



BARRIERS TO FAIR PLAY

June 2007



INTRODUCTION AND SUMMARY OF FINDINGS

With the 35th anniversary of Title IX, the federal law that bans sex discrimination in all aspects of education, there is much to applaud. Women and girls have opened doors to institutions, programs, and careers that were previously closed to them. In sports, the rise in participation by female athletes has not only attracted national attention, but has been a source of national pride. The number of high school girls playing sports increased from just under 300,000 during the 1971-72 school year to more than 2.9 million during the 2005-06 school year.¹ The number of women playing college sports grew from fewer than 32,000 in 1972 to nearly 171,000 in 2005-06.²

Despite this substantial progress, discrimination against and barriers to progress by women and girls remain all too prevalent across educational programs and activities.³ In the athletics arena, while close to 3 million girls were playing high school sports during the 2005-06 school year, more than 4.2 million high school boys were playing that same year. In other words, only 41% of high school athletes were girls, even though girls made up 49% of all high school students.⁴ In college sports, women receive only 43% of the opportunities to participate, even though they comprise almost 55% of today's undergraduates.⁵ In Division I, they receive only 45% of athletics scholarships, 37% of athletics operating expenses, and 32% of the dollars spent on recruiting.⁶

To identify trends that underlie these statistics, the National Women's Law Center ("the Center") undertook an examination of the athletics complaints filed with, and compliance reviews conducted by, the Office for Civil Rights of the U.S. Department of Education ("OCR") over the last five years. In December 2006, the Center submitted a request to OCR under the Freedom of Information Act for all complaints and complaint resolutions, and all compliance reviews and resolutions, that related to Title IX and were filed with or prepared by OCR between January 1, 2002 and December 31, 2006. The Center then analyzed each of the 416 complaints provided by OCR that related to athletics and aggregated the information for its analysis.⁷

The results of this investigation provide a context for what the above statistics demonstrate: 35 years after the enactment of Title IX, girls and women are still given fewer opportunities than their male peers to participate in sports. When they do play, girls and women are still all too often treated like second-class citizens in the facilities, equipment, coaching, publicity, and other support services that they receive.

The Center's findings include the following:

- ▶ **Discrimination against girls and women in sports remains widespread.** There were 416 athletics complaints filed with OCR between January 1, 2002 and December 31, 2006—likely just a fraction of the number of complaints that were raised informally with schools during that period. The OCR complaints challenged discrimination against girls or women 11 times more frequently than they claimed discrimination against males, demonstrating concretely that the playing field is still far from level for female athletes.
- ▶ **Schools' second-class treatment of female athletes, even when they are given a chance to play, is a particular concern.** While more than one-quarter of the complaints overall challenged schools' failures to provide sufficient participation opportunities for girls and women, more than half—54%—challenged inequitable treatment of girls' or



EXPANDING THE POSSIBILITIES
11 Dupont Circle NW
Suite 800
Washington, DC 20036
202.588.5180
202.588.5185 (fax)
www.nwlc.org

women's teams once female athletes were allowed to play. Among complaints filed on behalf of K-12 girls, moreover, fully 60% of the allegations concerned inequities in treatment of female teams. And many of the treatment complaints—particularly those concerning disparities between girls' softball and boys' baseball teams, such as in the quality of softball versus baseball fields—identified blatant and egregious inequities that had persisted for many years.

- ▶ **Disparities between softball and baseball are particularly pervasive.** Softball was the sport most often cited in complaints, resulting in 79 claims at the K-12 level and 13 claims at the college level. Often, softball complaints identified blatant inequities between the treatment of the girls' softball teams and the boys' baseball teams.
- ▶ **Coaches fear retaliation if they complain, so the burden typically falls on students and their parents to protest discrimination.** Although coaches have greater access to information and are often in the best position to perceive and challenge discrimination, coaches filed only just shy of 8% of the 416 complaints made during the relevant period. Tellingly, a full 50% of those complaints alleged retaliation in addition to other forms of discrimination against the coaches and their female athletes.
- ▶ **More must be done to educate high school students and parents about their rights.** Although the almost 3 million female high school athletes filed more complaints than their college-aged counterparts, female college athletes filed complaints at significantly higher rates than high school students. This trend, which likely reflects high school students' lack of knowledge about Title IX and their rights under the law, is particularly troubling because it is most often through participation in sports in their early teenage years that girls become prepared to play in college and to maintain healthy lifestyles into the future.
- ▶ **Discrimination complaints filed on behalf of female athletes were far more likely to be meritorious enough to secure changes than complaints filed on behalf of male athletes.** Schools made changes to their athletics programs in response to complaints filed on behalf of female athletes at close to five times the rate at which they made changes in response to complaints filed on behalf of male athletes. As a corollary, OCR found no violation in almost double the number of complaints filed on behalf of men as in complaints filed on behalf of women.
- ▶ **OCR enforcement efforts fell short of the proactive steps necessary to ensure true gender equity in sports.** During the five year period covered by the Center's review, OCR initiated only *one* compliance review of a school's athletics program. Moreover, while OCR processed the majority of the complaints it received, resolution of those complaints was unreasonably delayed in a number of instances, and onerous evidentiary burdens were sometimes put on the female athletes filing the complaints.

I. A BASIC GUIDE TO TITLE IX AND ATHLETICS

Title IX prohibits schools receiving federal funds from engaging in sex discrimination. The prohibition is very broad, applying to most elementary and secondary schools and to virtually all colleges and universities. The law covers every aspect of a federally funded education program or activity, including athletics.

Schools must comply with three fundamental requirements to ensure equity in their athletics programs. Schools must provide female and male students equal opportunities to participate in sports; must treat female and male students fairly in all aspects of their athletics programs; and must allocate their athletics scholarship dollars equitably. In addition, schools may not retaliate against those who complain about discrimination.

A. Schools Must Provide Female and Male Athletes Equal Opportunities To Participate in Sports.

There are three wholly independent ways schools can show that their male and female students have equal opportunities to participate in sports. Schools can show that:

- ▶ the percentage of male and female athletes is about the same as the percentage of male and female students enrolled in the school, or;

- ▶ the school has a history and a continuing practice of expanding opportunities for female students, because they are the gender that usually has been excluded from sports, or;
- ▶ the school is fully and effectively meeting its female students' interests and abilities to participate in sports.⁸

If a school can meet any one of these tests, it will be found to be in compliance with Title IX's participation requirements.⁹

B. Schools Must Treat Male and Female Athletes Equally in All Aspects of Sports Programming.

Schools are required to treat their male and female athletes equally with regard to all aspects of their sports programs, including equipment and supplies; scheduling of games, practices, and seasons; financial support for travel and expenses; assignment and compensation of coaches; opportunities to get tutoring where necessary; locker rooms, playing fields, and practice areas; medical and training services; housing and dining; and publicity.¹⁰ Schools need not provide identical benefits and opportunities to men's and women's teams, and spending on those teams need not be equal, as long as the schools' treatment of male and female athletes is equal overall.¹¹

C. Schools Must Equitably Allocate Athletic Scholarships.

Colleges and universities also must ensure that the overall share of athletic financial aid awarded to female athletes is about the same as the percentage of female athletes participating in the athletic program.¹² Specifically, the percentage of total athletic aid awarded to female athletes must be within 1%, or one scholarship (whichever is greater), of the percentage of female athletes, unless there are legitimate nondiscriminatory reasons to justify a larger disparity.¹³

D. Schools May Not Retaliate Against Individuals who Protest Discrimination.

Title IX protects those who complain about sex discrimination from retaliation.¹⁴ This protection extends to students who complain about discrimination against themselves, and to others who complain on their behalf, such as coaches, who often have the greatest access to information and are in the best position to recognize discrimination.¹⁵

II. AN OVERALL PICTURE OF COMPLAINTS FILED WITH OCR

The athletics complaints filed with or resolved by OCR between January 1, 2002 and December 31, 2006 run the gamut, alleging violations of each of the four requirements described above: lack of participation opportunities, usually for female athletes; failure to provide equal facilities for female and male athletes and other unequal treatment; failure to provide female athletes with their fair share of scholarships; and schools subjecting students and coaches to retaliation for protesting discrimination. The complaints range from challenges to discrimination experienced by a single athlete to allegations of systemic violations by schools.

Many of the complaints include allegations of more than one violation, such as both treatment and participation violations at a school.¹⁶ A total of 496 allegations were made in the 416 complaints reviewed. Where a complaint alleged more than one category of discrimination, each allegation was analyzed separately.

The following summarizes the major findings of the Center's evaluation.

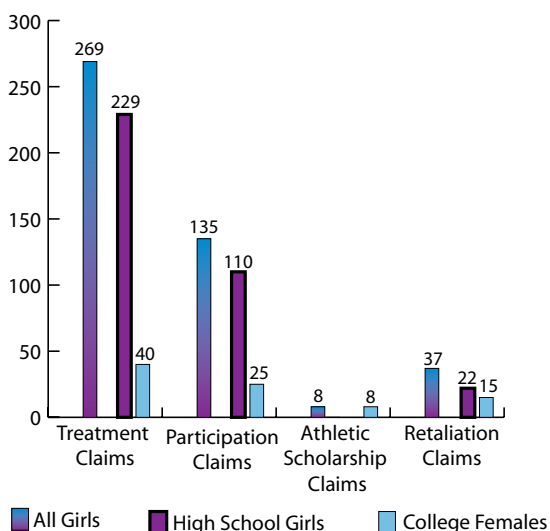
- ▶ **Females alleged discrimination 11 times as often as males—signifying that female athletes continue to face pervasive discrimination.**

The vast majority of the 416 complaints—375—were filed on behalf of females. Of the remaining complaints, 33 were filed on behalf of males and 8 were filed on behalf of athletes whose sex was not specified.

- ▶ **The majority of allegations filed on behalf of girls or women challenged inequities in the treatment of female teams.**

Allegations of inequitable treatment outnumbered claims of inadequate participation opportunities at each educational level and for complaints filed on behalf of both genders. The trend was particularly pronounced with regard to the subset of claims filed on behalf of girls or women. While nearly one-third of the allegations in the complaints

Distribution of Discrimination Claims



filed on behalf of females—135 allegations, or 30% of the total—challenged a denial of participation opportunities for female students, double that number—269 allegations, or almost 60%—protested inequitable treatment of girls’ or women’s teams. More specifically, allegations made on behalf of girls broke down as follows:

- 269, or about 60%, challenged inequitable treatment of girls’ or women’s teams;
- 135, or 30%, challenged schools’ failure to provide adequate participation opportunities for girls and women;
- 8, or slightly less than 2%, protested that female athletes received an inequitable share of athletics scholarships;
- 37, or about 8%, claimed retaliation against complainants who challenged schools’ discrimination against female athletes.

The pattern was also more marked at the K-12 level than in colleges. While allegations in complaints filed on behalf of K-12 girls challenged inequities in the treatment of female teams almost twice as frequently as a

denial of participation opportunities, the numbers of treatment and participation complaints were closer at the college level.

► **Softball was the source of the greatest number of complaints.**

Ninety-five allegations of participation and treatment violations targeted a school’s overall athletic program. Where specific sports were named in a complaint, softball was the source of 79 claims at the K-12 level and 13 claims at the college level.

After softball, basketball was the sport specified most often—60 times—at the K-12 level. At the college level, soccer was the second most cited source of complaints, accounting for 7 claims.

► **Coaches filed only a small number of complaints and alleged retaliation in half of them.**

Coaches filed 32, or just short of 8%, of the athletics complaints OCR received or resolved during the relevant period. These complaints covered a broad range of violations, from inequitable treatment of girls’ and women’s teams to employment discrimination targeted at the coaches themselves.¹⁷ Strikingly, 50% of the coaches who filed complaints alleged retaliation in addition to underlying discrimination that harmed female athletes. This is particularly problematic because coaches are often in the best position to identify and challenge discrimination. If coaches are fearful of filing complaints, it increases the burden on students and their parents to ferret out and protest discrimination.

► **Female college athletes filed claims at higher rates than high school girls.**

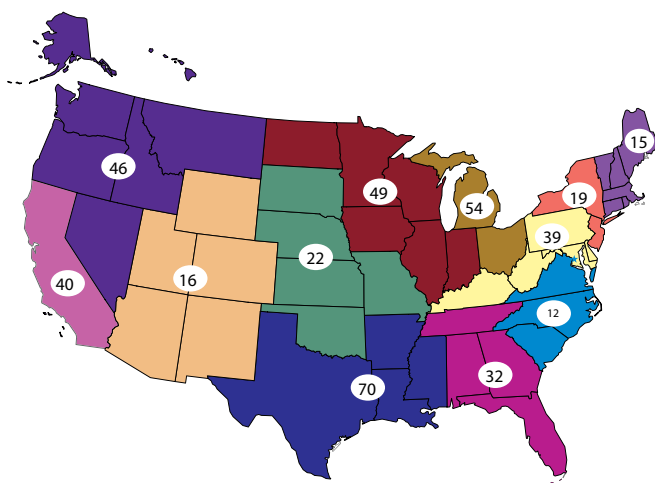
While almost 82% of the 416 complaints filed in the relevant period were made on behalf of K-12 students,¹⁸ the rate at which high school students challenge discrimination lags behind the rate at which their college-aged counterparts file complaints. A similar pattern is apparent based on an examination of the subset of complaints filed on behalf of female athletes. Thus, while 317 complaints were filed on behalf of the 2.9 million girls playing high school sports, 58 complaints were filed on behalf of the 170,526 women participating in intercollegiate sports.¹⁹ These statistics illustrate the importance of ensuring that high school girls and their parents are fully aware of their rights under Title IX and are able to use the mechanisms available to ensure effective protection of those rights.

► **Schools changed their athletics programs in response to more than 5 times as many complaints filed on behalf of female students as male students.**

The converse pattern is apparent in an examination of the complaints as to which OCR found “insufficient evidence” of a violation; this occurred in almost double the number of male complaints as female complaints.²³ Thus, while OCR found insufficient evidence of any violations in fewer than 33% of the complaints filed on behalf of women, it made this finding in almost 58% of the male complaints. In the remainder of the complaints, OCR did not reach the merits of the allegations of discrimination.²⁴

- Of the 59 compliance reviews conducted by OCR between 2002 and 2006, only eight addressed issues of a school's compliance with Title IX's substantive requirements and only one evaluated potential athletics violations.²⁵ The others addressed the procedural requirements of the Title IX regulations and looked at whether schools had designated a Title IX Coordinator, had disseminated a nondiscrimination policy, and/or had adopted grievance procedures to address sex discrimination complaints.

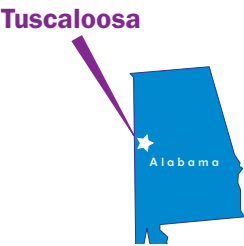
- Of the 12 OCR regional offices, the office in Dallas, which has jurisdiction over Arkansas, Louisiana, Mississippi, and Texas, received the greatest number of claims of sex discrimination in athletics—70 out of 416, or almost 17% of the total. The office in Cleveland, which covers the states of Michigan and Ohio, received the next greatest number—54 complaints, or about 13% of the total. Overall, these two OCR offices received almost 30% of the total athletics complaints.



Eighty-two complaints filed on behalf of K-12 students (both girls and boys) alleged inequitable treatment across a school's athletics program. Where specific sports were targeted, softball was specified most often (66 times), followed by basketball (54 times).

Complaints address a variety of inequities in school athletics programs. The most frequently cited source of unequal treatment was facilities, such as fields and locker rooms, challenged in 119 complaints. The next highest number of complaints related to inequitable scheduling, with 81 complaints targeting this problem.

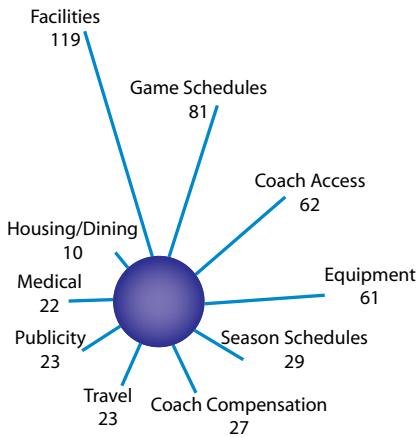
The examples below illustrate some of the inequities faced by girls’ teams:



Holt High School, Tuscaloosa, Alabama, May 2005

A former athletic department employee at Holt High School in Tuscaloosa complained to OCR about systemic unequal treatment of the girls’ softball and basketball teams in comparison to the comparable boys’ teams. Their complaints identified the following disparities:

Types of Inequitable Treatment Challenged in K-12 Athletic Programs



Baseball Team	Softball Team
▶ Newly upgraded field, dugouts, batting cage, and bullpen that cost thousands of dollars	▶ Poorly maintained field and batting cage
	▶ No bull pen, admissions gate, or freestanding concessions stand
▶ Locker room with heat, air conditioning, and plumbing	▶ Locker room without heat, air conditioning, or plumbing
▶ New game uniforms provided by the school	▶ Each girl had to purchase her own uniform (approximately \$150.00)
▶ Practice uniforms provided by the school	▶ No practice uniforms
▶ Newer equipment	▶ Older equipment, including an old catcher’s helmet that presented a safety hazard because it did not fit the team’s catcher

Boys’ Basketball Team	Girls’ Basketball Team
▶ Separate locker room from the boys’ physical education locker room	▶ Shared locker room with the girls’ volleyball team and the physical education students
▶ Matching home and away uniforms	▶ Mismatched uniforms
▶ Warm-up pants	▶ Missed away games because no bus driver available
▶ Gym bags	

The complaint also identified other examples of unequal treatment. For instance, some girls’ teams had to start their season later than other area girls’ teams because their coaches were also assistant coaches for boys’ teams. When there were not enough trainers to attend all of the teams’ games on a particular day, the boys’ teams were given preference. In addition, the complainant reported that she had been told by the school’s Athletic Director that the girls did not need a separate training room and that they should not enter the training room in the football field house because “girls do not play as hard as boys.” Although the complaint was filed more than two years ago, OCR had not taken action to resolve the allegations by December 31, 2006.



Guthrie

Guthrie Public Schools, Guthrie, Oklahoma, May 2004

This complaint challenged inequities in treatment between the girls' softball and boys' baseball teams. First, there were substantial disparities in the amenities provided on the fields used by each of the teams. Although both of the fields were off-campus, the softball field—unlike the baseball field—lacked covered spectator seating, a press box, a public address system, and underground irrigation. OCR found that these inequities violated Title IX and negatively affected the softball team's spectator attendance and media coverage.

The school also treated the girls' team inequitably in its allocation of locker room space. Because the softball team was not permitted to use the locker room at the school, the girls were forced to change in an empty mobile home—which lacked lockers or a shower—adjacent to the softball field. The baseball team, on the other hand, was provided with a locker room at the school with showers and enough lockers for each team member. OCR found that the disparate quality and availability of locker rooms violated Title IX.

Starkville



Starkville School District, Starkville, Mississippi, August 2003

This complaint challenged inequities in girls' and boys' access to weight room facilities. The girls' softball and soccer teams shared a weight room in the school's old maintenance building that suffered from a number of deficiencies: old equipment, rolls of paper, and wooden beams littering the floor; insufficient space for proper use of some of the training equipment; and no air conditioning. The boys' baseball team, on the other hand, had an exclusive weight room facility and locker room, with a television, showers, air conditioning, heat, fans, and a washer/dryer. The football, boys' soccer, and boys' and girls' track teams were able to use a weight room that was in excellent condition. Based on the complaint, the school district agreed to provide equal weight training facilities to all boys' and girls' teams.

Mid-Ohio Athletic Conference



The Mid Ohio Athletic Conference, February 2003

Girls' basketball games between the ten schools in the Mid Ohio Athletic Conference were scheduled on weekday evenings, but boys' basketball games were played on Friday and Saturday nights, the prime time for student and parent attendance. After this complaint was filed with OCR, all ten schools agreed to provide the girls' and boys' teams equal opportunities to play on Friday and Saturday nights.

B. K-12 Girls Have Fewer Participation Opportunities Than Their Male Peers.

Of the 391 allegations made about discrimination in K-12 athletics programs, 110, or 28%, challenged schools' failure to provide equal participation opportunities to female students. Allegations regarding a lack of participation opportunities were filed on behalf of women more than six times as often as those filed on behalf of men. Seventeen allegations were filed on behalf of boys; in 3, the sex of the student was unspecified.

Some complaints challenged a school's overall failure to provide sufficient athletic opportunities for girls. Other complaints focused on a particular sport, alleging that there was sufficient interest among girls in the student body to support a team in that sport. Of the complaints that identified a specific sport, soccer, softball, ice hockey, and field hockey were most frequently mentioned at the K-12 level. There were 16 complaints related to soccer, 13 to softball, 12 to ice hockey, and 11 to field hockey.

Again, the following examples show the lack of opportunity to play sports that is a reality for too many girls:

Scottsboro



Scottsboro City School District, Scottsboro, Alabama, January 2007

A complainant alleged that there were fewer girls' basketball teams than boys' basketball teams in the Scottsboro City School District and that existing girls' teams were treated unequally. OCR determined that the school district was unable to meet any of the prongs of the three-part test:

- ▶ The school district was not offering substantially proportionate opportunities to boys and girls. Although the student population at the high school was 50% boys and 50% girls, girls got only 36% of the participation opportunities.
- ▶ The school district did not have a history or continuing practice of adding girls' teams. The district had added only two girls' teams in the preceding 30 years—a softball team in the 1970's and a golf team in the 1990's.
- ▶ The school had not fully accommodated girls' interests and abilities. In a 2006 survey administered by the school district, 67% of girls said that they would definitely join the swimming team if one was offered, 60% said they would join a tennis team if one was created, and 53% of girls said they would play soccer if a soccer team was established. Despite the results of the survey, the school district's only action was to create a swimming team for both girls and boys, which did not reduce the disparity between the number of opportunities offered to boys and girls.

OCR and the school district entered into an agreement in which the school district agreed to add girls' soccer and tennis at both the junior high and high school level, unless it could show that there was insufficient interest.

Coldwater



Coldwater Exempted Village School District, Coldwater, Ohio, April 2005

A student filed a complaint when the Coldwater Exempted Village School District eliminated its high school girls' gymnastics team. OCR found that the district had failed to provide equal participation opportunities for female athletes.

- ▶ Although girls comprised close to 46% of the student body, they only got about 37% of the opportunities to play sports; OCR calculated that the district would need to provide 72 additional slots to offer substantially proportionate opportunities to girls.
- ▶ While the district had a history of adding girls' teams in the last 10 years, this history did not demonstrate sufficient responsiveness to girls' developing interests and abilities.
- ▶ The recent cutting of a viable team itself showed that the district had not fully accommodated the interests and abilities of its female students; in addition, girls had expressed interest in other teams that had not been formed.

In response to OCR's investigation, the school district did not reinstate the girls' gymnastics team. It did, however, agree to conduct a new survey about girls' interest in sports teams and to add new sports or additional teams based on the results of the survey.

Richmond



De Anza High School, Richmond, California, November, 2004

The complainant alleged that De Anza High School had violated Title IX by cutting a number of girls' teams. Following the filing of the complaint, the high school restored the girls' water polo team and rescinded its decision to eliminate the girls' golf team. A year later, it restored the girls' tennis team. While OCR concluded that the allegations had been resolved, it required that the district continue to be proactive in ensuring continued compliance with Title IX's participation requirements.

C. Retaliation Remains a Significant Problem at the K-12 Level.²⁷

During the period covered by the Center's review, OCR received 24 complaints of retaliation at the K-12 level. All but two – or about 92% – of these complaints alleged that the school had retaliated in response to protests about discrimination against girls. Of these, 59% were filed on behalf of students and 41% were filed by coaches who had been penalized for protesting their schools' discrimination against girls' teams. Troublingly, half of the K-12 coaches who filed complaints alleged that their schools retaliated against them for standing up for their teams.

Opelika

Lee County School District, Opelika, Alabama, September 2006.

The complainant claimed that her school retaliated against her by not selecting her for the cheerleading squad because she had challenged participation violations in the school's athletics program. In response to the complaint, the school district initiated new policies for team tryouts.



IV. CLAIMS INVOLVING COLLEGES AND UNIVERSITIES

A. Women's Teams at the College Level Are Not Treated Equally to Men's Teams.

Of the 105 total allegations challenging discrimination at the college level, the highest number, 40 allegations—or 38%—were filed by women alleging inequitable treatment of their teams.²⁸ Approximately 93% of claims of unequal treatment at the college level were filed on behalf of women; only 3 allegations were filed on behalf of men.

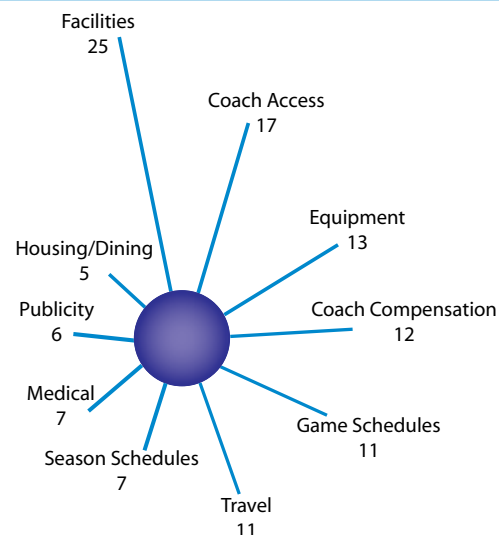
The greatest number of complaints, 18, challenged treatment violations across the entire sports program or did not specify a particular sport at issue. Where specific sports were identified, softball, which was targeted in 9 complaints, was named most frequently, followed by soccer, which was specified in 6 complaints.

As in the high school treatment complaints, inequitable facilities were named most frequently in the treatment complaints on behalf of college athletes.

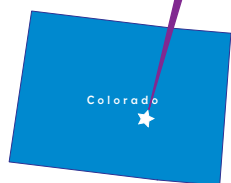
Treatment and Participation Complaints by Sport

Sport	K-12 Athletes		College Athletes	
	Treatment Complaints	Participation Complaints	Treatment Complaints	Participation Complaints
All Sports	82	35	22	18
Baseball	2	2	2	0
Basketball	54	6	0	2
Bowling	2	0	0	0
Cheerleading	10	15	1	0
Crew	0	0	1	1
Cross Country	1	0	0	0
Diving	0	0	1	5
Drill Team	1	0	0	0
Equestrian	0	0	1	0
Field Hockey	0	11	0	0
Flag Football	0	2	0	0
Football	3	5	0	1
Golf	1	5	0	1
Gymnastics	1	3	1	3
Ice Hockey	9	12	2	1
Indoor Track	0	0	0	1
Lacrosse	0	3	0	0
Outdoor Track	0	0	0	1
Skiing	0	0	0	1
Soccer	7	16	6	1
Softball	66	13	9	4
Swimming	1	3	2	6
Tennis	1	2	1	0
Track	5	2	1	1
Volleyball	11	10	0	1
Water Polo	0	1	0	1
Weight-Lifting	1	1	0	1
Wrestling	3	1	0	1
Little League	0	1	0	0
Physical Education	2	1	0	0
Self-Defense	0	1	0	0

Types of Inequitable Treatment Challenged in College Athletic Programs



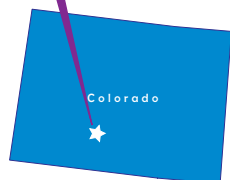
Pueblo



Colorado State University-Pueblo, Pueblo, Colorado, March 2004

In response to a complaint about unequal treatment of women's teams, the university committed to supplying equivalent uniforms, equipment, and other supplies to women's and men's teams. It also agreed to provide equal access to equipment storage for women's teams, specifically ensuring that women's volleyball and softball teams were accommodated. The university also promised to ensure equivalent facilities, including maintenance and repair of the facilities, modes of transportation, and access to trainers. OCR stated that it would monitor the university's compliance with Title IX.

Alamosa



Adams State College, Alamosa, Colorado, March 2003

After investigating a complaint, OCR concluded that Adams State College failed to treat female athletes equitably on a number of grounds. Coaches of women's teams were burdened with more time consuming duties than coaches of men's teams, which made them less available to their players. The college also failed to provide female athletes with equivalent uniforms and locker rooms, and the women's softball field did not meet regulation standards. Finally, women's teams were not afforded proportional numbers of subsidized visits for prospective athletes. In its Commitment to Resolve, the college agreed to remedy the violations and was subjected to OCR monitoring to ensure compliance.

Moorhead



Minnesota State University-Moorhead, Moorhead, Minnesota, September 2004

The complainant alleged that the quality, availability, and maintenance of facilities on the Minnesota State University-Moorhead campus put female athletes at a serious disadvantage. The women's swimming pool was in need of repair and was the only facility on campus that lacked adequate spectator seating. The women's soccer team played on the only university athletic facility that lacked a scoreboard and did not have an adequate practice field, which led to the overuse of its competition field. Additionally, because the women's tennis team did not have access to on-campus indoor or outdoor facilities, the team was forced to use two off-site facilities, thereby limiting their practice and match schedules to off-peak and evening hours. Finally, both the women's soccer and softball teams suffered from inadequate field maintenance. The softball field was not watered a single time by the university during the 2003 season. The university consented to a Resolution Agreement to remedy these disparities and is subject to OCR monitoring.

B. Women Are Denied Equal Opportunities To Participate in College Sports.

Of the 37 total participation allegations made by college students, 25 were made on behalf of women and 12 were made on behalf of men. The participation allegations on behalf of women comprised just under a quarter of all allegations made about sex discrimination in intercollegiate athletics programs.

OCR did not find sufficient evidence of discrimination in any of the 12 participation complaints filed by men. It found the schools in compliance with Title IX in 9 of those complaints; was still investigating one complaint; dismissed one complaint because it had not been filed in a timely manner; and had not resolved the other by December 31, 2006.

In 18 of the participation complaints, complainants challenged an overall failure of the school to provide enough athletic opportunities. In the remaining 19 complaints, students asserted that there was sufficient interest among the student body to support a particular sport not currently being offered, citing softball and basketball most frequently.

Worcester



Assumption College, Worcester, Massachusetts, December 2005

Although the student body at Assumption College in Worcester, Massachusetts was approximately 60% women, only about 40% of the college's athletes were women. OCR received a complaint when the college cut its women's track team in 2005. OCR found the college in violation of Title IX, and determined that even before the college cut its track team, it had failed to offer substantially proportionate athletics opportunities to its female students. The college had also failed to satisfy the second prong of the three-part test: it had added only four new sports since the 1970's and had already cut two of those sports, swimming and track, during this time. OCR ordered the college to reinstate the track team and to conduct a survey of the students to determine if there was unmet interest for other women's teams.

C. Women Face Discrimination in the Award of Athletic Scholarships.

Sex discrimination in scholarships triggered the smallest number of allegations—9—which was 9% of the total allegations made on behalf of college students. Most of the complaints, 8 of the 9, were filed on behalf of women. In the one complaint filed on behalf of men, OCR found insufficient evidence of discrimination.

Arcata



Humboldt State University, Arcata, California, May 2002

A Voluntary Resolution Plan at Humboldt State University sought to resolve a number of compliance concerns, among them inequities in the amounts of athletic financial assistance afforded male and female athletes. The university agreed to review and revise its manual on athletics grants and its annual notice of athletic financial support. It also committed to developing procedures for reporting accurate financial assistance data in the athletics program and ensuring compliance with Title IX requirements of equitable distribution of athletic grants-in-aid. Finally, the university agreed to provide OCR with annual reports documenting the amount of aid awarded to athletes on each team and plans for future awarding of grants.

D. Coaches Who Complain About a College's Treatment of Women Fear Retaliation.

Complaints that colleges retaliated against those who protested discrimination comprised about 14% of total college level allegations. All but one of the allegations challenged retaliation for complaining about sex discrimination against women. Seven claims, or close to half of the total, were filed by coaches. Over 58% of the complaints filed by college coaches alleged retaliation as one component of their claims.

V. OCR ENFORCEMENT

A. OCR Is Not Fulfilling Its Duty To Perform Compliance Reviews of K-12 Schools or Colleges.

In addition to responding to complaints, OCR is responsible for initiating assessments of Title IX compliance by federally funded educational institutions across the country.²⁹ OCR's record of initiating such reviews reveals that it did not adequately fulfill this responsibility during the period covered by this report.

As reported in preceding sections, OCR conducted only *one* compliance review of a school's athletics program during the five years covered by this review. An examination of OCR's annual reports from 1995-2005 shows that this represents a harmful reduction of OCR's enforcement activities. Not only has the number of compliance reviews under all statutes enforced by OCR noticeably decreased over the past six to seven years, the focus of its Title IX reviews has narrowed considerably. Between 1995 and 2000, OCR annual reports consistently listed equal opportunity in athletics as a focus of enforcement efforts or provided examples of compliance reviews that addressed athletics. Between 2001 and 2005, however, no annual reports mentioned athletics as a focus for compliance reviews, and none cited examples of athletics as evidence of successful reviews. Instead, OCR annual reports for 2003 through 2005 all cite the importance of ensuring that state agencies have designated Title IX coordinators, developed and disseminated antidiscrimination policies, and implemented grievance procedures.

While strong internal procedures and policies are essential for schools to adequately address substantive Title IX violations, the existence of such policies should represent only the beginning of an inquiry about a school's compliance with Title IX's substantive requirements. A school's designation of a Title IX coordinator and the establishment of procedures are necessary but insufficient steps to ensure that real action is being taken to end sex discrimination.

B. OCR Complaint Processing Is Inadequate in Some Cases.

The procedures OCR used in processing complaints raised concerns in some instances. For example, the resolution of several complaints was unreasonably delayed. In OCR's Kansas City office, it took 1,599 days, or nearly four and a half years, to resolve one complaint and about three and a half years to resolve another. The Dallas office had 5 complaints that took more than two years to resolve, along with 6 complaints that were pending for over a year. In some of these cases, violations of the participation and treatment regulations were found, meaning that many female athletes had graduated before changes were made to provide equity. In addition, 6 complaints that were filed during or before 2004, and 10 complaints that were filed in 2005, were still pending on December 31, 2006.

In several instances, OCR put the burden on the complainant to do an investigation, rather than doing the investigation itself to determine whether there was a Title IX violation. For example, OCR dismissed a complaint that the men's baseball facility at a college was superior to the women's softball facility because the complainant had not provided enough information to suggest that the overall treatment of female athletes was not equivalent to the treatment of male athletes. However, the OCR Investigator's Manual states that it is OCR that will investigate all the program components.³⁰ This is essential, since complainants generally lack access to the information necessary to evaluate an athletics program overall.

CONCLUSION

As this report reveals, there is substantially more work to be done to eradicate sex discrimination in athletics in our nation's K-12 schools, colleges and universities. To assist in this work, the National Women's Law Center is unveiling a new website, www.fairplaynow.org, which is designed to assist parents in holding K-12 schools accountable for gender equity in athletics, and releasing *Breaking Down Barriers*, a comprehensive legal manual on the standards and procedures that apply to athletics claims under Title IX. The Center also calls on OCR to improve its enforcement efforts to ensure that, before its next anniversary is reached, Title IX achieves its promise of true gender equity in sports.

APPENDIX: REPORT METHODOLOGY

This report analyzes the 416 athletics complaints that were received by the Center in response to the Freedom of Information Act (FOIA) request it filed with OCR in December 2006. The Center's request covered all complaints and complaint resolutions, all compliance reviews and resolutions, and all attachments to these documents, that relate to Title IX and were filed with or prepared by OCR between January 1, 2002 and December 31, 2006. In order to expedite the processing of the request, OCR and the Center agreed to limit the number of documents that OCR would provide. Accordingly, if the complaint had not been resolved by the end of 2006, OCR provided the complaint itself.³¹ If a complaint had been resolved, OCR provided the letter of resolution to the school. Similarly, OCR provided either the letter initiating or resolving the compliance reviews. The Center limited its review of the complaints to athletics, and examined the 416 complaints or resolution letters that concerned sex discrimination in athletics that were provided.³² It also reviewed all the compliance documents that were received, only one of which concerned athletics.

The Center created a database to record and analyze the information in the complaints. Many complaints contained more than one grievance, which this report refers to as allegations. Each allegation of sex discrimination was put into the category of treatment, participation, scholarship, or retaliation. The resolution of each allegation was also entered into the database as described below. The data in this report are based on information in the database.

Types of Resolution

As discussed in this report, the filing of a complaint resulted in one or more of the following outcomes:

- ▶ Recipient agreed to make changes
 - School agreed to make changes before OCR began its investigation. This included private agreements made between the school and the complainant as well as changes to school policies or procedures that addressed complainant's concerns. Some regional offices included a copy of these private agreements.
 - During the course of, or as a result of, OCR's investigation, the school reached an agreement with the complainant to make changes or voluntarily instituted new policies or procedures that addressed the complainant's concerns.
 - As a result of OCR's investigation, the school reached an agreement with OCR to institute changes.
- ▶ Insufficient evidence
 - As a result of OCR's investigation, OCR found insufficient evidence to support one or more allegations contained in the complaint.
- ▶ OCR did not reach the merits of the complaint
 - Dismissed as not filed in a timely manner
 - Referred to another governmental agency with jurisdiction, such as the Equal Employment Opportunity Commission (EEOC)
 - Closed for other reasons, such as failure to provide sufficient information about the alleged discrimination or lack of jurisdiction because the school in question did not receive federal funding

Unknown Information

In a few cases, OCR's redaction of private information made it difficult to determine the exact nature of the complaint or the sex of the student on whose behalf the complaint was filed. For this reason, some of the data includes categories such as "unknown."

OCR's Inconsistent Response to the FOIA Request

Although all 12 of OCR's regional offices complied with the FOIA request, they did not provide the documents in exactly the same manner. For example, some offices included resolution letters explaining that a school had reached an agreement with OCR that the agency would continue to monitor, while other offices included the agreement, information describing OCR's continued monitoring, as well as a final letter explaining that the school had fulfilled its obligations under the agreement's terms. Similarly, some offices only provided complaints that had reached some kind of resolution as of December 2006, while others provided all complaints filed during that time, including those still under investigation.

ENDNOTES

- 1 National Federation of State High School Associations, *2005-06 Participation Survey* (2006), available at http://www.nfhs.org/core/contentmanager/uploads/2005_06NFHSparticipationsurvey.pdf
- 2 Department of Health, Education, and Welfare, Policy Interpretation, 44 Fed. Reg. at 71419 (1979); National Collegiate Athletic Association (NCAA), *1981-82–2005-06 NCAA Sports Sponsorship and Participation Rates Report* 72 (2007).
- 3 Cheslock, J. (2007). *Who's Playing College Sports? Trends in Participation*. East Meadow, NY: Women's Sports Foundation.
- 4 U.S. Census Bureau, *Current Population Survey Report* (Oct. 2005), available at <http://www.census.gov/population/www/socdemo/school/cps2005.html>
- 5 National Collegiate Athletic Association (NCAA), *1981-82–2005-06 NCAA Sports Sponsorship and Participation Rates Report* 69 (2007); see National Collegiate Athletic Association (NCAA), *2003-04 Gender-Equity Report* 12 (Sept. 2006).
- 6 National Collegiate Athletic Association (NCAA), *2003-04 Gender-Equity Report* 25 (2006).
- 7 For a more detailed discussion of the Center's methodology for the report, see the Appendix to this document. The Center used best efforts to catalog and aggregate information from the complaints. Because some of the complaints were redacted or provided in ways that made it impossible to obtain full information about them, however, some of the calculations in this report could be subject to change if additional information became available.
- 8 U.S. Department of Education Athletic Guidelines; Title IX of the Education Amendments of 1972; A Policy Interpretation; Title IX And Intercollegiate Athletics, 44 Fed. Reg. 71,413, 71,418 (C.5.a.(1)-(3)) (1979) (hereinafter "Policy Interpretation").
- 9 Office for Civil Rights, Department of Education, Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (Jan. 16, 1996).
- 10 34 C.F.R. § 106.41(c)(1)-(10) (2007).
- 11 Policy Interpretation, *supra* note 8, 44 Fed. Reg. at 71,415 (B.2.).
- 12 34 C.F.R. § 106.37(c)(1) (2007).
- 13 Letter from Dr. Mary Frances O'Shea, National Coordinator for Title IX Athletics, Office for Civil Rights, Department of Education, to Nancy S. Footer, General Counsel, Bowling Green State University (July 23, 1998).
- 14 *Jackson v. Birmingham Board of Education*, 544 U.S. 167 (2005); 34 C.F.R. § 106.71 (incorporating 34 C.F.R. § 100.7(c)).
- 15 *Id.*
- 16 Within a complaint, it was not always clear into which category of athletics discrimination the allegations of the complaint fell.
- 17 Of course, discrimination against coaches also harms athletes, such as by reducing the caliber of their coaching or sending the message that girls' teams are second class. Thus, discrimination targeted at coaches themselves can violate the Title IX rights of their athletes.
- 18 Complaints against high schools, middle schools, elementary schools, entire school districts, and some combination of elementary, middle, and high schools are included in the category of K-12 schools.
- 19 No distinction is made between colleges and universities in this report, and both colleges and universities are referred to as colleges.
- 20 The term "at least" is used because it was impossible to discern the resolution of some complaints based on the limited information provided by OCR.
- 21 The schools adopted the changes at various stages of the processing of the complaint: the complainant and the school were already in the process of negotiating an agreement when OCR got involved; the school agreed to make changes before OCR finished its investigation or took any action; or OCR found a violation and ordered the school to make remedial changes.
- 22 These changes were instituting a boys' middle school baseball team and a boys' high school lacrosse team, and an unspecified remedial action based on allegations concerning a boy who tried out for the cheerleading squad.
- 23 "Insufficient evidence" is the terminology used by OCR; it never stated that it found no violation of the law in its letters to the schools.
- 24 The complaints in which at least one of the allegations was dismissed without OCR reaching the merits breakdown as follows: OCR determined that it did not have jurisdiction over 21 complaints; it dismissed six because the complainant was pursuing the claims in court or through state administrative procedures; it found that 22 did not include sufficient information; it dismissed 11 because the entities that were the subjects of the complaints were not recipients of federal funding; it dismissed 15 because the challenged actions were not covered under Title IX, were not related to a sport, or did not allege sex discrimination; it dismissed 10 on timeliness grounds; it dismissed three complaints because they were moot or there was no remedy; it dismissed one based on pending litigation, although the litigation was not related to sex discrimination in athletics; and it combined five with other complaints it had received about the same school. In 26 complaints, the complainant withdrew the complaint; 34 of the complaints had not been resolved by December 31, 2006.
- 25 In addition to the athletics assessment, substantive compliance reviews looked at procedures for and responses to sexual harassment allegations, opportunities for males and females regarding vocational training and special education, access to Title IX policies for minority language speakers, and compliance with admission and recruitment requirements related to engineering programs.
- 26 Three allegations were made on behalf of boys and five allegations were made on behalf of K-12 students whose sex was not specified.

- 27 Because athletic scholarships are typically provided only by colleges and universities, there are no complaints challenging scholarship violations at the K-12 level.
- 28 The complaints also contained three allegations of unequal treatment of men's teams.
- 29 Department of Education Principal Office Functional Statements, available at http://www.ed.gov/about/offices/list/om/fs_po/ocr/intro.html#1.
- 30 Office for Civil Rights, Department of Education, Title IX Athletics Investigator's Manual (1990), p. 7.
- 31 If OCR did not provide a resolution letter, the complaint is treated as unresolved for the purposes of this report.
- 32 In some instances, it was difficult to determine whether a complaint should be categorized as alleging discrimination in athletics. One complaint alleged discrimination in participation opportunities on behalf of both women and men, and has been treated as if it were two complaints.

The National Women's Law Center is a nonprofit organization that has been working since 1972 to advance and protect women's legal rights. The Center focuses on major policy areas of importance to women and their families, including employment, education, health and reproductive rights, and family economic security.

Acknowledgements

The National Women's Law Center expresses its gratitude to the following Center staff members who were invaluable in the preparation of this report: Marcia D. Greenberger, Co-President; Jocelyn Samuels, Vice President for Education and Employment; Dina R. Lassow, Senior Counsel for Education and Employment; Theresa Keeley, MARGARET Fund Fellow; Lisa M. LeMair, Art Director; Princess Bethea, Program Assistant; Alexis Kuznick, Legal Intern; Kristina Petronko, Legal Intern; Kelly Robinson, Legal Intern; and Keaton Wong, Legal Intern.

This project would not have been possible without the financial support provided by the Beech Street Foundation, the Ford Foundation, the Herb Block Foundation, the Charles Evans Hughes Memorial Foundation, the John D. and Catherine T. MacArthur Foundation, and the MARGARET Fund. The opinions and conclusions expressed herein do not necessarily represent the views or positions of these funders.

© National Women's Law Center 2007



11 Dupont Circle NW Suite 800

Washington, DC 20036

202.588.5180

202.588.5185 (fax)

www.nwlc.org