

## TITLE IX AND WOMEN'S ATHLETIC OPPORTUNITY: A NATION'S PROMISE YET TO BE FULFILLED

Title IX of the Education Amendments of 1972 is the primary federal law barring sex discrimination in education, including sports programs. Title IX requires schools or other covered education programs to (1) offer members of both sexes equal opportunities to play sports; (2) allocate athletic scholarships equitably; and (3) treat male and female athletes fairly in all other respects. While Title IX has led to greater opportunities for girls and women to play sports, receive scholarships, and obtain other important benefits that flow from sports participation, its goal of equal opportunity in sports has yet to be realized.

### **Title IX Has Partially Opened Doors for Women**

Because of Title IX, women have gone from being almost totally excluded from athletics to having a disproportionately small but important share of athletic opportunities.

- When Congress passed Title IX in 1972, fewer than 32,000 women competed in intercollegiate athletics.<sup>1</sup> Women received only 2% of schools' athletics budgets, and athletic scholarships for women were nonexistent.<sup>2</sup>
- Title IX has made a huge difference in female athletic participation at the intercollegiate level. The number of college women participating in competitive athletics is now nearly five times the pre-Title IX rate. In 2005-06, a record number of 170,526 women competed, representing 42% of college athletes nationwide.<sup>3</sup>
- Title IX has had a tremendous impact on female athletic opportunities at the high school level as well. Before Title IX, fewer than 300,000 high school girls played competitive sports.<sup>4</sup> By 2006-07, the number had climbed to 3 million.<sup>5</sup>

### **Despite Important Advances Made Under Title IX, Women Have Not Yet Achieved Equity In Athletics**

Female athletes still have a long way to go before Title IX's mandate of equality becomes reality in our nation's sports programs.

- Although women are over half of the undergraduates in our colleges and universities, female participation in intercollegiate sports has just now caught up to pre-Title IX male participation: While 170,384 men played college sports in 1971-1972 (Title IX was passed in 1972), only 170,526 women played college sports in 2005-2006.<sup>6</sup>
- Women in Division I colleges, while representing 53% of the student body, receive only 44% of the participation opportunities, 37% of the total money spent on athletics, 45% of the total

athletic scholarship dollars, and 32% of recruiting dollars.<sup>7</sup> Title IX does not require schools to spend equal amounts of money on male and female athletes. It does, however, require equal treatment of male and female teams.

- There is no shortage of interest by women and girls in participating in athletics. Since 1972, when Title IX first opened opportunities for female athletes, female participation in high school athletics has skyrocketed by almost 900%, disproving claims made by opponents of Title IX that women participate at lower levels in varsity sports because they are not interested in athletics.<sup>8</sup>

### **Sports Are Important for Girls & Women**

Competitive athletics promote greater academic success, responsible social behaviors, a multitude of health benefits, and increased personal skills for all female athletes.<sup>9</sup> Title IX's mandate of equality in sports is especially important for minority women and girls. Minority female athletes experience higher levels of self-esteem, are more likely to be involved in extracurricular activities, and are more likely to become leaders in their communities than minority women who do not play sports.<sup>10</sup> Minority female athletes also get better grades than their nonathletic peers<sup>11</sup> -- in particular, black female athletes are 15% more likely to graduate from college.<sup>12</sup> Hispanic female athletes are more likely to graduate from high school and attend college.<sup>13</sup> But minority girls are more likely to participate in sports through their schools than through their private organizations.<sup>14</sup> For minority women and girls to experience the benefits of sports participation, therefore, they need equal access to school-sponsored athletics.

#### **Greater Academic Opportunities and Success**

- 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. But, women still do not receive their fair share of athletic scholarship dollars.
  - In 2004, women received only 45% of the total available athletic scholarship dollars – that difference amounts to an average of over 136 million dollars more per year in athletic scholarships for male athletes than female athletes.<sup>15</sup>
- Female student-athletes have higher grades, are less likely to drop out, and have higher graduation rates than their non-athletic peers.<sup>16</sup>

#### **Responsible Social Behaviors**

- Athletes are less likely to smoke or use drugs.<sup>17</sup>
- Adolescent female athletes have lower rates of both sexual activity and pregnancy than their nonathletic peers.<sup>18</sup>

#### **Health Benefits**

- Sports participation decreases a young woman's chance of developing heart disease, osteoporosis, and other health related problems.<sup>19</sup>
- Women who participate in sports significantly reduce their risk of developing breast cancer.<sup>20</sup>
- Increased fitness levels can contribute to better posture, the reduction of back pain and the development of adequate strength and flexibility, qualities which allow girls to participate fully in their daily activities, both vocational and recreational.<sup>21</sup>
- Women and girls benefit psychologically. Young women who play sports have a higher level of self-esteem, a lower incidence of depression and a more positive body image.<sup>22</sup>

### Increased Personal Skills

- Female athletes develop the ability to work with a team, to perform under pressure, to set goals and to take criticism. In addition, playing sports helps young women develop self-confidence, perseverance, dedication and the “competitive edge.”<sup>23</sup>

### **Title IX Has Consistently Been Supported By Congress and the Courts**

Congress has repeatedly rejected attempts to limit Title IX's application to athletics:

- In 1974, Congress rejected the Tower Amendment, which would have exempted revenue-producing sports from Title IX coverage. Congress instead adopted the Javits Amendment, which affirmed that Title IX covered all sports and required the Title IX regulations to take into account the nature of particular sports. Current regulations follow this directive by recognizing that football uniforms cost more than swimsuits and therefore do not require the same amount of money to be spent on each.<sup>24</sup>
- Congress reaffirmed Title IX's coverage of athletics in the Civil Rights Restoration Act in 1988.<sup>25</sup>

The federal courts have strongly stood behind Title IX's regulations and policies in cases brought against colleges that have failed to provide equal opportunity to their female athletes.

- In November 2003, a federal court ordered West Chester University to immediately reinstate its women's gymnastics team and provide the team with full funding, coaching, facilities and equipment. The court held that WCU was not in compliance with any prong of Title IX's three-part participation test. The next year, the school settled the lawsuit brought on behalf of the female athletes, agreeing to reinstate the team permanently, among other things.<sup>26</sup>
- In 2000, female students at Louisiana State University won a federal court ruling that the university discriminates against women by refusing to offer them athletic opportunities equal to those it offers its male students.<sup>27</sup> LSU added a couple women's teams.
- In November 1996, a federal court held that Brown University discriminated against women

in its sports participation opportunities. Brown demoted its women's gymnastics and volleyball teams from university-funded to donor-funded status and then argued that it complied with Title IX. The district and appellate courts held that Brown violated Title IX and rejected its challenge to Title IX, which was based on the stereotype that men are more interested in playing sports than are women.<sup>28</sup> The Supreme Court declined Brown's petition to hear the case.

Moreover, courts consistently have rejected claims by male athletes that Title IX discriminates against them by requiring schools to cut or cap men's teams to achieve gender equity.

- In May 2004, a federal appellate court upheld the dismissal of a case brought by the National Wrestling Coaches Association (NWCA) against the Department of Education. The NWCA claimed that Title IX's athletics policies discriminate against men because several schools cut men's wrestling teams. The NWCA's argument was that Title IX policies require quotas for female athletes, who are less interested in sports, which results in schools being forced to cut men's teams. The district and appellate courts held that the NWCA could not show that Title IX was the cause of cuts to men's wrestling teams or that changing Title IX would bring the cut wrestling teams back.<sup>29</sup>
- In 1999, a federal appellate court rejected a claim by male wrestlers at California State University, Bakersfield, that the capping of their team violated Title IX and the Equal Protection Clause of the U.S. Constitution.<sup>30</sup> The court held that Title IX does not impose quotas but simply requires schools, which specifically decide how many participation opportunities they will give to each sex (because men and women have separate teams), to allocate such opportunities equally. The court held that men at the university were getting more than their fair share of participation opportunities, and that Title IX gives schools flexibility to decide how to fairly distribute these opportunities. Therefore, the court held that schools are permitted, but not required, to reduce some men's opportunities to achieve gender equity, as long as men and women are treated equally overall.

### **Increased Opportunities for Female Athletes: Success Stories**

Some sports programs have made substantial steps toward athletic equity. While many of our nation's colleges and universities are not yet in compliance with Title IX, it is well within their reach.

- Once the subject of a sex discrimination lawsuit in 1979, Washington State University has made great strides toward the goal of gender equity. In 1979, female participation in athletics was less than 30%, even though women composed 47% of the student body. The school spent only 20% of its athletic budget on women. Today, women represent 48% of the student body and are 46% of the athletes. Women's sports teams receive 33% of the schools' total athletic budget.<sup>31</sup>

Largely as a result of the doors opened to female athletes by Title IX, increased participation by women in high school and college sports has led to a new generation of

athletes, and fans, who pack stadiums and spend a growing number of consumer dollars on women's sports.

- Women won a record 41 Olympic medals in the 2004 Summer Olympic Games, including gold medals in basketball, soccer, and softball. The United States' women's basketball team is a powerhouse that has won the gold medal at the last three Summer Olympics. The women's ice hockey team won the silver in the 2002 Winter Olympic Games, and U.S. women won nine medals at the Winter Olympics in 2006 and four medals at the Winter Paralympic Games.<sup>32</sup> In 2002, the first African-American ever to win a gold medal in the Winter Olympics was a woman.<sup>33</sup>
- In 1989, the University of Connecticut's women's basketball team played before just 287 fans in the front half of a doubleheader shared with the men. During the 2006-07 season, 304,038 supporters attended Connecticut's 36 games, and 426,191 people attended Tennessee's 37 games.<sup>34</sup>
- ESPN's coverage of the 2004 NCAA women's basketball championship drew 3.8 million household viewers, the highest rating for any game on ESPN ever, beating the previous record of the 2002 NCAA women's basketball championship by 310,000 household viewers.<sup>35</sup>
- Women's soccer is also growing in popularity. The 1999 Women's World Cup, held in the United States, has broken attendance records for a women's sports event. The opening match between the United States and Denmark drew a record-breaking crowd of 78,972 fans.<sup>36</sup> The final, between the United States and China, brought a crowd of 90,185 to the Rose Bowl, the largest crowd ever to witness a women's athletic event.<sup>37</sup>
- Women's rowing and soccer programs have experienced some of the biggest gains in female athletic programs since Title IX was enacted. The number of women's crew teams nationwide increased from 12 teams in 1991 to 142 teams in 2006. Women's soccer teams have increased from 318 NCAA teams in 1991 to 930 teams in 2006.<sup>38</sup>

***Women and girls have come a long way since the enactment of Title IX, but much work still needs to be done to fulfill the law's promise.***

The National Women's Law Center is a non-profit organization that has been working since 1972 to advance and protect women's legal rights. The Center focuses on major areas of importance to women and their families, including education, employment, health and reproductive rights, and family support and income security, with special attention given to the needs of low-income women.

## Notes

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<sup>1</sup> See Department of Health, Education, and Welfare, Policy Interpretation, 44 Fed. Reg. at 71419 (1979).

<sup>2</sup> Remarks of Senator Stevens (R-AL), 130 Cong. Rec. S 4601 (daily ed. April 12, 1984).

<sup>3</sup> National Collegiate Athletic Association (NCAA), 1981-82—2005-06 NCAA Sports Sponsorship and Participation Rates Report 76 (May 2007).

<sup>4</sup> National Federation of State High School Associations (NFHS), 1971 Sports Participation Survey (1971).

<sup>5</sup> NFHS, 2006-07 High School Athletics Participation Survey 2 (2007).

<sup>6</sup> NCAA, 1981-82—2005-06 Participation Rates Report, 76, 78, 224 supra note 3.

<sup>7</sup> NCAA, 2003-04 Gender-Equity Report 12, 25 (Sept. 2006).

<sup>8</sup> NFHS, 2005-06 High School Athletics Participation Survey 2 (2006).

<sup>9</sup> Alex Poinsett, Carnegie Corporation of New York, The Role of Sports in Youth Development 9 (March 1996).

<sup>10</sup> The Women's Sports Foundation, "Table 8," Minorities in Sports: The Effect of Varsity Sports Participation on the Social, Educational and Career Mobility of Minority Students 4 (Aug. 15, 1989); see also Sabo, D., Miller, K. E., Melnick, M. J. & Heywood, L., Her Life Depends On It: Sport, Physical Activity, and the Health and Well-Being of American Girls, (East Meadow, NY: Women's Sports Foundation, 2004) (a comprehensive survey of scientific research on girls' health, sports participation, and physical activity).

<sup>11</sup> Minorities in Sports, supra note 9.

<sup>12</sup> Jerry Crowe, "Graduation Rates Fall for Most Players," Los Angeles Times, Nov. 21, 2000, at D6.

<sup>13</sup> See Her Life Depends On It, supra note 9.

<sup>14</sup> Women's Sports Foundation, The Wilson Report: Moms, Dads, Daughters and Sports 5 (June 7, 1988).

<sup>15</sup> NCAA, 2003-04 Gender-Equity Report 20, 76 (Sept. 2006).

<sup>16</sup> See 2001 NCAA Graduation Rates Report, available at [http://www.ncaa.org/grad\\_rates/2001/index.html](http://www.ncaa.org/grad_rates/2001/index.html); NFHS, The Case for High School Activities (2004) (A state-wide, three year study by the North Carolina High School Athletic Association found that athletes had higher grade point averages (by almost a full grade point), lower dropout rates, and higher high school graduation rates, than their nonathletic peers); see also Richard E. Lapchick, Keeping Score When it Counts: Graduation Rates and Diversity in Campus Leadership for the 2004 Women's Sweet 16 Teams, University of Central Florida's Institute for Diversity and Ethics in Sports (March 2004) (study

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showing that female athletes in the national basketball tournament had exceedingly high graduation rates).

<sup>17</sup> NFHS, The Case for High School Activities (2004), available at [http://www.nfhs.org/web/2004/01/the\\_case\\_for\\_high\\_school\\_activities.aspx](http://www.nfhs.org/web/2004/01/the_case_for_high_school_activities.aspx) (92% of high school athletes do not use drugs; 30% of high school athletes, versus 44% of nonathletic high school students, smoke cigarettes).

<sup>18</sup> See, e.g., T. Dodge and J. Jaccard, Participation in Athletics and Female Sexual Risk Behavior: The Evaluation of Four Causal Structures, 17 *Journal of Adolescent Research* 42 (2002); The Women's Sports Foundation Report: Sport and Teen Pregnancy (1998) at 5-7; accord The President's Council on Physical Fitness and Sports Report, Physical Activity & Sports in the Lives of Girls (Spring 1997).

<sup>19</sup> See generally Her Life Depends On It; see generally Dorothy Teegarden, et al., Previous Physical Activity Relates to Bone Mineral Measures in Young Women, 28 *Medicine and Science in Sports and Exercise* 105 (January 1996).

<sup>20</sup> L. Bernstein et al., Physical Exercise and Reduced Risk of Breast Cancer in Young Women, 86 *Journal of the National Cancer Institute* 1403 (1994); see also Marilie D. Gammon, et al., Does Physical Activity Reduce the Risk of Breast Cancer? (Abstract), 3 *Menopause: The Journal of the North American Menopause Society* 172 (1996).

<sup>21</sup> The President's Council on Physical Fitness and Sports Report, Physical Activity & Sports in the Lives of Girls (1997).

<sup>22</sup> See, e.g., 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, and T.S. Schwenk, Using Exercise to Ward Off Depression, 9 *Physician Sports Med.* 23, 44-58 (1995); R.M. Page & L.A. 12 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).

<sup>23</sup> See H.W. Marsh, The Effects of Participation in Sport During the Last Two Years of High School, 10 *Soc. Sport J.* 18 (1993).

<sup>24</sup> Pub. L. No. 93-380, § 844, 88 Stat. 612 (1974); see also Sex Discrimination Regulations, Hearings Before the Subcommittee on Postsecondary Education of the Committee on Education and Labor, 94th Cong., 1st Sess. at 21 (1975). In 1975, Congress formally reviewed the regulations as then required under law. Resolutions disapproving the regulations were introduced in both Houses of Congress, but none passed. Congress thus accepted the regulations as fully consistent with the Javits Amendment. See Policy Interpretation, 44 Fed. Reg. at 71413 (summarizing relevant history).

<sup>25</sup> 20 U.S.C. § 1687 (2006). In 1988, Congress had another opportunity to examine the application of Title IX to athletic programs during consideration and passage of the Civil Rights Restoration Act. This Act affirmed Title IX's coverage of athletics. See Cohen v. Brown University, 991 F.2d 888, 894 (1<sup>st</sup> Cir. 1993) (noting that Title IX's application to intercollegiate athletics today is principally based on the authority of the Restoration Act).

<sup>26</sup> See Press Release, "TLPJ Achieves Settlement in Sex Discrimination Lawsuit Against West Chester

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University for Violating Title IX,” May 5, 2004, [available at http://www.tlpj.org/pr/wcu\\_settlement\\_2004.htm](http://www.tlpj.org/pr/wcu_settlement_2004.htm).

<sup>27</sup> Pederson v. Louisiana State University, 213 F.3d 858 (5<sup>th</sup> Cir. 2000).

<sup>28</sup> Cohen v. Brown University, 101 F.3d 155 (1<sup>st</sup> Cir. 1996), *cert. denied*, 520 U.S. 1186 (1997).

<sup>29</sup> National Wrestling Coaches Association v. Department of Education, 366 F.3d 930 (D.C. Cir. 2004).

<sup>30</sup> Neal v. Board of Trustees of The California State Universities, 198 F.3d 763 (9<sup>th</sup> Cir. 1999).

<sup>31</sup> Debbie Becker and Tom Witosky, “Crew, Soccer Help Schools Close Gender Gap,” USA Today, Mar. 4, 1997, at 6C.

<sup>32</sup> Donna Lopiano, Women’s Sports Foundation, “The State of Women’s Sports 2006,” [available at http://www.womenssportsfoundation.org/cgi-bin/iowa/issues/history/article.html?record=1168](http://www.womenssportsfoundation.org/cgi-bin/iowa/issues/history/article.html?record=1168).

<sup>33</sup> Bud Greenspan, “Will They Make History?” Parade.com, Feb. 5, 2006, [available at http://www.parade.com/articles/editions/2006/edition\\_02-05-2006/Olympics](http://www.parade.com/articles/editions/2006/edition_02-05-2006/Olympics).

<sup>34</sup> NCAA, Women’s Basketball Attendance Statistics for 2006-07 Season, available at [http://ncaa.org/stats/w\\_basketball/attendance/2006-07/2006-07\\_w\\_basketball\\_attendance.pdf](http://ncaa.org/stats/w_basketball/attendance/2006-07/2006-07_w_basketball_attendance.pdf)

<sup>35</sup> Rick Horrow, “March Madness: Business of the Women’s Tournament,” CBS Sports Line, March 24, 2005, available at <http://cbs.sportsline.com/print/general/story/8322725>

<sup>36</sup> Amy Shipley, “U.S. Rolls in Cup Opener,” Washington Post, June 20, 1999, at D1. (The previous record was set by the 76,489 fans who watched the US beat China for the 1996 Summer Olympic soccer gold medal.)

<sup>37</sup> William Gildea, “U.S. Takes One for the Team; Collective Selflessness Culminates in Title at Women’s World Cup,” Washington Post, July 11, 1999, at A1.

<sup>38</sup> NCAA, 1981-82—2005-06 NCAA Sports Sponsorship and Participation Rates Report 104, 107 (May 2007).