

The 2005 Title IX Clarification Debate

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June 22, 2005 —

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Third Approach Toward Compliance to Title IX Sparks Debate

In 1972, the Title IX Educational Act banned gender discrimination in colleges and universities, and a 1974 amendment expanded the law to include discrimination in athletic programs. Since then, schools have struggled to provide equitable opportunities for male and female athletes.

There are three ways schools can use to show they are compliant with Title IX. The first is to show that the number of male and female athletes is "substantially proportionate" to the overall composition of the student body. That means if the student population is 50 percent male and 50 percent female, the school should have about 50 percent male athletes and 50 percent female student athletes. Schools such as the University of Maryland use this formula to satisfy Title IX.

If a school cannot show the proportion of student body to student athlete by gender, it can still satisfy the requirements of Title IX by showing it has a history of continually expanding opportunities provided to the underrepresented sex, which almost always means the female athletes. Schools such as Columbia University use this test to meet Title IX.

If one sex is underrepresented among athletes, and if the institution can't show a history of expansion, it can still satisfy Title IX by demonstrating a lack of interest and ability among the underrepresented sex.

This third approach is where the debate over the new clarification lies.

An Important First Step Toward Reform

On Feb. 26, 2003, a commission appointed by President Bush to review Title IX submitted a report -- along with a dissenting report by two of the 15 commissioners -- suggesting that the Department of Education's Office of Civil Rights give schools more guidance in complying with Title IX.

According to the OCR Web site, the clarification posted on March 17 is a response to that report and was issued to "offer guidance to those schools that choose to comply with part three."

OCR's clarification offers a model survey as one of several ways schools can comply with part three. The model survey suggests polling the entire student body or all members of the underrepresented sex to assess whether or not there is interest in a sport not currently provided and if there is enough ability within the student body to create a varsity team. If survey results show that there is no interest and ability for certain sports, the school can provide proportionally fewer athletic participation opportunities to one sex, as compared to its enrollment rate, and still be in compliance with Title IX.

Essentially, if there is no interest and ability among female students, the school can provide more men's teams than women's teams and still be in compliance with Title IX and therefore eligible to receive federal funding.

"It's a strong and important first step toward reform of a policy that has wreaked havoc on college campuses," said Jim McCarthy, a spokesman from the College Sports Counsel. "What's especially positive about it is that it allows every athlete, male or female, to have opportunities in athletics simply by raising a hand and saying I wish to participate."

Lack of Response Equals Lack of Interest?

Judy Sweet, NCAA senior vice president for championships and education services, disagreed.

"The greatest weakness is that this approach indicates a lack of response is going to be interpreted as a lack of

interest," Sweet said.

The clarification states that "schools may assume that nonresponse to the census indicates an actual lack of interest if all students have been given an easy opportunity to respond to the census, the purpose of the census has been made clear, and students have been informed that the school will take nonresponse as an indication of lack of interest."

"Those of us on campus know full well that students don't respond to e-mail surveys," Sweet said.

She added another criticism of the clarification.

"What is most bothersome is that the survey would be administered to the existing student population," Sweet said. "If a student had serious interest in a sport and that institution didn't offer that sport, that student would probably choose another university."

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