E117
Washington, DC 20202-4537

Re: Agency Information Collection Activities; Comment Request; Regulations for Equity in Athletics Disclosure Act (EADA) (FR Doc. ED-2012-ICCD-0072, at 77 Fed. Reg. 76292)

Dear Ms. Mullan:

The National Women's Law Center submits the following comments in response to the Department of Education's request regarding the collection of information pursuant to the Equity in Athletics Disclosure Act (EADA), 20 U.S.C. § 1092(g).

For over 40 years, the Center has worked to expand the possibilities for women and girls in the areas of education and employment, family economic security, and health. The Center is a leader in the struggle to ensure that women and girls have equal educational opportunities, and has worked since Congress enacted Title IX of the Education Amendments of 1972 to advance and protect the rights of students in educational institutions.

In particular, the Center has worked since Title IX's passage towards the achievement of gender equity in athletics and has a strong interest in ensuring the existence and availability of data that can help identify inequities and better inform young women and their families about the educational opportunities available to them. Accordingly, the Center offers the following comments on the necessity of the EADA data and ways to enhance the quality, utility, and clarity of the information collected.

I. The Department's Existing Collection and Website Posting of EADA Data are Vital to Help Address the Continuing Lack of Equal Athletic Opportunities for Women.

The information collected pursuant to the EADA is critical because it helps highlight gender inequities in schools' athletics programs. The Department's centralized collection and posting of this information on its website is essential because without it, these data would not be widely and easily available to parents, students, coaches, advocates, researchers and the Department apart from individual requests to individual schools. Providing access to such information helps promote compliance with Title IX and other civil rights laws by allowing various entities to hold schools accountable for athletics disparities.

Despite the tremendous advances since Title IX became law, the playing field is still not level. While more than half of the students at NCAA schools are women, they receive only about 44% of the athletic participation opportunities.¹ Moreover, female athletes at the typical Division I-FBS (formerly Division I-A) school receive only 28% of the total money spent on athletics, 31% of the recruiting dollars, and 42% of the athletic scholarship dollars.² In addition, at the typical FBS school, for every dollar spent on women's sports, about two and a half dollars are spent on men's sports.³

By not providing women with equal opportunities to play sports, colleges and universities are denying them the health, academic, and economic benefits that accompany participation. Playing sports decreases a young woman's chance of developing heart disease, osteoporosis and breast cancer.⁴ Research shows that girls who had opportunities to play sports because of Title IX had a 7 percent lower risk of obesity 20 to 25 years later when they were in their late 30s and early 40s.⁵ Female athletes have higher levels of self-esteem, a lower incidence of depression, and a more positive body image compared to non-athletes.⁶ Female college athletes are also less likely to smoke than their non-athletic peers⁷ and have lower rates of both sexual activity and pregnancy⁸ than non-athletes.

¹ National Collegiate Athletic Association (NCAA), *1981-82—2010-11 NCAA Sports Sponsorship and Participation Rates Report* 69-70 (October 2011).

² National Collegiate Athletic Association, *2004-10 Gender-Equity Report* 28-36 (January 2012).

³ *Id.* at 36.

⁴ See generally Ellen J. Staurowsky et al., *Her Life Depends On It II* (New York: Women's Sports Foundation, Dec. 2009) available at http://www.womenssportsfoundation.org/home/research/articles-and-reports/mental-and-physical-health/~media/PDFs/WSF%20Research%20Reports/Her_Life_II_Full.ashx; Dorothy Teegarden, et al., *Previous Physical Activity Relates to Bone Mineral Measures in Young Women*, 28 MEDICINE SCIENCE SPORTS EXERCISE 105 (Jan. 1996); Leslie Bernstein et al., *Physical Exercise and Reduced Risk of Breast Cancer in Young Women*, 86 J. NAT'L CANCER INST. 1403 (1994); see also Marilie D. Gammon et al., *Does Physical Activity Reduce the Risk of Breast Cancer?*, 3 MENOPAUSE: J. N. AM. MENOPAUSE SOC'Y 172, Abstract (1996), available at http://journals.lww.com/menopausejournal/Abstract/1996/03030/Does_Physical_Activity_Reduce_the_Risk_of_Breast.9.aspx.

⁵ Tara Parker-Pope, *As Girls Become Women, Sports Pay Dividends*, N.Y. TIMES, Feb. 16, 2010, at D5, available at http://www.nytimes.com/2010/02/16/health/16well.html?_r=0; Robert Kaestner and Xin Xu, *Title IX, Girls' Sports Participation, and Adult Female Physical Activity and Weight*, 34 EVAL. REV. 52 (2010). The study notes that while a 7 percent decline in obesity is modest, "no other public health program can claim similar success."

⁶ See, e.g., Staurowsky et al., *supra* note 4, at 41, 44; DON SABO ET AL., HIGH SCHOOL ATHLETIC PARTICIPATION AND ADOLESCENT SUICIDE: A NATIONWIDE STUDY, INTERNATIONAL REVIEW FOR THE SOCIOLOGY OF SPORT (2004) (on file with the Women's Sports Foundation); G. Nicoloff & T.S. Schwenk, *Using Exercise to Ward Off Depression*, 9 PHYSICIAN SPORTS MED. 23, 44-58 (1995); R.M. Page & L.A. Tucker, *Psychosocial Discomfort and Exercise Frequency: An Epidemiological Study of Adolescents*, 29 ADOLESCENCE 113, 183-91 (1994) (suggesting that physically active adolescents tend to feel less lonely, shy, and hopeless as compared to their less physically active peers).

⁷ Staurowsky et al., *supra* note 4, at 29

⁸ See Staurowsky et al., *supra* note 4, at 38-39 ("According to one recent study, 10% of young adult women with a history of extensive sports involvement in high school has a child outside of marriage, while the number is 25% for those who had little or no involvement in high school sports."); T. Dodge & J. Jaccard, *Participation in Athletics and Female Sexual Risk Behavior: The Evaluation of Four Causal Structures*, 17 J. ADOLESCENT RES. 42 (2002); Don Sabo et al., WOMEN'S SPORTS FOUNDATION, REPORT: SPORT AND TEEN PREGNANCY 5-7 (1998), available at http://www.womenssportsfoundation.org/home/research/articles-and-reports/mental-and-physical-health/~media/PDFs/WSF%20Research%20Reports/Teen_Pregnancy.ashx; THE PRESIDENT'S COUNCIL ON PHYSICAL FITNESS AND SPORTS, PHYSICAL ACTIVITY & SPORT IN THE LIVES OF GIRLS (Spring 1997), available at <http://www.fitness.gov/girlssports.htm>.

Title IX's mandate of equality in sports is especially important for women of color. Minority female athletes get better grades than their nonathletic peers⁹ -- in particular, black female athletes are 15% more likely to graduate from college.¹⁰ In addition, the availability of athletic scholarships dramatically increases a young woman's ability to pursue a college education and to choose from a wider range of colleges and universities. Yet women still do not receive their fair share of athletic scholarship dollars. In 2010, women at the typical DI-FBS school received roughly 42% of the total available athletic scholarship dollars -- a difference that amounts to over \$1 million more per year in athletic scholarships at the typical school.¹¹

Participating in competitive sports is also associated with greater employment success. A recent study using state-level data concluded that an increase in female sports participation leads to an increase in women's labor force participation down the road and greater female participation in previously male-dominated occupations, particularly high-skill, high-wage ones.¹² In addition, more than four out of five executive businesswomen played sports growing up, and the vast majority reported that the lessons they learned on the playing field contributed to their success in business.¹³ Female athletes and athletes of color are more likely to aspire to hold leadership positions later in life than their peers who are not athletes.¹⁴

Schools clearly must do more to ensure that their female students enjoy equal access to the many benefits that flow from sports participation. And the role of EADA data in shining a spotlight on how schools are allocating valuable athletic opportunities cannot be overstated. EADA information provides parents, students, coaches, advocates, researchers and the Department with the means to hold schools accountable for any gender inequities. It also encourages schools to evaluate their own programs and monitor their compliance with Title IX and other applicable laws.

EADA information is important for parents and students as they consider which colleges offer opportunities to play particular sports and possibly receive athletic scholarships. It is important for coaches of women's teams who might be concerned that they are not being paid the same as coaches of men's teams. It is important for advocates and researchers who are concerned about the continuing disparities faced by women at institutions across the country.¹⁵ It is important for the Department as it fulfills its duty as the primary agency in charge of enforcing Title IX. And it is important for schools because it provides an incentive for them to self-audit and address any compliance issues. For all of these reasons, the collection and posting of EADA data by the Department is absolutely necessary.

⁹ Sabo D., *Minorities in Sports: the Effect of Varsity Sports Participation on the Social, Educational, and Career Mobility of Minority Students* (New York: Women's Sports Foundation, 1989).

¹⁰ Jerry Crowe, *Graduation Rates Fall for Most Players*, L.A. TIMES, Nov. 21, 2000, at D6.

¹¹ NCAA, *2005-06 Gender-Equity Report* 24, 76, 33 (July 2008).

¹² Betsey Stevenson, *Beyond the Classroom: Using Title IX to Measure the Return to High School Sports* 23-24 (Nat'l Bureau of Econ. Research, Working Paper No. 15728, 2010).

¹³ Women's Sports Foundation, *Women's Sports and Physical Activity Facts and Statistics* 14 (2007), available at http://www.womenssportsfoundation.org/binary-data/WSF_ARTICLE/pdf_file/191.pdf.

¹⁴ Sabo, *supra* note 9.

¹⁵ Kevin M. Gray, *Bias in Scholarships Charged at 25 Colleges*, N.Y. TIMES, June 3, 1997.

II. EADA Data Should Be Broken Down by Race/Ethnicity.

The utility of the EADA data would be greatly improved by asking schools to disaggregate enrollment and participation data by race/ethnicity. Breaking down the information in this way would help reveal any differences and disparities between subgroups of women and would be consistent with the approach the Department takes in its Civil Rights Data Collection. This is particularly important given evidence that women of color are not benefitting from sports participation to the same extent as white women. According to a Women's Sports Foundation study, while women of color are about 25% of all female undergraduates, they make up only about 15% of all female intercollegiate athletes.¹⁶ Black women make up about 10% of the female athletes, Hispanic women make up about 3%, and other women of color make up about 2%.¹⁷ In addition, female athletes of color are clustered primarily in two sports: basketball and track;¹⁸ they are underrepresented in all other sports relative to their enrollment.¹⁹ Providing more information on the racial and ethnic breakdown of schools' student bodies and athletes would shed light on the work that remains to be done to ensure that Title IX's promise is fulfilled for all women and girls.

III. The EADA User's Guide Should Be Modified to More Accurately Count Participants.

The EADA User's Guide that provides instructions to institutions for submitting their information electronically to the Department states that "Male practice players who are listed on the women's team roster as of the day of the first scheduled contest should be counted as participants on the women's team."²⁰ This instruction is problematic because it can result in an overstatement of the actual number of female participants on a particular team and thus distort the analysis of whether participation opportunities are being allocated equitably on the basis of sex. While some women's teams may choose to use males as opponents in practices, these male practice players are not eligible to compete in games as members of the women's team and thus should not be counted as participants. Furthermore, whether an institution chooses to list someone on the team roster is not determinative of whether that person is a participant under Title IX.²¹ If institutions still want to keep track of the number of male practice players or the

¹⁶ Jennifer Butler and Donna A. Lopiano, *Title IX and Race in Intercollegiate Sport* 5 (New York: Women's Sports Foundation, June 2003), available at <http://www.womenssportsfoundation.org/en/home/research/articles-and-reports/school-and-colleges/title-ix-and-race-in-intercollegiate-sport>.

¹⁷ *Id.* at 8.

¹⁸ See William C. Rhoden, *Black and White Women Far From Equal Under Title IX*, N.Y. TIMES, June 10, 2012.

¹⁹ Butler and Lopiano, *supra* note 16, at 13.

²⁰ U.S. Department of Education, Office of Postsecondary Education, USER'S GUIDE FOR THE EQUITY IN ATHLETICS ACT WEB-BASED DATA COLLECTION (2012), at 27 [hereinafter EADA USER'S GUIDE].

²¹ The Title IX Policy Interpretation defines participants as those athletes:

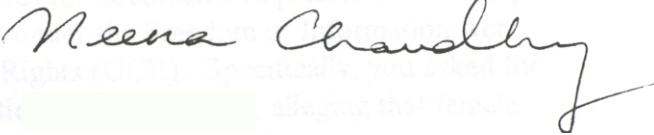
- a. Who are receiving the institutionally-sponsored support normally provided to athletes competing at the institution involved, e.g., coaching, equipment, medical and training room services, on a regular basis during a sport's season; and
- b. Who are participating in organized practice sessions and other team meetings and activities on a regular basis during a sport's season; and
- c. Who are listed on the eligibility or squad lists maintained for each sport, or
- d. Who, because of injury, cannot meet a, b, or c above but continue to receive financial aid on the basis of athletic ability.

expenses associated with these players, they can note any such information in the caveat boxes provided on each screen.²²

* * * *

Thank you for the opportunity to comment on the renewal of the Department of Education's EADA data collection. We would be happy to discuss our comments further or to answer any questions you may have.

Sincerely,

A handwritten signature in black ink that reads "Neena Chaudhry". The signature is fluid and cursive, with a long, sweeping tail on the "y".

Neena Chaudhry
Senior Counsel and Director of Equal Opportunities in Athletics

⁴⁴ *Fed. Reg.* at 71415.

²² EADA USER'S GUIDE at 5.