

Title IX *40 years and counting*

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The Next Generation of Title IX: Athletics

Title IX of the Education Amendments of 1972 prohibits sex discrimination in educational programs that receive federal funds. While the law applies to all aspects of educational opportunities, it is probably best known for its application to sports. Title IX requires that schools (1) provide male and female students with equal opportunities to play sports, (2) give male and female athletes their fair shares of athletic scholarship dollars, and (3) provide equal benefits and services (such as facilities, coaching, and publicity) to male and female athletes overall.

Title IX at 40: The Road Traveled

Thanks to Title IX, girls and women are playing sports at earlier ages and in much greater numbers than ever before, but they still face many hurdles on the road to equality.

Elementary and Secondary Schools

Girls' participation in sports in elementary and secondary schools has skyrocketed since Title IX was passed, proving that "if you build it, they will come." In 1972, only 295,000 girls competed in high school sports, whereas 3.67 million boys did.¹ By 2010-2011, the number of girls playing had risen to 3.2 million and the number of boys to 4.5 million.²

But girls' opportunities are still not at the level that boys' opportunities were in 1972; schools are still providing 1.3 million fewer chances for girls to play sports in high school.³ Girls of color,

in particular, play sports at far lower rates than even Caucasian girls: Only 64% of African-American and Hispanic girls and 53% of Asian girls play sports, while 76% of Caucasian girls do. Also, three quarters of boys from immigrant families are involved in athletics, while less than half of girls from immigrant families are.⁴

Recent civil rights data submitted by schools to the Department of Education reveal the work that remains to be done to make sure that girls receive equal opportunities to play sports in high schools across the country. Figure 1 ranks states by the percentage of high schools in the state reporting a participation gap of 10 percentage points or higher. (The participation gap is the percentage point gap between the percentage of girls enrolled and the percentage of athletes who are girls. For example, if at School A, girls are 45 percent of all students but only 35 percent of all athletes, then School A has a participation gap of 10 percentage points.) Showing that the percentage of girls enrolled is roughly equal to the percentage of athletes who are girls is one way that schools can demonstrate compliance with Title IX (see box). While there is no set participation gap that constitutes a violation of Title IX,⁵ gaps of 10 percentage points or more raise red flags that schools are likely not complying with the law. For example, at the typical school with a 10-percentage point gap or greater, girls lose more than 100 opportunities to play sports.⁶ These self-reported data show that high schools in every state need to examine their athletic programs to ensure that they are treating their female students fairly with respect to participation opportunities.

Figure 1

Rank	State	Percentage of high schools in the state reporting a participation gap of 10 percentage points or higher
1	New Hampshire	2.0%
2	Hawaii	4.8%
3	Maine	7.5%
4	Minnesota	10.7%
5	Vermont	11.4%
6	Montana	13.6%
7	North Dakota	14.5%
8	Washington	15.4%
9	South Dakota	15.7%
10	Colorado	16.1%
11	Massachusetts	17.3%
12	Connecticut	17.5%
13	Wyoming	17.6%
14	Rhode Island	19.4%
15	Wisconsin	19.6%
16	Alaska	20.2%
17	Pennsylvania	20.2%
18	Kentucky	22.7%
19	New Jersey	22.8%
20	Michigan	23.9%
21	New York	24.7%
22	Maryland	25.3%
23	Oregon	25.5%
24	West Virginia	26.9%
25	Kansas	27.2%
26	Utah	27.2%
27	Nebraska	27.5%
28	Virginia	27.7%
29	Delaware	29.0%
30	Florida	29.3%
31	New Mexico	29.6%
32	Illinois	31.4%
33	Iowa	31.5%
34	Indiana	32.0%
35	California	33.5%
36	Missouri	34.5%
37	Idaho	35.4%
38	Ohio	36.1%
39	Nevada	39.5%
40	Oklahoma	39.8%
41	Arizona	41.2%
42	Arkansas	49.6%
43	Mississippi	53.9%
44	North Carolina	54.9%
45	Dist. of Columbia	57.1%
46	Texas	59.4%
47	South Carolina	61.4%
48	Alabama	62.2%
49	Louisiana	62.2%
50	Tennessee	65.4%
51	Georgia	71.6%

Source: NWLC's calculations are based on U.S. Department of Education, Civil Rights Data Collection (CRDC), flat file. CRDC data are for school year 2009-2010 and cover about 85 percent of the nation's public school students. These data are not intended to be estimates of state or national data. All data in the CRDC are self-reported. Schools are included in NWLC's calculations if they have a 10th grade and reported athletes. Single-sex schools are excluded from NWLC's calculations.

Colleges and Universities

Women's participation in intercollegiate athletics has also increased greatly since 1972, when fewer than 32,000 women played sports,⁸ women received only 2% of schools' athletics budgets, and athletic scholarships for women were nonexistent.⁹ Today, a record 193,232 women compete, over six times the pre-Title IX rate.¹⁰

But the playing field is still not level. While more than half of the students at NCAA schools are women, they receive only 44% of the athletic participation opportunities.¹¹ Moreover, female athletes at the typical Division I-FBS (formerly Division I-A) school receive roughly 28% of the total money spent on athletics, 31% of the recruiting dollars, and 42% of the athletic scholarship dollars.¹² 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.¹³

Under Title IX, there are three independent ways for schools to demonstrate that they are providing their male and female students with equal opportunities to play sports. A school must show any **one** of the following:

- (1) the percentages of male and female athletes are about the same as the percentages of male and female students enrolled, or
- (2) the school has a history and continuing practice of expanding athletic opportunities for the underrepresented sex (almost always female students), or
- (3) the school is fully and effectively meeting its female students' interests and abilities to participate in sports.⁷

Why It Matters: The Impact on Women and Girls

By not providing girls and women with equal opportunities to play sports, schools are denying them the health, academic, and economic benefits that accompany participation. Playing sports decreases a young woman's chances of developing heart disease, osteoporosis and breast cancer.¹⁴ 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.¹⁵ The study notes that while a 7 percent decline in obesity is modest, "no other public health program can claim similar success."¹⁶ Female athletes have higher levels of self-esteem, a lower incidence of depression, and a more positive body image compared to non-athletes.¹⁷ Female student-athletes are also less likely to smoke or use drugs¹⁸ and have lower rates of both sexual activity and pregnancy¹⁹ than non-athletes.

Sports participation also has a positive effect on academic achievement. Young women who play sports are more likely to graduate from high school, have higher grades, and score higher on standardized tests than non-athletes.²⁰ They are also more likely to do well in science classes than their classmates who do not play sports.²¹ In addition, the availability of athletic scholarships significantly increases young women's ability to pursue higher education.

Ensuring equal opportunities in sports is especially important for girls of color. Studies show that they are less physically active during adolescence than white girls and that they are less likely to participate in sports outside of school than white girls.²² Moreover, girls of color drop out of school at alarming rates. While 24% of girls overall fail to graduate on time with a diploma each year, the numbers for girls of color are much worse: 44% of Native American female students, 35% of Black female students, and 34% of Hispanic female students fail to graduate on time.²³

In addition to helping students stay engaged in school, playing sports has a positive effect on employment outcomes and women's economic security. A 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.²⁴ Research also shows that more than four out of five executive businesswomen played sports growing up, and the vast majority say that the lessons they learned on the playing field contributed to their success in business.²⁵

Title IX

The Road Ahead: Recommendations for Action

The U.S. Department of Education's Office for Civil Rights (OCR) should strengthen enforcement of Title IX by initiating more compliance reviews of schools and negotiating robust resolutions of complaints.

OCR should issue further guidance to schools about what they can count as participation opportunities under Title IX.

Federal policymakers should require secondary schools to publicly disclose gender equity data about their sports programs so that communities are aware of how their schools are treating boys and girls in athletics.

Next Generation Issues

What Counts as a Participation Opportunity for Title IX Purposes?

Schools are adding competitive cheer and flag football for girls in attempts to demonstrate that they are providing equal opportunities for girls to play sports.²⁶ Yet these activities do not provide female students with the same types of competitive opportunities that male students receive and therefore raise Title IX concerns. Competitive cheer, which is evolving, currently does not provide the same level of competition or championship opportunities as

other varsity sports. Therefore it should not be counted by schools in their Title IX athletic participation numbers.²⁷ And while flag football is an exciting sport and may be easy to add for girls where a school already has football for boys, the lack of opportunities to play at the college level and earn athletic scholarships in flag football pose Title IX concerns where schools provide boys with varsity sports that all provide such opportunities. Questions also have arisen over whether schools can count indoor track, outdoor track, and cross-country as separate participation opportunities and under what circumstances.²⁸

- 1 NATIONAL FEDERATION OF STATE HIGH SCHOOL ASSOCIATIONS, 2010-11 HIGH SCHOOL ATHLETICS PARTICIPATION SURVEY 52 (2011), available at <http://www.nfhs.org/content.aspx?id=3282>.
- 2 *Id.*
- 3 *Id.*
- 4 DON SABO & PHIL VELIZ, WOMEN'S SPORTS FOUNDATION, GO OUT AND PLAY: YOUTH SPORTS IN AMERICA 14-15, 161 (Oct. 2008), available at <http://www.womenssportsfoundation.org/sitecore/content/home/research/articles-and-reports/mental-and-physical-health/go-out-and-play.aspx>.
- 5 See U.S. Dep't of Educ., Office for Civil Rights, *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* (Jan. 16, 1996) at 4-5 [hereinafter 1996 *Clarification*] (describing case-by-case approach used to determine whether participation opportunities are "substantially proportionate to enrollment rates," which depends on the size of an institution's athletic program and whether number of opportunities that would be required to achieve proportionality would be sufficient to sustain a viable team).
- 6 The number of opportunities lost represents the additional number of girls who would be able to play sports if the school closed the participation gap. Typical (median) enrollment at a school with a ten percentage point gap or greater is 1130 students.
- 7 See 1996 *Clarification*. Title IX also requires the equivalent treatment of male and female athletes and the allocation of scholarship dollars among male and female athletes proportional to their representation. See generally U.S. Dep't of Health, Educ. and Welfare, Office for Civil Rights, *A Policy Interpretation: Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71,413, 71,418 (Dec. 11, 1979).
- 8 See U.S. Department of Health, Education, and Welfare, *Policy Interpretation*, 44 Fed. Reg. at 71419 (1979).
- 9 Remarks of Senator Stevens (R-AL), 130 Cong. Rec. S4601 (daily ed. April 12, 1984).
- 10 National Collegiate Athletic Association (NCAA), 1981-82–2010-11 NCAA Sports Sponsorship and Participation Rates Report 69-70 (October 2011).
- 11 *Id.*
- 12 National Collegiate Athletic Association, 2004-10 Gender-Equity Report 28-36 (January 2012).
- 13 *Id.* at 36.
- 14 See generally Ellen J. Staurowsky et al., *Her Life Depends On It II* (Women's Sports Foundation, East Meadow, N.Y.), 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.
- 15 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.htm>; Robert Kaestner and Xin Xu, *Title IX, Girls' Sports Participation, and Adult Female Physical Activity and Weight*, 34 EVAL. REV. 52– (2010).
- 16 *Id.*
- 17 See, e.g., Staurowsky et al., *supra* note 14, 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).
- 18 *The Case for High School Activities* (National Federation of State High School Associations, Indianapolis, I.N.), 2011, at 6, available at <http://www.nfhs.org/WorkArea/DownloadAsset.aspx?id=6075>.
- 19 See Staurowsky et al., *supra* note 14, 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>.
- 20 See National Collegiate Athletic Association (NCAA), *Graduation Success Rate Report: 1999-2002 Cohorts: Overall Division I* (2009), available at http://web1.ncaa.org/app_data/nHBegsrAggr2009/1_0.pdf; *The Case for High School Activities* (National Federation of State High School Associations, Indianapolis, I.N.), 2008, at 7, available at <http://www.nfhs.org/WorkArea/linkit.aspx?LinkIdIdentifier=id&ItemId=3263> (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); Press Release, University of Central Florida, College of Business Administration, *UCF Study Looks at Diversity in Campus Leadership, Graduation Rates for Women's 2004 Sweet 16 College Teams* (March 25, 2004), available at http://www.tidesport.org/Grad%20Rates/2004_Campus_Leadership_Study_for_Women%27s%20BB.pdf (study showing that female athletes in the national basketball tournament had exceedingly high graduation rates).

- 21 Sandra L. Hanson & Rebecca S. Krauss, *Women, Sports, Science: Do female athletes have an advantage?* 71 SOC. EDUC. 93 (1998).
- 22 Staurowsky et al, *supra* note 14, at 60.
- 23 Editorial Projects in Education Research Center (EPE), Education Counts Custom Table Builder, available at <http://www.edcounts.org/createtable/step1.php>; see generally *When Girls Don't Graduate, We All Fail: A Call to Improve High School Graduation Rates for Girls* (National Women's Law Center, Washington, D.C.), 2007, available at http://www.nwlc.org/sites/default/files/pdfs/when_girls_dont_graduate.pdf.
- 24 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).
- 25 Oppenheimer/MassMutual Financial Group, *Successful Women Business Executives Don't Just Talk a Good Game – They Play(ed) One* (2002).
- 26 See, e.g., *Blediger v. Quinnipiac Univ.*, 728 F.Supp.2d 62 (D. Conn. July 21, 2010); Katie Thomas, *No Tacking, But Girls' Sports Takes Some Hits*, NY TIMES, May 16, 2010, at A1, available at <http://www.nytimes.com/2010/05/16/sports/16flag.html?pagewanted=all>; *Girls Flag Football Grabs Attention; Coming to Nevada*, RENO GAZETTE-JOURNAL, May 14, 2012, <http://www.rgj.com/viewart/20120515/PREPSORTS/305150005/Girls-flag-football-grabs-attention-coming-Nevada>.
- 27 See *Quinnipiac Univ.*, 722 F. Supp. 2d at 100 (finding “the Quinnipiac competitive cheer team’s inability to recruit off campus, its inconsistent regular season, and its aberrant post-season sufficient to conclude that the women’s competitive cheer team was not a varsity sport under Title IX”).
- 28 *Id.* at 64 (“Quinnipiac’s practice of requiring women cross-country runners to participate on the indoor and outdoor track teams, and its treatment of the indoor and outdoor track teams as, in essence, an adjunct of the cross-country team, are sufficient to show that some cross-country runners who participate on the indoor and outdoor track teams should not be counted under Title IX.”).