



Athletics

BACKGROUND ON GENDER EQUITY IN ATHLETICS

Today, nearly 3.5 million girls play high school sports,¹ but they are afforded over 1 million fewer opportunities than boys to do so.² In fact, although girls comprise nearly 50 percent of high school students, schools provide them with only 43 percent of the athletic opportunities³—even though girls want to play in far greater numbers.⁴ Retaliation or fear of retaliation is prevalent among PK–12 school communities where girls and their families attempt to assert Title IX equity rights, chilling efforts to level the playing field.⁵

The state of play is even worse for girls of color, who receive fewer opportunities than both white girls and boys of color.⁶ At high schools attended predominantly by white students, girls have 82 percent of the opportunities that boys have to play sports, but at high schools attended predominantly by students of color, girls have only 67 percent of boys' athletics opportunities.⁷

College women face similar challenges. More than 200,000 women play sports in college,⁸ yet they receive almost 60,000 fewer athletics opportunities than college men.⁹

Analysis shows that most intercollegiate athletic departments are not meeting any of the standards Title IX sets for schools to demonstrate equity in sports opportunities.¹⁰ NCAA institutions would need to provide women an additional 148,030 sports opportunities to match the same ratio of opportunities that are offered to men.¹¹ Even when women are given the opportunity to play, schools fail to provide equitable economic support—women miss out on more than \$240 million in athletics scholarships annually.¹²

When girls and women do have a chance to play sports, they are frequently provided worse facilities, uniforms, and equipment; are supported by inexperienced coaches; receive less support and publicity from their schools; and experience a whole host of other inequities that send a corrosive message to girls and women that they are “less than” their male peers.¹³

LGBTQI+ youth are less likely than their non-LGBTQI+ peers to participate in sport. According to a 2017 study, 68 percent of all youth played a sport, but only 24 percent of all LGBTQI+ youth played a sport.¹⁴ Transgender and nonbinary youth report even lower rates of sports participation than their cisgender LGBTQ peers, with just 12 percent of transgender girls reporting that they play sports.¹⁵ Many transgender and nonbinary youth report that school staff or coaches have discouraged them from playing sports because of their LGBTQI+ identity, and most report being prevented from using the locker rooms that align with their gender.¹⁶ Transgender girls are most likely to report these barriers, with 21 percent reporting that they have been discouraged from participating and 58 percent reporting that they were

prevented from using the locker room that aligns with their gender.¹⁷ Although participation in extracurricular activities like sports increases LGBTQI+ students’ feeling of connection to their school and overall well-being, 10 percent of them report that school officials had either prevented or discouraged them from playing sports because of their identity (see **LGBTQI+ Students**).¹⁸

Girls and women reap numerous benefits from playing sports. Students who play sports are more likely to graduate from high school, score higher on standardized tests, and have higher grades.¹⁹ Black and Latina women who play Division I college sports are 14 percent and 6 percent more likely, respectively, than their non-athlete peers to graduate from college.²⁰ Student athletes are also more likely to have higher levels of confidence, more positive body image, greater psychological well-being, and lower levels of depression.²¹ LGBTQI+ athletes in particular report nearly 20 percent lower rates of depressive symptoms compared to non-athletes.²² Women and girls who have the highest physical activity during adolescence and young adulthood are less likely to get breast cancer later in life,²³ and long-term physical activity also reduces the risk of other cancers, including endometrial cancer.²⁴ Sports participation also provides career benefits: girls who play sports in high school go on to earn 7 percent higher annual wages than their non-athlete peers,²⁵ and more than 90 percent of women executives report having played sports growing up.²⁶

Developments Since 1972

What was then the Department of Health, Education, and Welfare first issued Title IX regulations and guidance on gender equity in athletics in 1975, followed by a policy interpretation on intercollegiate athletics in 1979.²⁷ In 1980, under the Carter administration, the Department of Education also issued Title IX regulations on athletics, which explain the standards schools should abide by when developing and assessing whether their athletics programs are equal for girls and women.²⁸ In successive administrations, the Department went on to issue multiple additional guidances clarifying the regulations.²⁹ These guidances explained the Three-Part Test, which requires schools to show at least one of the following to demonstrate that they comply with Title IX: (1) girls' or women's athletics participation is "substantially proportionate" to their enrollment, (2) the school has a "history and continuing practice" of expanding athletics opportunities for girls and women, or (3) the school is "fully and effectively accommodating" girls' or women's athletics interests and abilities.³⁰ The guidances also explained that schools must provide equal benefits and services to girls' and boys' (or women's and men's) sports teams, and that the percentage of total athletic scholarship dollars awarded to men and women in college sports must be within 1 percent of their athletic participation rates or one scholarship, whichever is greater.³¹

Meanwhile, in 1984, in *Grove City College v. Bell*, the Supreme Court held that Title IX only applied to school programs directly receiving federal funding—a ruling that threatened to end many of Title IX's protections for gender equity in athletics.³² In response, Congress passed the Civil

Rights Restoration Act of 1988, ensuring that an educational institution as a whole (including its athletic programs) is bound by Title IX if any part of it receives any federal funding.³³

In the decades since, courts have increasingly recognized the importance of gender equity in athletics. For example, in 1996, the First Circuit Court of Appeals found that Brown University violated Title IX when it eliminated women's teams in the face of gender inequity in the University's athletics program.³⁴ In 2004, the D.C. Circuit upheld a district court decision rejecting an association of wrestling coaches' assertion that Title IX was responsible for schools' decisions to cut men's teams.³⁵ In 2014, the Ninth Circuit affirmed rulings on behalf of a class of high school girls who brought a Title IX case based on inequities in their athletics program and retaliation for complaining about discrimination.³⁶ The Supreme Court's decision in *Jackson v. Birmingham* was also a major victory, as it held that a girls' basketball coach who complained about athletics inequality was protected from retaliation by the school district under Title IX.³⁷

More recently, federal courts have extended the Supreme Court's ruling in *Bostock v. Clayton County* to Title IX, affirming that sex discrimination includes discrimination based on sexual orientation and gender identity and that Title IX protects transgender students' equal access to restrooms and sports teams consistent with their gender identity (see **LGBTQI+ Students**).³⁸

Although these regulations, guidances, and cases demonstrate the impact Title IX has had on women's and girls' access to sports, serious inequities remain.

Recommendations

The Department of Education should:

- Review and refresh its guidances (including Dear Colleague Letters and the Investigator's Manual³⁹) to make Title IX gender equity athletics standards easier to understand and apply in schools.
- Strengthen its efforts to enforce Title IX by initiating proactive compliance reviews at more educational institutions and providing technical assistance and guidance on emerging Title IX questions, including transgender students' right to participate in athletics.
- Provide training to Title IX coordinators so that school staff may truly understand the law, regulations, and guidance to effectively implement gender equity across federally funded public institutions with regard to athletics (and all else).
- Utilize the Civil Rights Data Collection to collect and analyze data to help target their enforcement of Title IX's athletic requirements, including data that will provide a greater understanding of the experience of transgender and nonbinary youth in athletics. In particular, the Department should collect data on the number of transgender and nonbinary youth who participate in sports, the incidence of bullying and harassment in sports-related space such as locker rooms, and on the prevalence of mixed-gender interscholastic teams.

- Condemn state and local governments' attacks on LGBTQI+ students' rights, and coordinate with the Department of Justice to submit amicus briefs in litigation challenging these harmful laws as discriminatory and affirming that Title IX prohibits anti-LGBTQI+ discrimination. This includes reiterating that transgender athletes pose no threat to girls' and women's sports and that anti-transgender bans detract from the real and documented issues facing girls' and women's sports like inadequate funding, high rates of sexual abuse, and fewer participation opportunities to play, especially for girls of color.

Congress should:

- Pass athletics transparency bills, requiring that high schools report basic data on the numbers of girls and boys who are students and athletes, as well as additional data on athletic treatment and benefits afforded to girls' and boys' teams.
- Instruct the Government Accountability Office to conduct a more thorough review of Title IX compliance with Congressional hearings to bring light to these critical issues.⁴⁰
- Amend the Ted Stevens Olympic and Amateur Sports Act to require the United States Olympic and Paralympic Committee reports to include demographic information regarding sexual orientation and gender identity in national governing bodies' athletic, governance, and management activities—as well as descriptions of the programs and initiatives meant to encourage the participation of people of all sexual orientations and gender identities.

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- 3 WSF Athletics Report, *supra* note 2, at 9.
- 4 Women's Sports Foundation, *Coaching Through a Gender Lens: Maximizing Girls' Play and Potential*, 4 (Apr. 2, 2019), https://www.womenssportsfoundation.org/articles_and_report/coaching-gender-lens-maximizing-girls-play-potential.
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- 6 PRACC & National Women's Law Center, *Finishing Last: Girls of Color and School Sports Opportunities*, 1 (Apr. 1, 2015), <https://www.prrac.org/finishing-last-girls-of-color-and-school-sports-opportunities>.
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- 11 U.S. Department of Education (2019), *Equity in Athletics Disclosure Act Data Analysis Cutting Tool*, <https://ope.ed.gov/athletics>.
- 12 WSF Athletics Report, *supra* note 2, at 49.
- 13 *Id.*
- 14 Human Rights Campaign Foundation, *Play to Win: Improving the Lives of LGBTQ Youth in Sports*, 7 (2019), <https://assets2.hrc.org/files/assets/resources/PlayToWin-FINAL.pdf>.
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- 16 GLSEN, *LGBTQ Students and School Sports Participation*, 3 (2021), <https://www.glsen.org/sites/default/files/2022-02/LGBTQ-Students-and-School-Sports-Participation-Research-Brief.pdf>.
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- 18 *Id.* at 3.
- 19 In fact, a statewide, three-year study in North Carolina found that student athletes had grade point averages that were nearly a full point higher than their non-athlete peers. National Coalition for Women and Girls in Education, *Title IX at 45: Advancing Opportunity through Equity in Education*, 41–42 (2017) [hereinafter NCWGE Report], <https://www.ncwge.org/TitleIX45/Title%20IX%20at%2045-Advancing%20Opportunity%20through%20Equity%20in%20Education.pdf>.
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- 33 S.557, 100th Cong. (1988).
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- 37 544 U.S. 167 (2005).
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