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*Title IX at 40: Examining
Mysteries, Myths, and
Misinformation Surrounding
the Historic Federal Law*

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*Examining Title IX at 40:
Historical Development, Legal
Implications, and Governance
Structures*

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40th Anniversary of Title IX: Status of Girls' and Women's Sports Participation

Looking back at the historic 2012 Summer Olympic Games, we can reflect on the tremendous accomplishments of our U.S. Olympians and Paralympians. With great successes in London, many milestones were reached in terms of participation levels and medal counts. For the first time ever, women represented the majority of the U.S. team, with 269 female participants compared to 261 male participants. American women also took home most of the country's medals—winning nearly twice as many medals as their male counterparts. These important landmarks highlight the resounding impact of Title IX of the Education Amendments of 1972, which has provided an entire generation of females equal access to educational and athletic opportunities.

In honor of the 40th anniversary of Title IX, we are excited to present two new articles by Mary Jo Kane, director of the Tucker Center for Research on Girls & Women in Sport at the University of Minnesota, and Shawn Ladda, professor in the Department of Physical Education & Human Performance at Manhattan College that address the impact of Title IX over the past four decades. Ladda insightfully addresses the historical and legal challenges of this important legislation, while Kane highlights some of the misperceptions of the legislation, emphasizing the pervasive and harmful myths and stereotypes that continue to define Title IX. While most of the discussion focuses on what Title IX means to sports at a collegiate level, we can trace the impact of Title IX to high school and sports participation of younger children.



“Even though Title IX has fundamentally altered the landscape of women's sports, public knowledge and awareness about one of the most successful pieces of civil rights legislation in our nation remains deeply rooted... in mysteries, myths, and misinformation.”

Since the passage of Title IX, the number of girls who compete in high school sports has grown steadily every year—from fewer than 300,000 in 1972 to over 3 million in 2011, a ten-fold increase. Collegiate athletic programs experienced a six-fold increase in the number of female athletes over the past 40 years. The number of young males playing sports has also increased as more opportunities have been made available at all levels of play.

Coupled with the increased level of opportunities, the benefits of sports participation can also be seen both on and off the field. Sports are vital to encourage success in school, at work, and at play. Female athletes perform better academically and demonstrate higher rates of graduation than non-athletes. Additionally, female athletes are less likely to smoke, use drugs and alcohol, or become pregnant in high school.

Despite the many important advancements spurred by Title IX, America still has a long way to go before female athletes compete on a level playing field with males. Inequalities in access and financial assistance for girls and women in sports still exist in too

many communities and educational institutions across America, and these disparities are often more prevalent among minority and underserved populations, including people with disabilities. We need to work together and help each other. We've got to continue to educate and promote equal rights and opportunities for boys and girls, men and women. The health and well-being of our nation depends on it!

Shellie Y. Pfohl
Executive Director
President's Council on Fitness, Sports & Nutrition

Title IX at 40: Examining Mysteries, Myths, and Misinformation Surrounding the Historic Federal Law

Mary Jo Kane, PhD

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance."

—United States Congress, June 23, 1972

These 37 words, which make up the federal law known as Title IX, forever changed the landscape of women's sports as well as the lives of millions of girls and women, both on and off the playing fields. We have just honored and celebrated the 40th anniversary of this groundbreaking piece of civil rights legislation. All across the country, in ways large and small, the social, psychological, and physical benefits that occurred in the wake of Title IX have been well documented.¹⁻⁴ But in spite of its overwhelming success, many of the important issues surrounding Title IX—from its historic beginnings to its impact on changing (and challenging) gender roles—remain shrouded in mystery and misinformation for far too many Americans. The purpose of this article is to highlight these issues and to shed light on the pervasive and harmful myths and stereotypes that continue to define Title IX 40 years after its passage. My hope is that by doing so, I can dispel the misinformation embedded in these myths, and increase public awareness about the beyond-our-wildest-dreams consequences, some intended and some not, that resulted from this unprecedented moment in women's sports.

Historic Beginnings—The Father of Title IX

Birch Bayh, the former senator from Indiana, is often referred to as the "father of Title IX" because he co-authored and sponsored the bill in the Senate (Patsy Mink [D-Hawaii] was

also a fierce advocate for Title IX and is seen as vital to the law's passage). Against a background of social change and upheaval in the 1970s, Bayh said he went into public service to "make a difference in people's lives," and he was particularly committed to issues of gender equality. Bayh credits the influence and inspiration of women in his life—especially his maternal grandmother and his first wife—for making him keenly aware of such injustice.⁵ As a young boy, he lived with his grandmother, Kate Hollingsworth, after his mother died and his father was deployed in the armed services. Even though his grandmother worked as hard as any man, Bayh realized that under the law at the time, she could not have inherited the family farm. Bayh's wife, Marvella, also experienced gender discrimination. She was a straight-A student in high school, as well as class president, but was denied admission to the University of Virginia because until 1970, state law barred women from attending. So when Bayh had the opportunity to support a federal law designed to prohibit gender discrimination within an educational setting, he was more than ready: "I think Title IX has [made a real difference]. And I'm proud to have been a part of it."⁵

The Mystery of Title IX

For the past 25 years, I've been engaged in teaching and conducting research in the social sciences. Two of my bread-and-butter courses—Sport & Society and Sport & Gender—have

always included a major section on Title IX. Before I present the material, I ask my students to tell me what they know about the law. Even today, 40 years after passage, Title IX remains a mystery to the vast majority of my students, both male and female. It is particularly amazing to me, not to mention highly ironic, that those who have benefited most from the law, meaning female scholarship athletes, routinely respond with two basic observations: (1) it has something to do with making sure women get the same athletic opportunities as men; and (2) it's also the law that forces schools to drop men's sports. I emphasize these observations not as a criticism, but simply to point out that even though Title IX has fundamentally altered the landscape of women's sports, public knowledge and awareness about one of the most successful pieces of civil rights legislation in our nation remains deeply rooted, as the title of this manuscript suggests, in mysteries, myths, and misinformation.

With this as background, I begin my lecture with a personal touch. I tell my students that as a young girl who grew up in the 1950s and 1960s in the state of Illinois, I was the neighborhood "tomboy" who loved playing sports, but who also, as a pre-Title IX athlete, didn't have the opportunity to participate in any competitive, formal way. I also point out that it didn't matter how good or dedicated I was because there were simply no teams, let alone scholarships, available to me. Upon hearing my story, many of them look at me as if I had just landed from Mars. This type of reaction is a direct result of Title IX's success: Young women today grow up with a sense of entitlement to playing sports, even at the most elite levels of competition, and in most cases no longer hope for, but actually expect, a scholarship. It is a reaction that others who share their pre-Title IX stories also encounter. Judith Sweet, a pioneering athletic administrator and former president of the National Collegiate Athletic Association (NCAA), says that when she tells female athletes about her lack of opportunities compared to what is available to them today, "all I get are blank stares."⁶

Why Title IX Matters

Before Title IX was passed in 1972, advocates of women's sports were at the mercy—or goodwill—of athletic administrators. Perhaps not surprisingly, many of these administrators had attitudes about females engaging in athletic competition that ranged from noblesse oblige (a fund-raising breakfast here, a hand-me-down uniform there), to one of outright resistance and hostility. Far too many also believed that women's sports would be a drain on men's sports, at best, or would inevitably gut non-revenue sports, at worst. Title IX leveled the playing field for those who believed that young women deserved the same opportunities to participate in—and benefit from—a sports experience.^{7,8} Now, instead of receiving a cold shoulder or an occasional meager handout, parents and supporters of athletically gifted females

could (and did) sue for equal treatment under the law. And because Title IX is a federal law, athletic directors (ADs) were given a mandate to invest in women's sports all over the country, from the most respected universities within prestigious intercollegiate athletic conferences to little-known high schools in rural communities.

Though women's sports have yet to achieve parity 40 years after the law's passage, there have been some remarkable gains. According to the Women's Sports Foundation, approximately 300,000 young women played high school sports in the early 1970s but in 2011, that number had skyrocketed to just over three million.¹ At the intercollegiate level nationwide, approximately 30,000 women played competitive sports, but today it's close to 200,000.⁹ And finally, before Title IX, scholarships for sports-women were virtually unheard of, but in 2012, close to 43% of all college athletes who receive scholarships are female (J. Sweet, written communication, January 26, 2012). After decades of critics asserting that "females aren't that interested in—let alone very good at—playing sports," and that "no one would ever watch anyway," every March, the NCAA women's basketball Final Four breaks attendance and viewership records.¹⁰ In addition, U.S. women routinely dominate in a variety of sports at the Olympic level. For example, during the 2012 summer Games in London, female athletes captured 66% of all gold medals won by the American team.¹¹ Interest in U.S. women's sports was unprecedented: 4.4 million watched the gold medal women's soccer match between Japan and the United States, the most-watched event in the history of the newly launched NBC Sports Network.¹² At the professional level, sports leagues such as the Women's National Basketball Association (WNBA) provide career opportunities for highly gifted athletes beyond the college level. In short, Title IX "built them a ball field" and they have come—and excelled—in overwhelming numbers.

Challenges Related to Title IX Enforcement— Three Compliance Option

It is one thing to pass a law. It is quite another to enforce it, particularly when the law itself challenges, both structurally and ideologically, notions of power, prestige, and untold resources. Under such circumstances, resistance—and even backlash—inevitably occurs.^{13,14} In the case of Title IX, such resistance took place most frequently in the world of sports, even though athletics was not a major consideration when the law was being written. As you may have noticed, the words "sport" or "athletics" do not appear anywhere in the statute. But as Carpenter and Acosta⁶ point out, enforcement of Title IX within the athletic realm has received more attention from the legislative, judicial, and executive branches than any other area of the law's jurisdiction. They highlight two reasons why this has been the case: "First,

athletics involves a mainly sex-segregated construct [unlike law, sociology, or literature] and thus, discrimination is readily apparent. Second, athletics involves a historically male-centered domain, and opening the door to new participants means having to share resources previously thought to be for males alone” (p. 65). One early and obvious example of such sports-related gender imbalance, not to mention injustice, involved student fees. For decades, college and university athletic budgets were funded primarily from student fees. Female undergraduates were required to pay the same amount as their male counterparts, yet nationwide, budgets for women’s sports represented only 2% of the overall athletic budget.¹⁵ Another example of gender inequity during the pre-Title IX era comes from a letter to the editor of the Minneapolis *Star Tribune*: “In 1970, the Minneapolis school district spent more money on boys’ hockey sticks than on the entire girls’ athletic budget.”¹⁶ It is safe to say that similar scenarios existed in almost every university and school district throughout the country.

The federal institution charged with enforcing Title IX is the Office of Civil Rights (OCR) housed within the Department of Education. Over the years, OCR developed what is called the “three-prong test.” In order to be in compliance, a school needs to meet only one of the three prongs. They are as follows: (1) provide participation opportunities substantially proportionate—the “proportionality prong”—to the ratio of females to males in the undergraduate population; (2) demonstrate a history and continuing practice of program expansion; and (3) meet the interests and abilities of the underrepresented group, which in the vast majority of cases refers to females. Not surprisingly, it has been very difficult to rely on prongs two and three because there is no standard, uniformly accepted way to accurately measure what is meant by, for example, “demonstrating a history of program expansion.” Three sports in five years? Four sports in seven? Similarly, how does one measure “meeting the interests and abilities” of athletic females? Face-to-face interviews? Surveys or petitions? In contrast, the proportionality prong is much easier to measure: Calculate the percentage of female versus male students enrolled at the institution in question and compare that ratio to the percentage of participation opportunities available to female athletes. Though the first prong is easiest to measure, it is also the most controversial. Critics say that proportionality relies on a “quota system” that uses a numbers game based on roster management to determine participation opportunities.^{17,18,19} They further argue that these so-called “participation quotas” pressure schools to drop men’s nonrevenue sports such as wrestling and gymnastics. Why? Because when fewer male athletes participate—due to eliminating a sport—you have less need to add a women’s sport to increase their numbers in ways that are proportional to the number of males who are participating at any given institution.

On the surface, the concern over proportionality as a way to measure compliance seems reasonable, and appears to provide a case for opponents of Title IX who claim that universities are forced to drop men’s sports in order to comply with the law. But which sports are dropped, and that includes women’s as well as men’s, has far more to do with the large roster sizes and expenditures in collegiate football in particular, than anything related to Title IX. I say this because athletic directors typically have three options when it comes to complying with the law. The first option is to add a women’s sport, though to do so requires a significant financial investment. Even the smallest of sports such as golf, with only two coaches and six scholarships, could mean a financial commitment between \$600,000 and \$800,000 of recurring money for a sport that does not generate revenue that exceeds expenses. The second option is to drop a men’s nonrevenue sport and *save* between \$600,000 and \$800,000 of recurring money for a sport that will also never break even, let alone turn a profit.²⁰ What athletic director wouldn’t want to recoup such additional monies on a yearly basis that could then be used to offset the ever-escalating expenditures needed to fund today’s college sports programs? The key point here is that when a university meets compliance requirements by deciding to eliminate a men’s sport, Title IX has often been blamed for these decisions.

The third option is to rein in spending habits related to larger team sports such as men’s football, the details of which I will outline in the section below on “football pays for everybody.” But for now, it is important to note that when athletic directors try, for example, to curtail the recruiting budget of the football coach, they are far more vulnerable to pushback from influential boosters, alumni, and a large fan base, than when they decide to drop men’s tennis. Under such circumstances, it is easy to see why ADs have typically chosen option number two and state that “Title IX made me do it” versus taking on football, which is a particularly popular and powerful sport in the world of college athletics. But as supporters of Title IX emphasize, there is nothing in the law—either the letter or the spirit—that *requires* an educational institution to increase opportunities for females by decreasing those for their male counterparts. Unfortunately, in the pressure-cooker reality of big-time college sports, Title IX has far too often been a convenient scapegoat.²¹ Indeed, Keating’s research provides an in-depth analysis of how the distribution of scholarships allotted by the NCAA—versus Title IX—puts pressure on schools to drop men’s sports.

None of this is to suggest that dropping a men’s sport is done in a hasty, cavalier manner. Athletic directors who make such agonizing decisions must face current and former players and coaches, their families, and fan base, and defend what many will consider assaults on, and even the deaths of, proud traditions.

Nevertheless, it is important to note that these decisions are made at the local level rather than mandated by the government at the federal level. And whether it is deliberate or not, what frequently happens in the aftermath of dropping a sport is that women's sports get pitted against men's, we get distracted from taking a closer and critical look at funding decisions in men's major sports, and the impression is created that it was Title IX, and Title IX alone, that left university administrators and regents or trustees with no other options.

The Dueling Narratives of Title IX

Over the past 20 years, two major narratives have emerged regarding the critical discourse surrounding Title IX. One narrative—advanced by opponents of Title IX—is that it is a well-intentioned but unfairly enforced law that forces schools to drop men's nonrevenue sports and thus needs to be overhauled.²² The other, or counter-narrative, comes from supporters of Title IX who, as mentioned, argue that neither the letter nor spirit of the law requires educational institutions to decrease opportunities for men so that sportswomen can achieve gender equity. They also point out that, ironically, football is both the problem and the solution when it comes to addressing many of the concerns associated with Title IX.²³ The opponents' master narrative can be broken down into four major interrelated arguments. Proponents of Title IX have answered each argument with counter-arguments of their own. In the section below, I outline in detail each of these major arguments as well as their corresponding counter-arguments, respectively. In doing so, I attempt to highlight the myths, mysteries, and misinformation associated with Title IX.

Opponents' Argument #1: Women's Sports Don't Pay for Themselves

At the heart of this argument is the idea that because the vast majority of women's sports don't support themselves financially, they become an enormous federally mandated drain on the overall athletic budget. Proponents of Title IX have countered this assertion by making two essential points. First, when was it decided that educational institutions, supported by tax dollars, should offer only those extracurricular activities that pay for themselves? If that's the case, does this mean that a school should eliminate their marching band or cheerleading squad? What about student government or debate teams? Second, if this becomes the new policy, then almost all sports, including the overwhelming majority of football teams, will need to be eliminated. In the latter instance, recent data indicate that only 11.6% (14/120) of Division I football programs actually made a profit.²⁴ The reasons for this are myriad and are addressed below under opponents' third major argument.

Opponents' Argument #2: Title IX is a "Quota System" that Forces Schools to Drop Men's Sports

Though this issue has been addressed in great detail above, it is the most deeply embedded—not to mention the most powerful and pervasive—argument against Title IX and thus needs further analysis. Proponents of the law reply to this argument by stating that as is often the case with Title IX, all roads lead to football.¹⁷ One key to understanding how this sport in particular, as opposed to Title IX, puts financial pressures on athletic budgets is to make a roster comparison between the National Football League (NFL) and NCAA Division I football programs. The average size of a big-time college football team is 117²⁵ with 85 full scholarships; the roster size of all NFL teams is 53. If the gold standard in the industry, meaning the NFL, only requires a work force of 53, why do college teams need over twice that many players as well as an inordinate number of scholarships? A related issue has to do with the size of a team's travel squad. Most Division I schools travel to an away game with a squad size of between 60 and 70.¹⁷ When a team plays away from home they begin at a competitive disadvantage, so why compound that disadvantage by going up against a team with over 100 players? I suggest the answer has far more to do with saving money than with actually believing a team of 60 players is insufficient against a team of 117. The essential point here is that college football teams *do not need* such a large roster size in order to be truly competitive. It should be noted, however, that a policy to reduce roster size (as well as the number of scholarships) would need to come from the NCAA as a nationwide mandate because without it, individual schools and/or athletic conferences may feel they will be unfairly disadvantaged if they reduce the size of their roster but others do not.

What does all of this have to do with argument number two? First, supporters of Title IX argue that the real quota system in college athletics is the 85 scholarships allotted to football. Second, if we were to reduce the size of the team and the number of scholarships to, say, 70 and 50, respectively, the savings that would occur on an annual basis would go a long way toward adding a women's sport without dropping a men's. Andrew Zimbalist, an economics professor at Smith College, has estimated that "if football scholarships were cut to 60, the average college would probably save over \$1 million annually" (p. 118).²⁵ Making such reductions would also alleviate some of the participation pressures that are tied to the proportionality prong of Title IX: Because fewer males would be participating overall, there would be less need to add more participation opportunities for females.

Opponents' Argument #3: Football Pays for Everybody in Athletics

This particular argument contains one of the most damaging myths surrounding Title IX. Steeped in misinformation that is so widespread, so much a part of the common-sense wisdom of big-time college sports, and so rarely challenged in our all-pervasive sports media that it is simply stated as an obvious fact with no need for further discussion. And how can this not be the case? We see with our own eyes filled-to-capacity football stadiums, are exposed to 24/7 media coverage, and hear about college football programs that garner millions of dollars for their respective academic institutions. For example, the SEC's latest television contracts over a 15-year time period with ESPN (\$2.25 billion) and CBS (\$825 million) reflect the enormous sums of money surrounding intercollegiate football.²⁶ No one would argue that college football programs are revenue-generating machines. However, there is another side to the financial ledger that is routinely ignored by the law's critics. As I have argued elsewhere, when it comes to football, we must make a distinction between *revenue-producing versus profit-generating* financial outcomes.¹⁷ According to Weiner and Suggs,²⁷ it is simply a myth that college football (and men's basketball) not only cover their own expenses, but fully support all other sports: In 2007–08 alone, 93 out of 119 athletic departments at the Division I level ran a deficit, with losses averaging just under \$10 million.

There are a number of reasons why football, in spite of its capacity to generate millions of dollars, is, in reality, a significant drain on athletic budgets in the majority of cases.²⁸ First, football is an incredibly expensive sport to operate and maintain, ranging from equipment costs to stadium upkeep. Second, the salaries of head football coaches continue to escalate far out of proportion to any other university employee, including the president. Finally, as we have discussed, college football has a disproportionately large work force, meaning, in most cases, a squad size of 117 or more.

Because football teams are much larger than those in any other sport and, as a general rule, are given the highest priority within an athletic department, they typically require an enormous infrastructure whereby numerous employees' primary responsibility is to focus their efforts on this particular sport. Supporters of Title IX thus make the case that if you reduced the size of the football team by one-third, you would also reduce the over-sized infrastructure devoted to its care and maintenance. In sum, if intercollegiate football programs were downsized by even a third, the number of individuals needed to support the program would also be reduced proportionately and the annual savings would be significant. Clearly, under this scenario schools would recoup millions of currently invested dollars. But there is an additional reason that underscores the need to reduce the size

of college football teams—doing so would not harm athletic departments' revenues. For example, having a smaller roster would not impact the amount of money a school receives from television contracts or conference revenue-sharing agreements. Schools would also continue to capture significant sums of money from merchandising and sports apparel associated with their respective teams. And it is hard to imagine that individuals and families would stop attending games—or cancel their season tickets—to protest smaller squad sizes. The critical point here is that downsizing not only the football team, but the massive infrastructure that surrounds it, means that expenses would be significantly reduced but the institution's *income would remain stable or possibly even increase*.

Supporters of Title IX are well aware of (and sensitive to) the argument that significantly downsizing football programs would, in reality, cost a number of people their jobs. But when intercollegiate athletic directors claim there is no money in the budget to add a women's team, or that by doing so they would be forced to drop a men's team, it is simply unacceptable to ignore our hands-off policy toward football—where ever-escalating expenditures continue to put pressure on already strained or even maxed-out budgets—because of the myth that football supports the entire athletic department.

Opponents' Argument #4: Big-time College Sports as an Economic Model Is a Fact of Life in the 21st Century

When critics of Title IX hear the counter-arguments advanced above by the law's supporters, they often respond by saying that even if the never-ending race to the top does play a role in eliminating some men's sports, we have nevertheless entered into a "new world order" where the notion of amateur athletics is outdated and a profit versus loss mentality (and reality) rules the day. In short, if you want to make money, you need to invest money. Given the state of today's sports culture, it is hard to argue with such an assessment, but if this is indeed the new economic model, proponents of Title IX are right on point when they raise the following issues: Name a CEO who would keep his or her job by maintaining a work force that is over twice the size of your major competitor, meaning the number of players on an NFL roster. And how would this same CEO justify the excesses—and unnecessary expenditures—associated with college sports, such as allowing the men's basketball and football teams (and their numerous staff members) to spend the night in a hotel before every home game, a practice that is widespread throughout the country? Recruiting budgets and operating expenses continue to escalate, and we have already discussed the salaries of head coaches in college football, though there are many more examples that could easily be highlighted.

Title IX advocates point out that there is little effort to curb these types of expenses, while monumental efforts go into building new facilities, securing high-powered coaches, and raising even more money from wealthy donors, often with strings attached. In this for-profit economic model, few seem to be held accountable to the bottom line. Though it's certainly the case that coaches will be fired if they don't win, football programs can (and do) go for decades without a winning record, let alone a bowl appearance. But it is rarely the case, especially at the NCAA Division I level, that there is ever any serious thought given to actually eliminating the "product" under such circumstances, something that would occur in a profit-loss business model outside of college sports. If we were truly operating in a profit-loss world, there would be little resistance to, for example, the notion of downsizing where obvious and enormous savings would be captured on an annual basis. Excessive expenditures would be reined in and after-the-fact profits—versus revenues generated—would make up the bottom line.

Earlier in this article I pointed out that even though supporters of Title IX were highly critical of the way in which football is allowed to operate, they are also aware that if football did actually downsize, and curbed many of its unnecessary expenditures, the sport could, ironically, end up being Title IX's best friend. I say this because under the right circumstances, football is the only sport that can generate enough revenue—and actual profit—to support all sports, including women's. There is another "under the right circumstances" element that would also create an environment where gender equity could be realized for women's sports without harming men's. Rather than rely on their "economic fact of life" argument and their "golden goose" claims, opponents of Title IX could actually do the unthinkable—join forces with the law's supporters and make the case that budget pressures tied to big-time college football, not Title IX, are the real reasons why men's nonrevenue sports are eliminated. So why don't these "right circumstances" ever take place? I suggest it is for the same reasons that athletic directors choose to drop a men's sport rather than confront football. Critics realize that it is far easier (not to mention safer) to blame Title IX rather than risk the wrath of one of the most powerful institutions on the planet.

Unintended Consequences of Title IX

The spirit behind Title IX, as well as the intent of those who fought so hard to make it a reality, was that a "rise in female sports participation would automatically translate to increased leadership opportunities for women in sport."²⁹ Forty years after the passage of Title IX, nothing could be further from the truth. In fact, when it comes to females occupying positions of leadership in intercollegiate athletics—even in their own sports—we have turned back the clock in a rather dramatic fashion. Prior to

Title IX, over 90% of all head coaching positions in women's sports were occupied by females; today that number is just 43%.³⁰ When it comes to the position of athletic director, a highly visible and powerful occupation, women are even more marginalized: At the NCAA Division I level—which represents the most prestigious and influential athletic conferences—only five out of 120 ADs are women, yet prior to Title IX, more than 90% of all athletic directors in women's college sports were female.³⁰

The great irony here is that Title IX has been under constant assault for hurting men's sports. But when it comes to occupational employment, it's been an incredible boon to men because they now enjoy two career tracks—both men's *and* women's sports. It should be noted that women have not made similar inroads into men's athletics. They represent only 2% of all head coaching positions of men's collegiate teams, and rarely in a team sport such as football, basketball, or hockey.³⁰ I suggest it is no coincidence that we rarely (if ever) hear about this unintended outcome, meaning when it comes to employment opportunities, Title IX has been far more beneficial for men than for women.

The Impact of Title IX at 40 Years and Counting

As we look back over four decades, it's important to assess what Title IX has meant to our society in general and women's sports in particular. I will highlight three interrelated issues that have, in fundamental ways, changed the landscape not only in women's sports, but as a recent issue of *Sports Illustrated* honoring the 40th anniversary of Title IX makes clear, forever changed the role of women in society. First, as a direct result of Title IX, there is *unprecedented participation* by young girls and women at all levels of sport involvement, from recreational to professional. This, in turn, leads to the second issue—for the first time in our history there is a *critical mass* of females involved in sport and physical activity. Throughout our history, women have always engaged in sports, even at the highest competitive levels, from Babe Didrikson Zaharias to Althea Gibson to Billie Jean King. What is different today is that even though these sportswomen were pioneers—and made an impact beyond measure—they were considered path breakers not just because they were exceptional athletes, but because they were so few in number. As Harvard scholar Rosabeth Moss Kanter has argued in a different context, reaching critical mass reflects a "tipping point" in society, creating a more balanced gender ratio whereby the population in question (in this case, female athletes) moves beyond the status of outlier, at worst, or token presence, at best.³¹ Having reached critical mass leads directly to the final issue regarding the impact of Title IX. As mentioned earlier, young women today grow up with a *sense of entitlement* when it comes to participating in sports. It is simply assumed that if the talent and desire are there, an opportunity will be forthcoming. In this way there has indeed been fundamental

change—we have moved from a pre-Title IX era that questioned the very nature of women’s sports participation, to a 21st century belief system where it is no longer a contradiction in terms to be a female and an athlete.

A sense of entitlement extends to parents as well, and they have become some of the fiercest defenders of Title IX. Much has been written about “dads with daughters” and how those who fought hardest to ensure a young girl’s right to play was, in many, cases her father. As Donna Lopiano, the retired CEO of the Women’s Sports Foundation, points out, “[Dads] understood how much sport gave their children. Dad was the one who took his daughter into the backyard to play catch” (pp. 65–6).³² This is not meant to minimize the importance of moms in understanding the impact of sport on their daughters, nor their support for Title IX. But as Messner’s³³ research indicates, due to sexism and the “old boys” network, mothers are often marginalized within the sports world and are therefore, on average, less engaged in a more formal sense (e.g., as coaches) than are fathers.³⁴

Conclusion

Though we have come a very long way 40 years after the passage of Title IX, we still have miles to go before we reach parity. I say this because the majority of educational institutions are still not in compliance with the law, particularly in smaller, rural communities at the high school level.³⁵ With respect to high school participation rates, young girls have 1.3 million fewer opportunities than do their male counterparts.¹ Women’s sports also lag behind men’s at the NCAA intercollegiate level: In Division I alone, women receive just 36% of the recruiting budgets and 39% of the operating budgets. Finally, also at the Division I level, the median total institutional salary expenditures for head coaches of men’s sports is approximately \$916,000, compared to a median of \$646,000 for head coaches of women’s sports.³⁶

Even with these less-than-optimistic statistics, when one measures progress by using Title IX as a basis of comparison, the glass is not only half full for women’s sports, its cup runneth over. In a recent article in *Athletic Management Magazine* devoted to the 40th anniversary of Title IX, Jim Fiore, the AD at Stony Brook University, speaks for many when he says, “I truly hope that Title IX is never forgotten...rather, simply unnecessary.”³⁷ For me, the key to understanding what Title IX really means is simply this: In one generation, we have gone from young girls hoping there is a team to young girls hoping they make the team. Because of those 37 words, there is a universe of difference in that measure of hope. So Happy Anniversary, Title IX. We as a nation are now—and forever—in your debt.

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Examining Title IX at 40: Historical Development, Legal Implications, and Governance Structures

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Title IX and wider acceptance of the benefits of athletics for females have created more opportunities for women in sport, and have motivated more girls and women to pursue and achieve their goals in other aspects of life. But the road to such desirable outcomes has not been easy. This article provides a brief overview of the historical and legal challenges faced by women, in an effort to document the dramatic changes that Title IX have produced in female athletic participation and performance over the last 40 years.

Females' Sporting Life Before Title IX

Sport is considered to be a microcosm of life, and the restricted opportunities for women in athletics prior to the passage of Title IX mirrored women's opportunities in the greater society. Increased activity by females in the United States grew out of a concern for their overall wellness in the late 1800s. The main role expectations for women at that time were related to their childbearing capacity. Females were considered to be the more fragile gender. If girls and women were to engage in moderate activity, possible health consequences could be avoided. But there were also thoughts that vigorous exercise could pose a threat to the "female apparatus."

Advances in the participation of women in sports are intertwined with the successes of women in higher education. This early period from the 1880s to the 1930s was a time of establishing the right of women to attain higher education and participation in sports, and then consolidating those gains in the form of organized physical education departments, programs, and activities. These organizational gains notwithstanding, women were still perceived to "play" at sports.

The decades before the turn of the 20th century brought significant growth to higher education. There was much controversy surrounding women's access to higher education. Many people questioned the idea of women attaining higher education because they believed the "women's sphere" was in the home, so women did not need formal training. The stereotype of the perfect female of the time involved two components: getting

married and having children. When women did seek out higher education, physical and social barriers existed. Many physicians during the 1880s through the 1930s continued to reinforce the idea that women had a limited capacity for activities in life and that when they went beyond these limits, physical ramifications ensued.^{1,2} Such medical admonitions prevented many girls from even considering the pursuit of higher education. In contrast, the forerunner of the American Association of University Women (AAUW), the Association of Collegiate Alumnae (ACA), conducted a study in 1910 that showed that a student's health was related more to childhood than the college experience. Thus, it supported the idea that childhood health was a better predictor of overall health, rather than demonizing formal education's impact on women's health. Unfortunately, such studies were given little credence compared to reports from the medical community about the fragility of women.

A group of all-female higher education institutions referred to as the Seven Sister Colleges provided women with their first opportunities for higher education. Because these institutions were the first founded for the express purpose of educating women, they immediately became leaders and ground breakers in virtually everything that had to do with the development of women, including sports. The early curriculums of both Vassar and Wellesley included physical education requirements for health purposes. Much of that physical education consisted of exercises, although many of those were gymnastics. These exercises reinforced the emphasis of physical education on the improvement and maintenance of health, a quality that all but the most severe critics could agree upon. This health emphasis provided the justification for including physical education in the required curriculum for women.

Concern for the health of women inspired colleges to develop physical education programs beyond mere exercise opportunities. Among the goals of Mary Lyon, founder of the women's seminary that became Mount Holyoke College in 1837, was the preparation of future mothers and teachers.⁴ To this end, she realized that regular "calisthenics" were necessary to make women healthier

and better able to endure everyday life. For Lyon, who was known as a very dedicated educator who raised standards at the college level in order to force secondary schools to improve, the addition of physical education to the curriculum was yet another way to prove that women could handle higher education and that they were ultimately entitled to this education.

Women's colleges wanted to convince the public that their students were capable of achieving higher education without undue health problems. Athletics helped to make women stronger and healthier in order to disprove the critics who maintained that higher education would weaken and destroy. Vassar College challenged medical assumptions about the incompatibility of higher education and the female anatomy. Through the incorporation of required exercise into the curriculum, students became more physically fit, which enabled them to perform better academically. (It is interesting to note that in recent years, more studies^{5,6} have been released that show a high correlation between academic success and fitness scores.) From 1910 to 1940, the enrollment of women in colleges steadily increased. In a short time period, women's colleges had demonstrated that an educated woman was a healthy woman. Because of the emphasis on physical education as part of the total educational experience, women graduated both better educated and healthier. These physical education programs established in the early 1900s focused almost exclusively on health benefits and did not evolve into intercollegiate athletics until the 1970s. The reason for the slow development was the long-held belief by many—including parents, donors, college officials, and even students—that competitive athletics were harmful to women's health and well-being.

Women participated in sport as soon as institutions of higher education were founded to educate them.⁷ However, these sport events were organized as "play days" in order to distance them from the competitive realm. A play day consisted of two or more schools competing in a sport. Instead of one school playing another school, the teams were made up of players from all the schools that were competing, thus downplaying competition while emphasizing team play and working together, as well as physical fitness. The telegraphic form of competition and sports days were also utilized, in sports such as swimming and bowling. Each school would perform on its own campus and then compare results with other schools by telegraph. Sports days consisted of many schools competing together at one college. With many schools competing together, the emphasis was on participation as opposed to results.

Female physical educators in the early 1900s agreed that they did not want women's athletics to follow the same path that men's athletics had taken. Female physical educators felt that intercollegiate men's sport was too violent and intense because of the

contact and injuries that took place. Men's sports were also thought to exploit athletes because of the money involved. Direct payment to athletes, bribes, and slush funds were all too common in the early days of men's intercollegiate sports. In order to establish more control in intercollegiate athletics for men, more faculty members and administrators stepped in to oversee programs. To that end, the National Collegiate Athletic Association (NCAA) was established in 1910 as a means of providing oversight and control. In contrast, women were not permitted to engage in such competition and participated in sports in environments that were tightly controlled by female physical educators. Observing the flaws in men's athletics, female physical educators came to believe that competition could bring out the same negative consequences in women as it had in men, so it should be avoided at all costs.

With the exception of basketball, individual sports were much more popular than team sports for women at this time. Female physical educators made games such as basketball "safe" for women by changing the rules from those used for men's games. Thus, they avoided what they felt was the heavy competition of male sports and instead pursued "a sport for every girl and a girl in every sport," a motto that characterized this era of women's sports.

In 1923, the National Amateur Athletic Federation (NAAF) reinforced this attitude of discouraging competition for the female athlete. Again, this attitude was related to the belief that detrimental health effects could occur, competition was unladylike, and that women's athletics should not follow the same development as men's athletics had. The NAAF statement had a significant impact in diminishing intercollegiate women's competition. If the NAAF had worked for highly competitive athletics, in addition to the avowed goal of a system of sane athletics, it might have had a more positive role to play in the development of women's sports in the twentieth century.⁸ In other words, if the NAAF had lobbied for competition, women's intercollegiate athletics would have evolved much faster. But it chose not to, instead endorsing the status quo. Consequently, women's competitive intercollegiate athletics did not really begin to gather steam until the 1960s. There were a few notable exceptions to women being involved in intercollegiate athletics and athletics internationally. One such exception was the Olympic Games, although the events women were allowed to participate in were extremely limited. Another catalyst for change occurred during World War II, when women were needed in the work force to replace men who had gone off to fight. Through this work experience, women became more independent. With many men away at war, there was a void in leisure activity. In part to remedy this, the All-American Girl's Professional Baseball League was founded in 1943. While initially well received, the novelty soon

wore off, and the league lasted only 11 years. Despite the league's many successes and visibility, it did not increase the acceptance of team sports for women.

From the 1940s through the 1960s, women athletes continued to participate in noncompetitive play days. An exception was the first Women's National College Golf Tournament, organized by Gladys Palmer in 1941. However, the Executive Committee of the National Section on Women's Athletics of the American Association for Health, Physical Education, and Recreation (the early name of today's National Association for Girls and Women in Sport [NAGWS], founded in 1899) adamantly went on the record in opposition to such a competition. The golf tournament and other one-shot competitions like it were the exceptions that proved the rule concerning competition during this post-war era.

In many ways, women may have impeded their own progress. From the 1880s to the 1960s, women's sports were organized and overseen by women's physical education departments that mirrored the "separate spheres" ideology of the larger society.⁹ Women physical educators pushed for facilities and opportunities, but considered men's athletics flawed. Thus, female physical educators supported female athletics that could balance play with womanhood.

While women physical educators helped to break down barriers in order to allow women to be physically active, they also may have slowed women's progress in terms of intercollegiate athletics. Leaders within NAGWS were strongly protective of females, not wanting what they had known of men's athletics to shape women's athletics. But this initial argument that sport damaged women evolved into a healthier belief that physical activity facilitated learning and well-being. From this foundation, change could occur.

The 1960s brought a significant change to this attitude of protection. With the women's movement helping to broaden the definition of female roles and female physical educators more open to competition, women's intercollegiate athletics began to form. And with the passage of Title IX in 1972, many more opportunities for females were realized. The impact of Title IX rippled through higher education. Many colleges and universities established an intercollegiate women's athletic program for the first time. It has been stated that perhaps Billie Jean King was to professional sports development as Title IX was to educational institutions' progress.

Early Background of Title IX

Typically, the landmark Title IX decision is thought of and referenced in the context of the athletic arena. However, the initial intent was to address the problem of women being denied

employment at and admission into colleges and universities (see later comments on employment and Title IX). Dr. Bernice "Bunny" Sandler earned her doctorate at the University of Maryland and, upon graduation, applied for a faculty position. She was told that she "came on too strong for a woman." Soon afterward, Dr. Sandler volunteered at the Women's Equity Action League (WEAL) and sought to enforce an executive order issued by President Lyndon Johnson to prohibit sex discrimination within organizations with federal contracts. These sex discrimination complaints led to the passage of Title IX, prohibiting sex discrimination in all educational institutions including kindergarten through college. Through this advocacy work, Dr. Bernice Sandler came to be considered the "Godmother of Title IX."

The other major players in lobbying for support and the realization of Title IX are Senators Patsy Mink and Birch Bayh. Former Senator Birch Bayh is considered to be the father of Title IX, as he was a strong advocate and actual writer of the 37-word Title IX law. Greatly affected by strong female role models in his family, Birch Bayh embraced the idea that all people are created equal. Originally, he was concerned with women being denied admission to undergraduate and graduate colleges and universities. There was a realization as well that athletics would also fall under the auspices of Title IX, and girls and women would benefit with increased opportunities at the high school and college levels.

Legal Timeline of Title IX

Title IX is part of the Education Amendment Act of 1972 that prohibits discrimination based on sex in educational institutions that receive federal aid. Congress enacted Title IX in 1972 but schools, colleges, and universities were not required to fully comply until 1978. Initially, Title IX had a great influence on providing girls and women more opportunities in athletics. Sports such as basketball, field hockey, and softball that were more organized and widely accepted benefitted the most.

Since 1972 when Title IX was born, an *Investigator's Manual*, clarification letters (1996, 1998, 2003, 2006, and 2010), and many law suits have helped to clarify the law.¹⁰ Tracing the many law suits from both school and college levels gives further meaning to the threats of certain constituents and also reinforces what steps need to be in place to secure a fair and just society. A legal mandate does not change societal views overnight, and Title IX is no exception in its slowness at changing the cultural landscape of our country.

Just two years after the passage of Title IX, Senator John Tower of Texas proposed the Tower Amendment that would exclude "revenue producing" sports in the equation of Title IX compliance.

The wording was carefully crafted, in that “revenue producing” didn’t necessarily mean that the sport was producing a profit, but rather that it was just designated as a “revenue producing” sport. Had the Tower Amendment passed, Title IX would have had little effect on increasing opportunities for girls and women in athletics. The following will highlight some other key cases and explain their significance.

In *Cannon v. University of Chicago* (1979), it was established that one can sue an institution without first exhausting all administrative remedies, including those available within the institution or an Office for Civil Rights complaint. In other words, a private right of action is available under Title IX that gives an individual the right to bring a case to court. Clarification that both students and employees are covered under Title IX was provided by a high school case, *North Haven Board of Education v. Bell* (1982). In addition, it was determined that the Department of Health, Education, and Welfare does have “regulatory power to create, promulgate, and enforce specific regulations for Title IX.”¹¹

Women’s athletics were dealt a major setback from 1984 to 1988 because of the Supreme Court ruling on *Grove City College v. Bell* (1984). In this case, a student took Grove City College to court to obtain expanded financial aid support for women, using Title IX arguments. In brief, the Supreme Court ruled that any educational program not receiving direct federal funding did not have to comply with Title IX. The ruling was devastating for athletic gender equity, since few of these athletic programs received any direct federal funds. In other words, athletic programs would not have to comply with Title IX equity requirements. Consequently, many Title IX complaints concerning athletics were closed. For example, letters were sent from the U.S. Department of Education to Auburn University, the University of Maryland, and the Pennsylvania State University notifying these institutions of the *Grove City College v. Bell* decision; as a result, their Title IX cases were closed. Because of different interpretations of Title IX, like *Grove City v. Bell*, many of the complaints that were filed fell by the wayside.

In 1987, there was another challenge to Title IX attempting to exclude football or any sport labeled as revenue producing. In *Blair v. Washington State University* (1987), the court ruling was that all sports are within the jurisdiction of Title IX regardless of classification, just as it had been regarding the Tower Amendment.

The *Haffer v. Temple University* (1987) lawsuit was another important milestone in the gender equity story. Carpenter and Acosta explain the significance of this case: “It illustrates the fortitude required to pursue a Title IX claim in the courts during the years when Title IX was young. It set the stage for techniques to evaluate discrimination in intercollegiate sport settings.

The format used in *Haffer* of comparing benefits received by the men’s program with the benefits received by the women’s program became the model. The *Haffer* case also painfully illustrates the effect of the *Grove City* decision on cases that were pending at the time, and it stands as a witness to the lack of institutional goodwill for the cause of equity, which was to survive *Grove City*.”¹²

It was not until 1988 that Congress passed the Civil Rights Restoration Act and widened the interpretation of Title IX to include athletic programs. This interpretation meant that whether athletics received direct or indirect federal aid, the program had to comply with Title IX. Christine Grant, Women’s Athletic Director at the University of Iowa at the time, stated, “It is no coincidence that progress was phenomenal during the 1970s when Title IX was first enforced, but slow or nonexistent during the 1980s, when no penalties for discriminatory practices were enforced.”¹³ Many Title IX complaints that went by the wayside with the *Grove City v. Bell* decision were given new life with the passage of the Civil Rights Restoration Act.

In 1991, the NCAA surveyed its membership on expenditures of men’s and women’s athletic programs. The following was concluded from the results: 69.5% of collegiate athletes are men; 70% of scholarship money goes to men athletes; 77% of athletic operating budgets goes to men’s athletics; 83% of recruiting money is spent on men’s athletics. It was obvious to the NCAA after evaluating the survey results that equity had not been achieved. In March of 1992, Richard Schultz, the NCAA executive director, established an NCAA Gender Equity Task Force. The mission of the task force was to define gender equity, recommend ways to measure gender equity, and recommend ways to realize gender equity in intercollegiate athletics.

Shortly thereafter, the Supreme Court ruled in *Franklin v. Gwinnett County Public Schools* (1992) that monetary damages may be awarded under Title IX in cases of intentional discrimination. Prior to this ruling, the only penalty on an institution was to upgrade its athletic program; thus, many institutions simply used stall tactics. With this ruling, the plaintiff could now sue for damages as well.

In the fall of 1993, the NCAA Gender Equity Task Force produced its final report. Following its release, NCAA legislation was voted on at the NCAA National Convention in January 1994. Legislation was presented to help colleges and universities attain gender equity. Even so, many colleges and universities believe the NCAA has not gone far enough to instruct schools on how to comply with the gender equity law.¹⁵

Since the 1992 case of *Gwinnett*, a number of cases have provided further clarification on Title IX. *Favia v. Indiana University of Pennsylvania* found that institutions cannot use fiscal challenges,

promising future participation opportunities, counting the number of total teams, nor presence of intent to discriminate in order to defend discrimination. In 1993, Colorado State University was forced to reinstate a cut women's team and it was told the institution could not use expansion of the women's program in the 1970s to satisfy compliance. In contrast, Syracuse University in 1999 was able to use the history of upgrading defense in a Title IX suit as two women's teams were added in 1995.

The interpretation of Title IX has been disputed since its passage in 1972. The U.S. Department of Health, Education, and Welfare's Office for Civil Rights recommended defining equal opportunity as providing athletic participation opportunities of males and females in proportion to their enrollment in an institution's undergraduate student body.¹⁶ This interpretation has been challenged because some sports, such as football, require large numbers of participants, but there is no comparable sport for women. Thus, most intercollegiate athletic programs with football

are not in line with this interpretation (see further discussion of this point later in the article).

Another method of interpreting Title IX relates to measuring interest. In this context, interest means the number of students who communicate the desire for intercollegiate sport opportunities. Steve Nock, University of Virginia sociologist, believes women's interests should be measured in terms of potential for participation in women's intercollegiate sports programs.¹⁷ Nock uses the story of Anita DeFranz, Olympic Silver Medalist in crew, as an example of what he means by interest. While DeFranz was an undergraduate at Connecticut College, she was asked by a coach to participate in the sport of crew. If she had not been approached by this crew coach, DeFranz never would have known of her interest in the sport. This example illustrates Nock's definition of interest in terms of potential. Some women have not been exposed to certain sports and if they were, these women would show interest. Charlotte West, former

What have we learned about Title IX through case law?

- Fiscal difficulties are not an excuse for violating Title IX or for postponing compliance.
- The number of participants rather than the number of teams is the key to determining compliance with the Title IX requirements to provide access to participate.
- Proof of the defendant's intent to discriminate is needed to obtain monetary damages.
- Proof of the defendant's intent to violate Title IX is not needed.
- Proof of the defendant's intent to discriminate is not needed to bring forward a Title IX complaint or lawsuit; disparate result is sufficient.
- The courts may order specific remedies, including the reinstatement of a particular sport team. The courts are not limited to just ordering the defendant to increase opportunities for women.
- The "relative interest theory" is discredited and is not appropriate as a means for determining proportionality.
- Roster management, a euphemism for capping men's teams while not increasing women's opportunities, is technically legal, if not educationally sound.
- Generally, terminated men's teams cannot use Title IX to reinstate the team.
- Title IX includes a prohibition against retaliation.
- Sexual harassment is within the prohibitions of Title IX.
- The sex of the harasser and harassee need not be different.
- Notice followed by indifference to harassment is needed to obtain monetary damages in sexual harassment cases.

From: Acosta RV, Carpenter LJ. Women in intercollegiate sport: A longitudinal, national study: 35-year update, 1977–2012. 2012. Available at <http://acostacarpenter.org/AcostaCarpenter2012.pdf>.

associate athletic director at Southern Illinois University in Carbondale, stated: “Assessments of interests traditionally are unreliable. I think energies would be better spent for everyone to get (into compliance) (with Title IX) by showing added programs for women. Start showing a continuing history of program expansion.”¹⁸

In the *Cohen v. Brown* decision, nine students filed a Title IX complaint against Brown University. A U.S. District Court ruled that Brown discriminated against its female athletes and was in violation of Title IX. Judge Raymond J. Pettine explained that Title IX does not mandate statistical balance between the sexes. In the absence of such balance, however, a college must show a history of expanding sports opportunities for the underrepresented sex, or demonstrate that the interest and ability of that sex in athletics are fully accommodated. Brown does not meet either of those tests.¹⁹

Carpenter and Acosta provide a summary of what we have learned about Title IX through the case law (see box on previous page).²⁰

In 1994, Congress, after realization of continued blatant discrimination against women, enacted the Equity in Athletics Disclosure Act (EADA), which requires every coeducational institution of higher education that receives federal funding to file an annual report disclosing information on resources and opportunities allocated to male and female students and athletes. The report must include: numbers of male/female participants, total operating expenses for men’s and women’s sports, numbers of male/female head coaches, numbers of male/female assistant coaches, amount of athletic scholarship dollars allocated to males/females, salaries for coaches, and amount of recruiting dollars allocated for males/females. By making this information publically available, institutions will be more inclined to be in compliance with Title IX.

As mentioned above, within the EADA, institutions must report numbers of males and females coaching, as well as their salaries. Title IX includes employment discrimination but also overlaps with Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, and national origin. Under Title IX, both male and female student athletes are expected to have similar coaches in terms of quality. If coaching job descriptions are similar, the salary should be the same.

Currently in Congress are the High School Athletics Transparency Data Bills of 2011 that would require high schools to make similar data easily accessible to the public. High schools collect this data but it is not yet easily accessible. (See http://www.nwlc.org/sites/default/files/pdfs/hs_transparency_bills_mythsfacts.pdf.)

In 1995, Congressman Dennis Hastert, a former wrestling coach, president of the Wrestling Coaches Association, and inductee in

the Wrestling Hall of Fame, lobbied for hearings to evaluate the validity of the Title IX three-prong test, specifically the proportionality prong (for more information on the three-prong test, see Kane’s article in this issue of *Research Digest*). The result was the formation of the Commission on Opportunity in Athletics. The hearings resulted in sustaining the three-prong test. But seven years later, while Hastert was Speaker of the House, he supported a Department of Education—Office for Civil Rights Commission to again examine Title IX’s proportionality prong. The commission deliberated over eight questions that it was charged with answering. Criticism was received for the selection of members on the commission. A report entitled “Open to All: Title IX at Thirty” was released February 26, 2003, amidst controversy. Two members wrote a minority opinion on the process. Later in 2003, the Department of Education’s assistant secretary for civil rights issued the “Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance” and, yet again, confirmed the validity of the proportionality prong.

The *Jackson v. Birmingham* 2005 case saw the Supreme Court rule that one who is a whistle blower about Title IX violations cannot be retaliated against. In other words, Title IX includes a prohibition against retaliation.

Leadership—Governance Structure of Women’s Athletics

The Association of Intercollegiate Athletics for Women (AIAW) was founded in 1971 by women physical educators from NAGWS who responded to the desires of girls and women to be involved with more competitive athletics. NAGWS was founded in 1899 as the Women’s Basketball Committee (WBC) to provide rules and regulations to make the sport of basketball safe for females. The WBC developed into an organization of women physical educators overseeing the profession. The women who have served NAGWS are cherished leaders.²¹ Because there was wider acceptance and pressure for competitive sport for girls and women, the Division for Girls and Women in Sport (DGWS, now NAGWS) leaders formed the AIAW. DGWS would continue to oversee broad-based activity for females, while the AIAW would focus on the elite athletic experience.

Women’s physical education and athletics had always been based on a philosophy that valued participation first and limited competition second. The AIAW philosophy mirrored this attitude. In contrast, the NCAA valued sport specialization, competition, winning, and revenue production.

Comparing the two organizations, it is evident that the AIAW functioned more within an educational framework and the NCAA functioned more within a business framework. In 1981, the AIAW provided 41 national championships and 120,000 athletes were involved in athletics, while the NCAA provided 17 championship

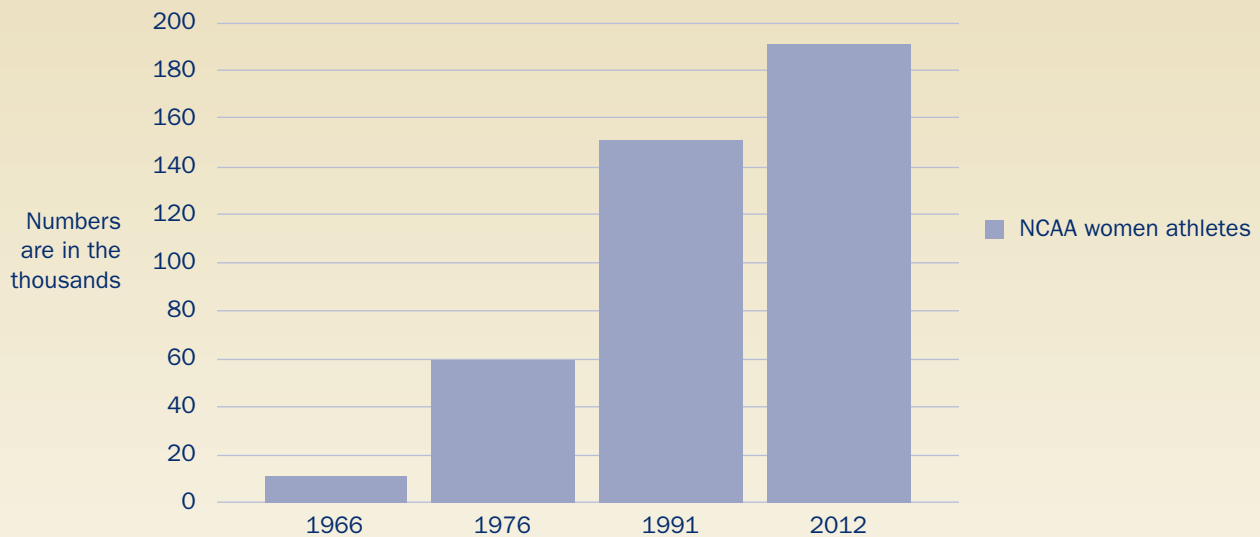
tournaments and involved 72,000 athletes. These numbers reinforced the AIAW philosophy of participation by providing more opportunities for women to participate in athletics and take part in a national championship tournament.

With the founding of the AIAW in 1971 and the passage of Title IX in 1972, women’s athletics experienced great interest and increased participation due to new opportunities. In Table 1, Carpenter and Acosta tracked a significant increase in women’s participation in intercollegiate athletics: 16,000 women in 1966; 64,000 in 1976; 158,000 in 1991; and 200,000 in 2012. This showed an increase of 184,000 women participating in intercollegiate athletics in only 46 years. In Table 2, high school data showed that girls’ participation was 294,015 in 1971; 1,940,801 in 1991; and 3,173,549 in 2010. This showed an increase of 2,879,534 girls participating in high school athletics in 39 years.²³

While the AIAW oversaw women’s athletics, the NCAA governed men’s intercollegiate athletics. With the founding of the AIAW, then the passage of Title IX, the NCAA became interested in governing women’s athletics. Two factors made the NCAA want to oversee intercollegiate women’s athletics. The AIAW had 823 membership colleges and universities and over 1000,000 student athlete participants in 1978. The NCAA saw that it would help increase its membership by including the AIAW membership schools. In addition, with the passage of Title IX, the NCAA thought it would be easier to control the implementation of Title IX while governing intercollegiate women’s athletics.^{24,25,26}

Christine Grant, associate professor emerita and athletic director emerita at the University of Iowa, recently stated, “When I became athletic director in 1973, I had no idea that we would still be talking about Title IX more than three decades later. In the first decade after Title IX was passed in 1972, there was a 10-year battle over the legislation, with the AIAW strongly supporting it and the NCAA strongly opposing it. The leadership of the NCAA first tried to have all intercollegiate athletics exempted from Title IX; they failed. They then tried to have football and men’s basketball exempt; they lost again. I believe that having lost on these two accounts, the leadership of the NCAA believed that the next best move would be to control the costs of women’s intercollegiate sports, so it was decided to start women’s championships and take control of these costs. In other words, it was another way to circumvent Title IX. The vast amount of time in my year as president of AIAW (1980–1981) was spent on this battle with the NCAA and with efforts to educate presidents of colleges and universities to support the AIAW at convention time. However, the motion to start NCAA women’s championships in Division I in January 1981 passed by a very small majority. This move, along with the NCAA’s offer to pay expenses to attend championship events, put the AIAW permanently out of business in 1982, thereby eliminating an alternate model of intercollegiate athletics, one that had been educationally sound, fiscally prudent, and built around the belief that the welfare of the student-athlete should be the top priority in all decisions.”²⁷

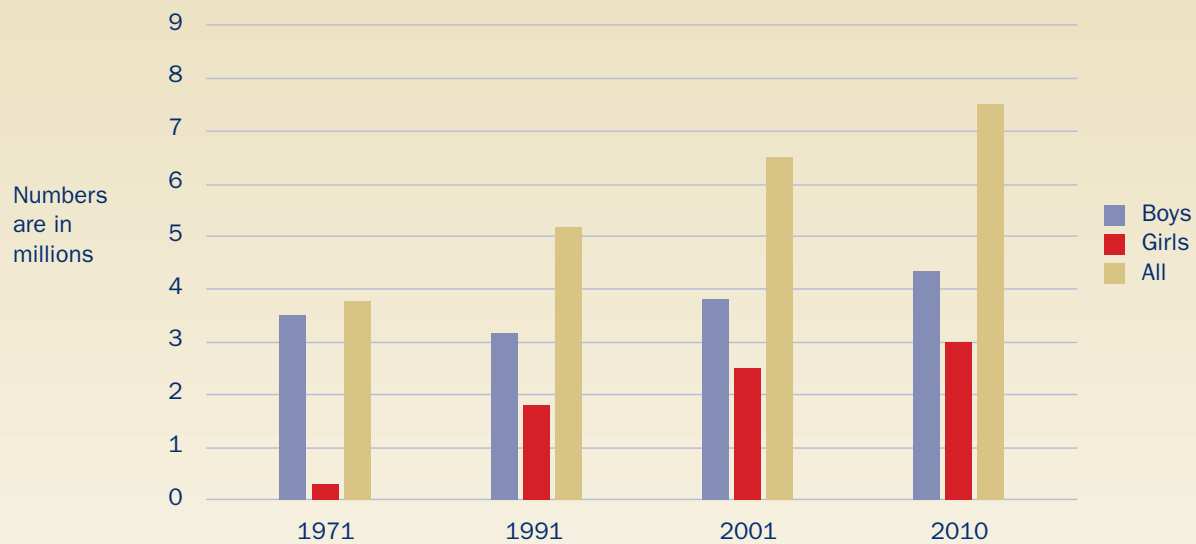
Table 1. Women’s Participation in Intercollegiate Athletics



From: Acosta RV, Carpenter LJ. Women in intercollegiate sport: A longitudinal, national study: 35-year update, 1977–2012. 2012. Available at <http://acostacarpenter.org/AcostaCarpenter2012.pdf>.

Table 2.

National Federation of State High School Associations (NFHS) Athletics Participation Summary 1971 to 2010



From: National Federation of State High School Associations (NFHS). National Federation of State High School Associations 2010–2011 Athletics Participation Summary. Available at <http://www.nfhs.org/content.aspx?id=3282>.

With mounting pressure between the AIAW and NCAA, the AIAW sued the NCAA in an anti-trust lawsuit and lost.²⁸ As a result, the AIAW was co-opted by the NCAA, and thus the NCAA had sole control over intercollegiate women's athletics.

Carpenter and Acosta made this observation: "The takeover of the governance of women's athletics guaranteed the NCAA control of women's programs. It thus limited the impact that moving toward equity for women would have on men's programs and budgets. Between 1981 and 1991, two new participation opportunities were created for women for every 1.5 new opportunities for men."²⁹ While this may appear to be progress, men's almost equal gains over this decade meant that women were never going to make up for the historic inequities or achieve numerical parity.³⁰ Men's athletic participation had not suffered at the expense of providing women athletic opportunities. An important issue in the transference of women's sports from AIAW to NCAA was the decline of women in leadership positions in women's athletics (see Acosta and Carpenter).³¹ In Table 3, percentages of females coaching women's athletic teams on the college level are 90% in 1972, 58.2% in 1978, and 42.9% in 2012. This represents a 47% decline of females coaching college and university women's athletic teams.

Donna Lopiano, former executive director of the Women's Sports Foundation and a long-time collegiate athletic administrator, stated, "The NCAA's takeover of women's sports was intended to remove a thorn in their side as opposed to a genuine commitment to growing women's sports. I would have liked to see women be given the opportunity to steer their own course...I think the NCAA takeover slowed down the development of women's sports probably by a good five to ten years."³²

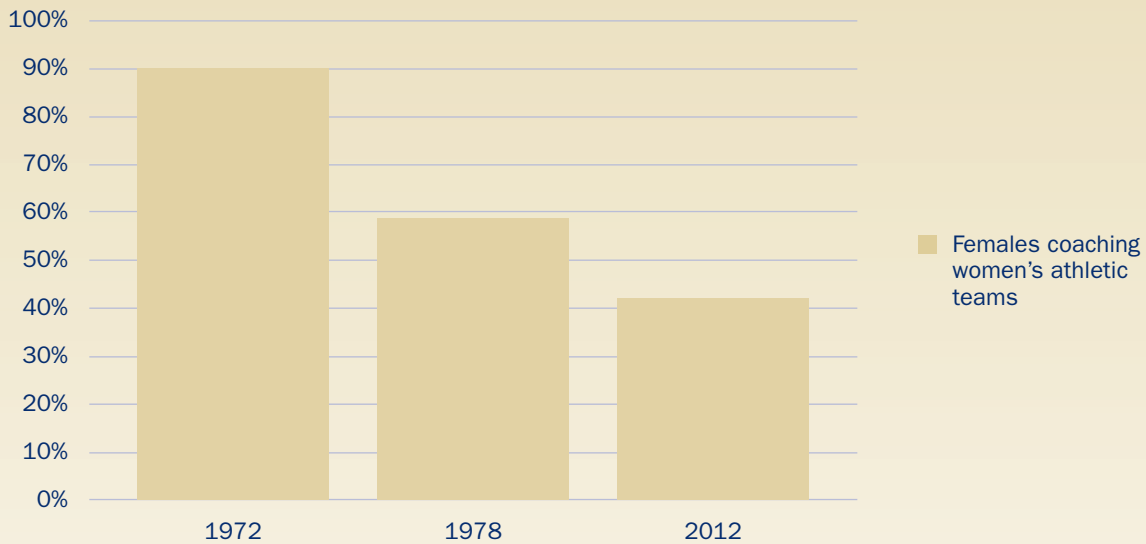
Even with the increased opportunities afforded from Title IX, we should not take these opportunities for granted and should always maintain vigilance regarding equity. Educational institutions need to not only comply with Title IX, but they should also celebrate the spirit of the law, which is to provide equal opportunity for both males and females. Compliance to the law is a much lower expectation than a changed attitude of fairness and equity. Acosta and Carpenter provide some indications of how we may know we are "there" with the spirit of Title IX (see box on p. 19).³³ Laws are often passed well before society truly embraces the greater value to broader human kind that the laws provide. If the original intent of Title IX is fully realized, both males and females will benefit.

Afterward

I am so grateful and appreciative of all the individuals who fought for Title IX and who continue to demand fairness and equity. I know I benefitted from these leaders, as I had varsity athletic opportunities in high school. In 1971, I would follow my brothers to Little League practice, standing behind the backstop, shagging foul balls. I wasn't on the field getting practice; I was not allowed to play because I was a girl. Soon though, one of my brother's coaches saw that I could play and asked me to be on the team. I said to him, "Well, I thought I wasn't allowed to play?" He said that he would clear it with each opposing coach and was sure I could play. The first game that I wore the uniform, the coach took me from a fielding position to pitch. After I struck out a boy at bat, there was outrage from the other coaches and the fans, and I was banned from Little League. The following year, with the passage of Title IX and a challenge to this Little League rule, girls were allowed to play. Unfortunately, I was over 12 years old so I was too old to play. I loved being active and playing sports and gained great confidence and self-esteem from doing so. My high school didn't have a soccer program, so I played on a club team with my brothers. Often times, parents would yell nasty things at me because they didn't like it when I could beat their sons.

During high school, I was a varsity athlete on the tennis, field hockey, basketball, and softball teams. I was recruited to play tennis in college at Penn State. But I ended up playing on the club soccer team. We were fortunate at the time that, because the university was so large, we had a bigger budget as a club team than some of the early varsity teams. We played in the first-ever soccer Eastern AIAW Championships, hosted by Brown University, with seven other teams, five of which had varsity status. In my junior year at Penn State, when the university denied signing off on an AIAW form for us to compete post-season, my teammates met with athletic director Joe Paterno (it was the only year he served as AD) and asked for elevation to varsity status. We were told the institution did not have the means to support us. We filed a Title IX complaint in 1982 that was lost in the state court system (the *Grove City* decision impacted it). It wasn't until 10 years later that Penn State established a varsity women's soccer team. These experiences have made me committed to fairness and equity for all, and I feel privileged that I recently had the opportunity to serve as a NAGWS president. I never take Title IX for granted, and I educate and reinforce to my college students the importance of valuing all humans and being committed to everyone having opportunities to fully be all one can be.

Table 3. Percentages of Females Coaching Women's Athletic Teams at the College Level



From: Acosta RV, Carpenter LJ. Women in intercollegiate sport: A longitudinal, national study: 35-year update, 1977–2012. 2012. Available at <http://acostacarpenter.org/AcostaCarpenter2012.pdf>.

Equity: Are we there yet?

Acosta and Carpenter asked, “Are we there yet? Some would point to this progress and say we’ve arrived, that the trip is complete. But progress is not completion. Movement toward equity is not full equity. How will we know when we have gotten there? Indeed, where is there? ‘There’ includes items that are not part of Title IX but are vital to accomplishing its spirit.”

Indications of arrival might include the following:

- Title IX requirements are seen as the “normal” paradigm rather than things to be circumvented or feared.
- The institutional role of athletics relates to the mission of the college or university in demonstrable ways.
- The value of the athletic experience is determined not by the fan base, but by the experience of the individual athlete.
- College presidents have higher salaries than athletics directors or coaches.
- Coaching compensation relates to the job being done, not to the sex of the athletes being coached, the sex of the coach, or the sport being coached.
- Supporters of athletics teams focus on program-wide loyalty rather than a particular sport.
- Negative pressures on life-balance issues have been eliminated.
- Self-delusional notions that big-time football programs contribute financially to an institution are understood to be false and thus no longer motivate bad administrative decisions.
- Women coaches of men’s teams are accepted and supported for their coaching skills, without regard to their sex.
- Women athletics directors are not an endangered species.
- Decisions about hiring and firing coaches and administrative staff are made by school leaders rather than fans and alumni.

From: Acosta RV, Carpenter LJ. Are we there yet? Thirty-seven years later, Title IX hasn’t fixed it all. *Academe Online*. 2009; July/August. Available at http://acostacarpenter.org/AAUP_%20Are%20We%20There%20Yet.pdf.

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