

NCWGE NATIONAL COALITION FOR WOMEN AND GIRLS IN EDUCATION

TITLE IX ATHLETICS POLICIES

Issues and Data for Education Decision Makers

**A Report
from the
National Coalition for Women and Girls in Education**

Updated May 10, 2007

The National Coalition for Women and Girls in Education (NCWGE) is a nonprofit organization composed of 50 diverse organizations dedicated to improving educational opportunities for girls and women. Established in 1975, the coalition has been a major force in developing national education policies that benefit all women and girls.

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EXECUTIVE SUMMARY

It is the position of the National Coalition for Women and Girls in Education (NCWGE) that:

- **No changes to the Title IX standards as applied to athletics are warranted or necessary; the three-part test, including its proportionality prong, is an appropriate and necessary means to implement Title IX's requirement of equality.** Modifications to the standards that would limit future opportunities for women in favor of expanded opportunities for men would violate the goal of gender equity. Any modification to the standard that is based on the premise that women are less interested than men in sports, i.e. using the results of an interest survey to limit women's participation opportunities, would be both factually inaccurate and legally invalid.
- **What is necessary to ensure equal opportunity is vigorous federal enforcement of Title IX and its implementing policies at every level of education,** not a weakening of the standards that have moved our nation toward that equality. The responsibility of the federal government is to ensure equal opportunity, not to ensure that particular sports teams are added, discontinued or maintained.
- **A "pull-back" on the nation's commitment to civil rights should not be precipitated by institutional financial decisions to reduce the size of men's sports programs in order to put increased emphasis on one or two selected men's sports** or in other ways determine the appropriate size and expense of athletics programs.

This report demonstrates the following:

- **Female athletes are not receiving equal treatment or opportunities to participate 35 years after passage of Title IX.** Although male and female participation in athletics has grown steadily, female students lag in every measurable category, including participation opportunities, receipt of scholarships and allocation of operating and recruitment budgets. Furthermore, female high school athletes receive 1.3 million fewer athletic participation opportunities than their male counterparts and female athletes receive 86,305 fewer opportunities at the college level. (Cheslock, 2007, NFHS, 2006) Thus, we have not yet reached the Title IX goal of gender equity.
- **The three-part test is flexible and lawful and reflects fundamental principles of equality.** Most educational institutions comply with Title IX's mandate to provide equal athletics participation opportunities by expanding opportunities for the underrepresented gender or by demonstrating that they have fully accommodated the interests and abilities of the underrepresented gender. Every federal appellate court that has considered the validity of the three-part test has upheld it as constitutional and consistent with the statute. The courts have repeatedly recognized that the three-part test in no way creates quotas.
- **Title IX has been wrongly blamed by its critics for cuts to some men's sports teams at some educational institutions.** Schools choose to support, eliminate, or reduce particular sports opportunities on both men's and women's specific teams for a variety of reasons, including varying interests in specific sports and choices about how to allocate budget resources among the sports teams the school decides to sponsor or

emphasize. The number, competitive level and quality of sports programs are individual institutional decisions, just as the number and quality of academic programs are institutional prerogatives. The government cannot dictate that particular varsity sports be added, retained or discontinued for men or women.

- **As is demonstrated by the increase in women’s participation in athletics since 1972, given the opportunity to play, women are just as interested in athletics as men.** The remaining discrepancies in participation rates are the result of continuing discrimination in access to equal athletic opportunities – the failure of schools and colleges to add more athletic teams for females. It is neither logical nor permissible to posit a lack of interest in college sports participation on the part of female athletes when there are 2.9 million high school female athletes vying for only 209,666 college participation slots. The female athletes are there, the female college teams are not. Furthermore, female athletes receive 1.3 million fewer athletic participation opportunities than their male counterparts at the high school level and 86,305 fewer opportunities at the college level. (Cheslock, 2007, NFHS, 2006)
- **Over the last five years the gap between male and female athletic participation in high school grew from 1.13 to 1.25 million opportunities.** In other words, more athletics participation opportunities at the high school level were added for males at the high school level than for females despite the under-representation of females. Females comprise 49% of the high school population but only receive 41% of athletic participation opportunities: 2,953,355 girls participating versus 4,206,549 boys. (NFHS, 2006)
- **Loss of male collegiate athletic participation opportunities is a myth. Male athletic participation continues to grow, and more male teams are added than are dropped.** For every 1 collegiate athletic participation opportunity added for women between 2001-02 and 2004-05 around 1 participation opportunity has been added for men. Any losses of participation opportunities in men’s sports like gymnastics, tennis or wrestling or losses of men’s teams in these sports have been more than offset by increases in men’s athletic participation opportunities in other sports like football, baseball, soccer and lacrosse through either roster size increases or the addition of new teams. Females comprise 57% of the college population, however they only receive 42% of athletic participation opportunities: 205,492 women participating versus 291,797 men in 1,895 community college and four-year institutions. Title IX requires equal “participation opportunities” for males and females (i.e., numbers of participants), not equal number of teams. The popularity of various sports, the size of teams and the adding and dropping of teams over time in both men’s and women’s sports varies widely and cannot be used to assess gender equity. (Cheslock, 2007, DeHass, 2006, U.S. GAO, 2001, Vincente, 2006)

The National Coalition for Women and Girls in Education (NCWGE) makes the following recommendations:

1. Mandate Collection of Title IX Data for High Schools

Congress should pass the High School Athletics Accountability Act/High School Sports Information Collection Act, which would require high schools to report key data, including participation numbers and budgets and expenditures, which can be used to gauge schools’ compliance with Title IX.

2. Rescind the March 2005 “Clarification”

The Department of Education should issue a policy statement rescinding the March 2005 Clarification and affirming the 1996 policy standards, which allow surveys to be only one of a multitude of factors schools can use to determine if they are satisfying the interests of the female students.

3. Improve Education

The OCR recognized the wide-spread misinformation about Title IX's application to athletics in 2003. Despite its commitment in 2003 to launching a national education campaign on Title IX, the OCR has failed to do so. Yet in order to see progress in sports equity, parents, athletes and schools must be educated about Title IX and be able to knowledgably raise complaints and spur enforcement. The OCR must take affirmative steps to educate school administrators of their obligations under Title IX, and inform coaches, parents and students of their rights to equality.

4. Control College Athletics Expenditures

While overall, schools have added more male teams than they have dropped, in the only competitive division showing a net loss of men's teams, NCAA Division I-A, the budgets for football and men's basketball consume nearly three quarters (73%) of the total men's athletics operating budget. While these 117 Division I-A schools may argue that this lopsided resource allocation is an investment in increasing revenues, the numbers show otherwise. In these athletic programs, supposedly the "most profitable," 60% currently operate at an overall deficit averaging \$4.4 million per year. Of all NCAA Division I and II schools, 85% currently operate at a deficit. (Fulks, 2005) Putting huge sums of money into one or two men's sports reduces the likelihood that schools will be financially capable of adding women's participation opportunities or reducing inequalities in treatment (scholarships, operating budgets, etc.) to comply with Title IX and increases the likelihood that other men's sports will be eliminated. Unless educational institutions and athletic governance organizations do more to control costs, this financial squeeze will affect all competitive divisions. Only by capping these spiraling costs will institutions be able to grow women's sports programs to comply with Title IX while maintaining existing participation opportunities for men.

5. Vigilant Enforcement

The OCR must strengthen its enforcement of Title IX. The OCR has never denied a school federal funding for failing to comply with Title IX, yet women and girls continue to be denied equal opportunities to participate and athletics and are not given equitable resources when they do compete. The OCR must initiate compliance reviews of educational institutions and not simply conduct investigations on a compliant-basis. In addition, when issuing findings in response to complaints, the OCR must be more vigilant in following through to ensure that schools actually implement their compliance improvement plans.

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¹ College Sports Council (CSC) Longitudinal Study of NCAA Participation Data (College Sports Council), 2007.

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B. Limitations of the Department of Education's Online Survey Method for Measuring Athletic Interest and Ability on U.S.A. Campuses by Christine Grant and Don Sabo	45

PREFACE: PRIMARY SOURCES OF DATA

The data used throughout this report are based on the following most recent sources of athletic participation and financial information. A shortened citation system (i.e., Fulks, 2005) replaces footnotes or endnotes for that purpose. Footnotes are used for explanatory comments and citations for references other than those listed below. When reports cover different time periods or groupings of institutions, multiple tables are used to provide more comprehensive views of trends and numbers.

2005-2006 High School Athletics Participation Survey. National Federation of State High School Associations, 2006.

Citation = NFHS, 2006

High school participation data have been available from 1971-72, the year Title IX was passed to the present and may be obtained from the National Federation of State High School Athletic Associations, P.O. Box 690, Indianapolis, IN 46202, Phone: (317) 972-6900, Fax: (317) 822-5700, www.nfha.org

Cheslock, J. (forthcoming). Title IX Reality Check - Who's Playing College Sports? East Meadow, NY: Women's Sports Foundation, June, 2007.

Citation = Cheslock, 2007

Due to be released on June 5, 2007, this report represents the most comprehensive analysis of collegiate athletic participation. The report examines participation changes over the 1995-96 through 2004-05 period for the same 738 NCAA institutions, which enables an analysis of participation changes controlling for growth in the size of this athletic governance organization. The report also examines participation rates for 1,895 community and four-year colleges over the 2001-02 through 2004-05 period. After June 7, contact: Women's Sports Foundation, Eisenhower Park, East Meadow, NY 11554, Phone: (516) 542-4700, Fax: (516) 542-4716, www.WomensSportsFoundation.org

DeHass, Denise. 2003-04 NCAA Gender-Equity Report. Indianapolis, IN: NCAA, 2006.

Citation = DeHass, 2006

http://www.ncaa.org/library/research/gender_equity_study/2003-04/2003-04_gender_equity_report.pdf, The National Collegiate Athletic Association 700 W. Washington Street, P.O. Box 6222, Indianapolis, IN 46206-6222, Phone: (317) 917-6222, Fax: (317) 917-6888, www.NCAA.org

Fulks, Daniel L. 2002-03 NCAA Revenues and Divisions I and II Intercollegiate Athletics Programs Report. Indianapolis, IN: NCAA, 2005.

Citation = Fulks, 2005

http://www.ncaa.org/library/research/i_ii_rev_exp/2003/2003D1aConfReport.pdf, The National Collegiate Athletic Association, 700 W. Washington Street, P.O. Box 6222, Indianapolis, IN 46206-6222, Phone: (317) 917-6222, Fax: (317) 917-6888, www.NCAA.org

United States General Accounting Office ("GAO"), (GA 01-128) Gender Equity: Men's and Women's Participation in Higher Education, December 2000.

Citation = GAO, 2000

A full copy of this report can be obtained at www.gao.gov. Search GAO Reports by date: December, 2000, and select *Gender Equity: Men's and Women's Participation in Higher Education*. This report examined the use of Prongs 1, 2 and 3 by institutions to meet Title IX athletics participation standards.

U.S. General Accounting Office Report (GAO-01-297). Intercollegiate Athletics: Four-Year Colleges' Experiences Adding and Discontinuing Teams, March 8, 2001.

Citation = GAO, 2001

A full copy of this report can be obtained at www.gao.gov. Search GAO Reports by date: March 8, 2001, and select *Intercollegiate Athletics: Four-Year Colleges' Experiences Adding and Discontinuing Teams*. The report made participation comparisons based on NAIA and NCAA data from 1981-82 to 1998-99. Athletic director survey data also compared the experience of adding and discontinuing teams from 1992-93 to 1999-00. This report examines the phenomena of adding and discontinuing sports teams. This report is being updated and the update is expected to be released late spring of 2007.

Vincente, Roberto. 1981-82 – 2004-05 Sports Sponsorship and Participation Report. Indianapolis, IN: NCAA, 2006.

Citation = Vincente, 2006

http://www.ncaa.org/library/research/participation_rates/1982-2005/1982_2005_participation_rates.pdf, National Collegiate Athletic Association, 700 W. Washington Street, P.O. Box 6222, Indianapolis, IN 46206-6222 , Phone: (317) 917-6222, Fax: (317) 917-6888, www.NCAA.org

PART I. THE LAW AND ITS IMPACT

Since enactment of Title IX of the Education Amendments of 1972, opportunities for women and girls in sports have increased dramatically. However, contrary to critiques of the impact of this law, these gains have not come at the cost of men's athletic opportunities. In fact, the number of athletic opportunities for men has also increased. Women still have far fewer athletic opportunities than men and spending on men's sports still dwarfs spending on women's athletics.

1. What is Title IX of the Education of Amendments of 1972?

A: Title IX of the Education Amendments of 1972 is the federal law barring sex discrimination in all facets of education, including sports programs. Title IX prohibits any federally funded education program or activity from engaging in sex discrimination. The statute states:

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.

-- 20 U.S.C. Section 1681.

2. How does Title IX apply to athletics?

A: Title IX requires that members of both sexes have equal opportunities to participate in sports and receive the benefits of competitive athletics. The law is exceedingly flexible, applying in a way to give schools a wide range of possible types of athletic programs. As a general matter, institutions do not have to offer any particular sport; neither men nor women have a right to play on particular teams. As long as a school provides equal participation opportunities to men and women overall, schools can decide for themselves how those opportunities should be allocated among sports or teams.

With respect to the benefits of competitive athletics, schools must ensure that male and female athletes are treated equally throughout the athletic program, including with regard to equipment and supplies; scheduling games and practices; financial support for travel and expenses; coaching; opportunities to get tutoring, where necessary; and locker rooms, fields and arenas, for example. Colleges and universities also must ensure that the overall share of athletic financial aid going to female athletes is the same as the percentage of female athletes participating in the athletic program. Specifically, athletic aid for female athletes must be within 1%, or one scholarship, (whichever is greater) of females' athletic participation rate, unless there are legitimate nondiscriminatory reasons to justify a larger disparity.

3. How does an institution show that it is offering equal participation opportunities?

A: There are three wholly independent ways to comply with Title IX's mandate that female students be provided equal participation opportunities. Schools may show that:

- the percentage of male and female athletes is the same as the percentage of male and female students enrolled at the school ("Prong One" or the "proportionality" prong), **OR**;
- they have a history and a continuing practice of expanding opportunities for the underrepresented sex, which is usually women ("Prong Two"), **OR**;
- they are completely and effectively accommodating the interests and abilities of female athletes ("Prong Three").

If a school can meet any *one* of these tests, it will be found to be in compliance with Title IX's participation requirements. This three-part test has been in effect for almost three decades and has been upheld by every one of the eight federal appeals courts that has considered it.

4. Does Congress support Title IX's application to athletics?

A: Yes. Congress has consistently taken steps to ensure that Title IX's mandate of equal education opportunities applies to athletics. In 1974, Congress rejected an amendment that would have exempted revenue-producing sports from Title IX coverage. Instead, Congress adopted the Javits Amendment, which affirmed the coverage of all sports and required Title IX regulations to take into account the nature of particular sports. Thus, for example, the regulations recognize that football uniforms cost more than swimsuits and do not require the same amount of money to be spent on each. In 1975, Congress held extensive hearings regarding the Title IX regulations, with particular attention focused on the need to address the pervasive sex discrimination in intercollegiate athletics. Congress accepted the Title IX regulations as consistent with the Javits Amendment. And, in 1987, Congress again examined the application of Title IX to athletic programs during consideration and passage of the Civil Rights Restoration Act. During this debate, many members of Congress cited Title IX's coverage of athletics with approval.

5. What is the federal government's role in enforcing Title IX?

A: Like any other statute, the federal government is to vigorously enforce the law and Title IX's implementing regulations and policies. It is not the federal government's role to protect or promote specific male or female sports or specific teams, particularly when the participants of those teams are already over-represented in the athletic department. Just as the federal government does not meddle in the specifics of the academic curriculum, schools are free to create their athletic programs in any non-discriminatory manner of their choosing.

The Department of Education's Office for Civil Rights (OCR) is the primary agency charged with making Title IX's mandate a reality. OCR has the power to withhold federal funding from a school that refuses to comply with the law, although OCR has never used this powerful tool. It is the federal government's role to vigorously ensure boys and girls,

men and women have equal opportunities in athletics. This important principle must be acknowledged.

6. Has Title IX helped to increase overall athletics opportunities for women and girls?

A. Yes. Opportunities for girls and women to play sports have increased by 904% at the high school level and 456% at the college level since 1972. See tables 1, 2, 3, 4 and 5.

7. Has men’s overall participation in athletics decreased since the enactment of Title IX?

A. No. Opportunities for boys and men to play sports at the high school level have increased by 12.7% and by 30.8% at the college level since 1972. See tables 1, 2, 3, 4 and 5.

8. Have women achieved equity in participation rates compared to men’s sports?

A. No. Females comprise 49% of the high school student population and receive only 41% of athletic participation opportunities. Females comprise 57% of the college student population and receive only 42% of athletic participation opportunities. Various studies consistently show that women are far from achieving equal opportunity in athletic participation. See tables 1, 2, 3, 4 and 5.

TABLE 1²
CHANGES IN INTERCOLLEGIATE PARTICIPATION BY GENDER - 1981-1999

Gender	1981-82	1998-99	Change in Number of Participants	Percentage Change
Female	90,100	162,783	+72,683	81%
Male	220,178	231,866	+11,688	5%

- GAO, 2001

TABLE 2
CHANGES IN INTERCOLLEGIATE PARTICIPATION BY GENDER – 2001-2004

Gender	2001-2002	2004-2005	Change	Percentage Change
Female	198,623	209,666	+11,043	5.6 percent
Male	285,215	295,180	+9,965	3.5 percent

- Cheslock, 2007³

² Table 1 data include participation figures obtained from both NCAA and NAIA institutions, rather than association participation data, thereby eliminating the factors of participation growth as a function of membership transfers between these organizations and duplicate counting due to dual association memberships. Only National Federation of State High School Associations (NFSHSA) high school participation and National Collegiate Athletic Association (NCAA) college participation data is available from 1971-72. National Association for Intercollegiate Athletics (NAIA) data is only available from 1981-82.

NCAA participation data was available for 1971-72. Table 3 shows that 2000-01 NCAA female participation still remains below men's pre-Title IX 1971-72 participation levels.

TABLE 3
CHANGES IN NCAA PARTICIPATION SINCE TITLE IX

Gender	1971-1972	2004-2005	Change	Percent Increase
Female	29,977	166,728	136,751	456 percent
Male	170,384	222,838	52,454	30.8 percent

- *Vincente, 2006*

At the high school level, the growth of female participation has also been significant. However, female participation in high school is 1.3 million opportunities below male participation levels and girls still have not reached the level of participation opportunities that boys had in 1972. See Tables 4 and 5. Disturbingly, over the last five years, the girls' high school participation gap has increased. See Chart 1.

TABLE 4
CHANGES IN HIGH SCHOOL PARTICIPATION SINCE TITLE IX

Gender	1971-1972	2005-2006	Change	Percent Increase
Female	294,015	2,953,355	+2,659,340	904 percent
Male	3,666,917	4,206,549	+539,632	14.7 percent

- *NFHS, 2006*

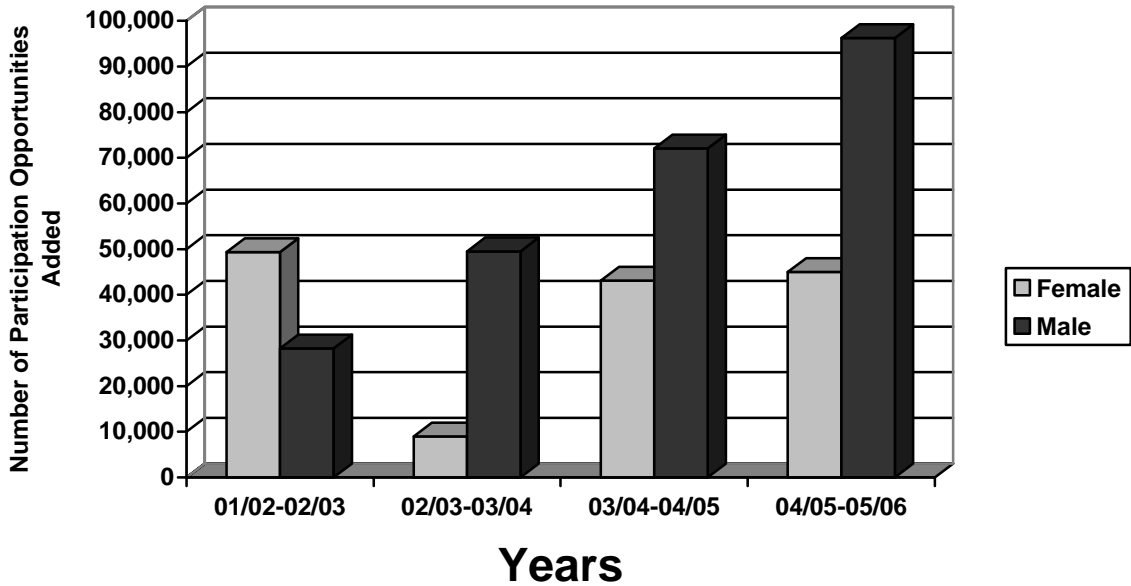
TABLE 5
HIGH SCHOOL PARTICIPATION GENDER GAP

	1971-72	1980-81	1990-91	2000-01	2005-06
Female	294,015	1,853,789	1,892,316	2,784,154	2,953,355
Male	3,666,917	3,503,124	3,406,355	3,921,069	4,206,549
Gender Gap	3,372,902	1,649,335	1,514,039	1,136,915	1,253,194

- *NFHS, 2006*

³ Table 2 examines participation data of 1895 community and four-year colleges over the 2001-02 through 2004-05 period.

Chart 1
High School Participation Opportunities Added
Per Year



9. What is the current status of expenditures on men’s and women’s athletic programs?

A: While expenditures vary by competitive division, data show significant financial disparities in the support of men’s and women’s athletics in both competitive divisions for which financial data is available.⁴

In general, there appears to have been little discipline in exercising control over the growth of men’s program budgets while schools worked to achieve Title IX compliance. Further, the results of the 2006 NCAA Gender Equity Study show that the allocation of participation slots and dollars for women in Division I and II is still far from equitable (see Table 6 through 11).

⁴ Only the NCAA produces regular reports on athletic program revenues and expenses, and only for Divisions I and II.

TABLE 6
2006 NCAA GENDER EQUITY – DIVISION I

	Male	Female
Participation	55%	45%
Athletic Scholarships	55%	45%
Operating Budget	63%	37%
Recruiting Budget	68%	32%

-- DeHass, 2006

TABLE 7.
1995-2003 NCAA DIVISION I OPERATING BUDGET EXPENSES – AVERAGE PER INSTITUTION

	Women's	Women's Percent	Men's	Men's Percent	Total Expenses
1995-96	\$1,525,000	31%	\$3,398,000	69%	\$4,923,000
1997-98	\$2,233,500	32%	\$4,808,900	68%	\$7,042,400
1999-00	\$2,623,000	34%	\$5,158,000	66%	\$7,781,000
2001-02	\$3,131,400	34%	\$5,991,200	66%	\$9,122,600
2002-03	\$3,440,200	34%	\$6,550,400	66%	\$9,990,600
2003-04	\$4,194,800	37%	\$7,285,500	63%	\$11,480,300

- DeHass, 2006

TABLE 8.
1995-2003 NCAA DIVISION I RECRUITING AND SCHOLARSHIP EXPENSES – AVERAGE PER INSTITUTION

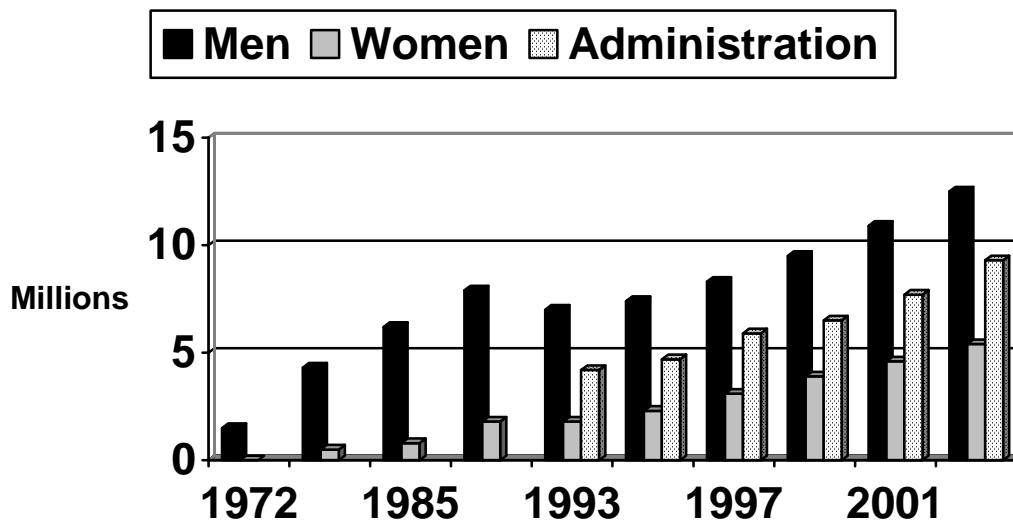
Recruiting Expenses					
	Women's	Women's Percent	Men's	Men's Percent	Total Expenses
1991-92	\$28,840	17%	\$139,152	83%	\$167,992
1995-96	\$49,176	27%	\$133,303	73%	\$182,479
1997-98	\$72,346	30%	\$171,098	70%	\$243,444
1999-00	\$85,900	32%	\$184,200	68%	\$270,100
2001-02	\$92,000	33%	\$189,500	67%	\$281,500
2002-03	\$97,300	33%	\$199,500	67%	\$296,800
2003-04	\$104,000	32%	\$218,000	68%	\$322,000

Scholarships					
	Women's	Women's Percent	Men's	Men's Percent	Total Expenses
1991-92	\$372,800	31%	\$849,130	69%	\$1,221,930
1995-96	\$634,689	38%	\$1,052,540	62%	\$1,687,229
1997-98	\$906,176	41%	\$1,320,688	59%	\$2,226,864
1999-00	\$1,055,500	43%	\$1,411,400	57%	\$2,466,900
2001-02	\$1,256,600	44%	\$1,590,300	56%	\$2,846,900
2002-03	\$1,388,100	45%	\$1,701,500	55%	\$3,089,600
2003-04	\$1,555,500	45%	\$1,891,800	55%	\$3,447,300

- DeHass, 2006

The above tables do not reflect administrative costs. In 1993, there was a change in the collection of data in order to attempt to identify administrative costs (see Chart 2, addition of third bar in 1993). These administrative costs are not fully detailed in the Fulks study but would include such "non-gender" items as academic support centers or training facilities used by both genders. However, while the expenses for men's programs were significantly reduced by this new approach, the expenses for women's programs remained almost the same, indicating that most administrative and support services and benefits benefit male athletes. Moreover, athletic program administrative costs are almost double the total allocation for women's sports operating budgets. Even setting aside administrative costs and assuming they are accurate and gender-neutral, a comparison of the financial allocations to men's and women's athletics programs since 1993 shows that significant disparities continue to exist.

CHART 2
Division IA Operating Budget Growth
Since Title IX



- Fulks, 2005

Chart 2 shows that in 1972 in Division I-A, approximately \$1.5 million was spent on average per institution on men with no reported expenditures on women's sports. Between 1972 and 1993, **for every new dollar spent on women's athletics, three additional dollars were added to the men's programs.** The Division I-A financial picture is singled out from Divisions I-AA and Divisions I-AAA because this is the only competitive division experiencing a net loss in men's teams (see Part III starting on page 19 for further discussion).

TABLE 9
2006 NCAA GENDER EQUITY – DIVISION II

	Male	Female
Participation	60%	40%
Athletic Scholarships	57%	43%
Operating Budget	58%	42%
Recruiting Budget	64%	36%

- DeHass, 2006

TABLE 10.
1995-2003 NCAA DIVISION II OPERATING BUDGET EXPENSES – AVERAGE PER INSTITUTION

	Women's	Women's Percent	Men's	Men's Percent	Total Expenses
1995-96	\$385,000	36%	\$689,000	64%	\$1,074,000
1997-98	\$508,200	38%	\$822,100	62%	\$1,330,300
1999-00	\$590,000	40%	\$886,000	60%	\$1,476,000
2001-02	\$707,800	41%	\$1,012,900	59%	\$1,720,700
2002-03	\$753,300	41%	\$1,087,000	59%	\$1,840,300
2003-04	\$900,400	42%	\$1,239,800	58%	\$2,140,200

- DeHass, 2006

TABLE 11.
1995-2003 NCAA DIVISION II RECRUITING AND SCHOLARSHIP EXPENSES – AVERAGE PER INSTITUTION

Recruiting Expenses					
	Women's	Women's Percent	Men's	Men's Percent	Total Expenses
1991-92	\$5,615	25%	\$17,290	75%	\$22,905
1995-96	\$6,684	30%	\$15,441	70%	\$22,125
1997-98	\$8,960	33%	\$18,092	67%	\$27,052
1999-00	\$10,100	35%	\$18,900	65%	\$29,000
2001-02	\$11,200	36%	\$20,200	64%	\$31,400
2002-03	\$11,700	35%	\$21,900	65%	\$33,600
2003-04	\$12,200	36%	\$21,800	64%	\$34,000

Scholarships					
	Women's	Women's Percent	Men's	Men's Percent	Total Expenses
1991-92	\$148,966	32%	\$319,543	68%	\$22,905
1995-96	\$175,258	36%	\$306,356	64%	\$22,125
1997-98	\$240,970	39%	\$374,536	61%	\$27,052
1999-00	\$268,000	41%	\$392,100	59%	\$29,000
2001-02	\$317,400	42%	\$429,800	58%	\$31,400
2002-03	\$340,600	43%	\$456,800	57%	\$33,600
2003-04	\$380,800	43%	\$514,500	57%	\$34,000

- DeHass, 2006

PART II. THE THREE-PART TEST AND THE “CLARIFICATION”

10. Why is the three-part test an appropriate and necessary means to implement Title IX’s command of equality?

A: **It would violate Title IX, and common sense, to eliminate Prong One as an acceptable way for schools to comply.** Prong One allows every female student to have the same chance of participating in athletics as every male student. Schools must be permitted to provide proportional opportunities to their male and female students. To prohibit schools from using Prong One as a way to comply with Title IX would reduce schools’ options.

Prong Two provides more flexibility than other civil rights standards; under Prong Two, schools need not actually provide equal opportunity, but may show simply that they have made, and are still making, progress toward equality. Imagine an employer claiming it is providing equal pay for women because the employer is simply making progress in steadily raising women’s pay towards equality with their male counterparts. Such an argument would never be acceptable in other contexts, but is permissible under Prong Two.

Prong Three enables schools that fall short of proportionality to show instead that they are fully meeting the actual interests of women at their schools. Prong Three allows for a school to show that it is fully accommodating the interests of its women students to participate in athletics, even though the school is not giving females the same number of opportunities to play as it gives to male students.

The three-part test guards against freezing discrimination into place. Despite Title IX’s considerable successes, there is still substantial discrimination against women. Females comprise 49% of the high school student population and receive only 41% of athletic participation opportunities. Although women in Division I colleges and universities make up 53% of the student body, they receive only 45% of the participation opportunities, 45% of the athletic scholarship dollars, 37% of athletic operating budgets, and 32% of recruiting dollars. There is also widespread discrimination against female athletes at the high school level. As courts have recognized, if schools are not allowed to comply with Title IX by offering proportional participation opportunities, women’s opportunities will be frozen at current levels. In addition, Courts have noted that even without the three-part test, schools might nevertheless continue to eliminate men’s teams in order to comply with Title IX or for some other unrelated reason,⁵ such as the athletics “arms race” discussed below. The three-part test is necessary to ensure that schools will not restrict women’s participation in athletics by unfairly limiting their opportunities.

⁵ National Wrestling Coaches Association v. U.S. Department of Education, 2004.

11. Does the three-part test establish quotas?

A: No. The three-part test imposes no numerical requirement even remotely analogous to quotas. Because athletic teams are gender-segregated, individual educational institutions must decide how many athletic opportunities they will allocate to each sex. Thus, schools are required to make gender-conscious decisions related to allocation of opportunities. Far from imposing quotas, the three-part test is merely a measurement, a benchmark for determining whether schools distribute sex-segregated athletic participation opportunities fairly. Courts have repeatedly recognized that the three-part test in no way creates quotas.

12. Is it true that schools have been forced to use Prong One, the “proportionality” prong?

A: No. Operation of the three-part test in practice has underscored the vitality of each of the three prongs and disproves any claim that schools are only able to comply under prong one. From 1994 through 1998, for example, the Office for Civil Rights at the U.S. Department of Education reviewed 74 cases that involved Title IX’s participation requirements. Of these, only 21 – or fewer than one-third – achieved compliance under Prong One. The OCR determined that the remaining schools – 53 schools – were in compliance under Prongs Two or Three.

Prong Three was used by institutions most frequently:

Prong One	28% (21 institutions)	Substantial proportionality
Prong Two	5% (4 institutions)	History and continuing program expansion
Prong Three	66% (49 institutions)	Full and effective accommodation of interests and abilities

- GAO, 2000

13. Have courts upheld the three-part test?

A: Yes. Every federal appellate court to consider the issue has upheld the validity of the three-part test, concluding it is Constitutional under the Fourteenth Amendment, is consistent with the statute and it conforms with the Administrative Procedures Act.

14. Do courts consider a school’s unequal athletic allocation decisions in violation of the three-part test to be “intentional discrimination”?

A: Yes. Schools are deemed to have intended to discriminate when their policies result in treating girls and boys differently, and organizing men’s and women’s athletics necessarily involves decisions to treat men and women differently. Assuming that a school cannot meet one of the three prongs, a school decision regarding the number of teams to sponsor, the number of scholarships it will offer, and the benefits that team is to receive signals valuing one gender's educational opportunities over another. Women or men do not need not prove that the school acted with discriminatory animus, malice or any other evidence of motive.⁶ Therefore, courts have held that the three-part test does

⁶ See, e.g., *Pederson v. La. State Univ.*, 213 F.3d 858, 881 (5th Cir. 2000) (“[The university] need not have intended to violate Title IX, but need only have intended to treat women differently”); see also *UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 199 (1991) (“Whether an employment practice involves disparate treatment through explicit facial discrimination does not depend on why the employer

not unlawfully establish a disparate-impact standard or unlawfully authorize intentional discrimination. Rather, the three-part test simply provides the means for schools to evaluate whether they have allocated these sex-segregated opportunities consistent with Title IX's non-discrimination requirements.⁷

15. Did the three-part test and the 1996 Additional Clarification unlawfully amend the 1975 Title IX Regulations?

A: No. Every court that has examined the 1979 Additional Clarification – which includes eight federal appellate courts – has upheld the validity and legality of the three-part test.⁸ Proposed drafts of both the 1979 Policy Interpretation establishing the three-part test and the 1996 Additional Clarification were published and circulated widely. Both interpretations were adopted only after considerable public input and debate. The Department published the 1979 Policy Interpretation in the Federal Register on December 11, 1978. Over 700 comments reflecting a broad range of opinion were received. In addition, HEW staff visited eight universities during June and July, 1979, to see how the proposed policy and other suggested alternatives would apply in actual practice at individual campuses. The final Policy Interpretation reflects the many comments HEW received and the results of the individual visits.⁹ A draft of the 1996 Additional Clarification was circulated in 1995 to over 4500 interested parties, soliciting comments about whether the document provided sufficient clarity to assist institutions in their efforts to comply with the 1979 Three-part test, and a notice was published in the Federal Register. Over 200 comments were considered before adopting the final Additional Clarification. The 1996 Clarification was reaffirmed by the Department in July 2003 after a high-profile public debate, and has also been given deference in courts

discriminates"); *Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1501 (10th Cir. 1995) ("absence of malevolent intent does not convert a facially discriminatory policy into a neutral policy with a discriminatory effect"); *Innovative Health Systems, Inc. v. City of White Plains*, 931 F. Supp. 222 (S.D.N.Y. 1996), *aff'd* 117 F.3d 37 (2d Cir. 1997) (ordinance against group home for disabled was discriminatory on its face even though not motivated by ill will); *Lenihan v. City of New York*, 636 F. Supp. 998, 1009 (S.D.N.Y. 1985) (intentional discrimination does not require malice or animus toward females); *United States v. Reece*, 457 F. Supp. 43 (D. Mont. 1978) (landlord's refusal to rent to single women because neighborhood was dangerous was intentional discrimination even though not motivated by any invidious intent).

⁷ *Cohen II*, 101 F.3d at 175.

⁸ See *Chalenor v. Univ. of N.D.*, 291 F.3d 1042, 1045 (8th Cir. 2002); *Pederson v. La. State Univ.*, 213 F.3d 858, 879 (5th Cir. 2000); *Neal v. Bd. of Trs. of Cal. State Univs.*, 198 F.3d 763, 770 (9th Cir. 1999); *Horner v. Ky. High Sch. Athletic Ass'n*, 43 F.3d 265, 274-75 (6th Cir. 1994), appeal after remand, 206 F.3d 685 (6th Cir. 2000), cert. denied, 531 U.S. 824 (2000); *Kelley v. Bd. of Trs., Univ. of Ill.*, 35 F.3d 265, 270 (7th Cir. 1994), cert. denied, 513 U.S. 1128 (1995); *Cohen v. Brown Univ.*, 991 F.2d 888 (1st Cir. 1993) [hereinafter *Cohen II*] (upholding the grant of a preliminary injunction to the female student-athletes); *Cohen v. Brown Univ.*, 101 F.3d 155, 170 (1st Cir. 1996), cert. denied, 520 U.S. 1186 (1997) [hereinafter *Cohen IV*] (this case was before the First Circuit twice, first on Brown University's appeal of a preliminary injunction granted by the district court (*Cohen I*), and the second time after a trial on the merits (*Cohen II*)); *Roberts v. Colo. State Bd. of Agric.*, 998 F.2d 824, 828 (10th Cir. 1993), cert. denied, 510 U.S. 1004 (1993); *Williams v. Sch. Dist. of Bethlehem*, 998 F.2d 168, 171 (3d Cir. 1993), cert. denied, 510 U.S. 1043 (1994)

⁹ 44 Fed. Reg. 71413 (1979). Policy Interpretation: Title IX and Intercollegiate Athletics (Dec. 11, 1979). Available at: <http://www.ed.gov/about/offices/list/ocr/docs/t9interp.html>

considering its validity.¹⁰ In short, the repetitious allegation that the three-part test is an unlawful change to the 1975 Regulations has been closely examined by federal courts throughout the country, Congress and the Department of Education, and has been found to be without merit.

16. Are women less interested in athletics than men?

A: No. The dramatic increase in girls' and women's participation in sport since Title IX was passed in 1972 (by 456% at the college level and 904% in high schools) demonstrates that it was lack of opportunity – not lack of interest – that kept females out of high school and college athletics for so many years. Before Title IX, women were told that they were not as interested in law or medicine as men were. But given equal opportunity to pursue these interests, women thrive in these fields. Similarly, given equal athletic opportunities, women will rush to fill them; the remaining discrepancies in sports participation rates are the result of continuing discrimination in access to those opportunities.

Additionally, it simply defies reality for colleges to claim a lack of interest in sports participation on the part of female athletes. With more than 2.9 million girls playing high school sports and hundreds of thousands more participating in Olympic sports not traditionally offered in schools and colleges – and with only 209,666 female participation opportunities available at the college level – it is clear that there are more than sufficient numbers of women interested in playing on college teams. **The single factor depressing female sports participation and Title IX compliance is the failure of schools to add more women's teams.**

To accept the stereotyped notion that women are inherently less interested in playing sports has been repeatedly rejected by courts. Gender-based stereotypes used to justify limits on women's opportunities are illegal.

17. Do interest surveys really measure women's interest in sports?

A: No. As courts have recognized, surveys are likely merely to measure the discrimination that has limited, and continues to limit, sports opportunities for women and girls. As the U.S. Court of Appeals for the First Circuit stated in *Cohen v. Brown University*:

“Interests and abilities rarely develop in a vacuum; they evolve as a function of opportunity and experience...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...Moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women.”¹¹

¹⁰ See e.g., *McCormick v. School District of Mamaroneck*, 370 F.3d 275, 300 (2nd Cir. 2004); *Miami University Wrestling Club v. Miami Univ.*, 302 F.3d 608, 613 (6th Cir. 2002); *Chalenor v. University of North Dakota*, 291 F.3d 1042, 1045 (8th Cir. 2002); *Neal v. Board of Trustees of Calif. State Universities*, 198 F.3d 763, 771 (9th Cir. 1999).

¹¹ *Cohen v. Brown University*, 101 F.3d 155, 178-79 (1st Cir. 1996), *cert. denied*, 520 U.S. 1186 (1997).

In addition, experts in the use of survey instruments have condemned the use of surveys of interest – which measure attitude – as a way to predict behavior. Even assuming that men will be more likely than women to profess an interest in sport, women's lower levels of expressed interest – given their historic and current exclusion from a fair share of participation opportunities – cannot be used to predict their actual levels of participation when non-discriminatory opportunities are made available. To use the results of interest surveys as a justification for withholding participation opportunities would be an improper use of such methodology.¹²

18. Should sports participation opportunities be divided by comparing the relative interests of males and females?

A: No. As demonstrated above, measuring inherent interest – apart from opportunity – is impossible. In every aspect of education, interest is a reflection of opportunities. Interest explodes when opportunities are made available. Furthermore, this faulty “measurement” would freeze current levels of participation into place. As courts have already held when previously considering applying this standard of compliance, the “relative interests test” cannot withstand scrutiny on either legal or policy grounds, because it “disadvantages women and undermines the remedial purposes of Title IX by limiting required program expansion for the under-represented sex to the status quo level of relative interests...”¹³ In other civil rights contexts, the Supreme Court has rejected using statistical evidence offered to prove generalized, stereotypical notions about the genders. Indeed, many civil rights laws are passed in an effort to surmount the limiting effects of these sorts of stereotypes.

19. What is the March, 2005 “Clarification” and why would it undermine the purpose of Title IX?

A. On March 17, 2005, the Department of Education, without notice or opportunity for public comment, released a letter announcing “additional clarification” of its policy for collegiate compliance with Title IX in athletic programs.¹⁴ Under this policy, schools in which females are underrepresented in athletics compared to their proportion in the general

¹² This point has been made by, for example, Donald Sabo, Ph.D., Professor of Sociology, D'Youville College; Director of the Center for Research on Physical Activity, Sport & Health; Former President, North American Society for the Sociology of Sport. Professor Sabo was an expert witness on research methodology for the *Cohen v. Brown University* case, and has extensively analyzed the methodological problems with such surveys.

¹³ *Cohen II*, 101 F.3d at 174. Allowing schools to provide fewer athletic opportunities to females than males, “based upon the premise that women are less interested in sports than men, is ... to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women’s interests and abilities.” *Id* at 174. “Had Congress intended to entrench, rather than change, the status quo – with its historical emphasis on men’s participation opportunities to the detriment of women’s opportunities – it need not have gone to all the trouble of enacting Title IX. *Id* at 180 – 181. *See also Horner*, 43 F.3d at 274, *Jeldness v. Pearce*, 30 F.3d 1220 (9th Cir. 1994), (rejecting claim that differing interests of sexes justified providing women prisoners with fewer educational opportunities than male prisoners.)

¹⁴ Women’s Sports Foundation. “Department of Education Creates Huge Title IX Compliance Loophole: The Foundation Position” June 16, 2005

student body (Prong 1 of Title IX's participation requirement) and that have not demonstrated a history and continuing practice of expanding opportunities for the underrepresented sex (Prong 2) would be deemed in compliance with the law under Prong 3 of the athletic participation provision if they simply e-mailed a "model survey" to current students to determine their interests and abilities and found interest by the underrepresented sex to be lacking. Once this flawed survey was administered, the burden of demonstrating compliance with Prong 3 would shift from the college or school to the athlete. In essence, the institution would enjoy a presumption of compliance, a difficult hurdle for an athlete to surmount.

If used by schools, the new Clarification will likely perpetuate the cycle of discrimination to which female athletes have been, and continue to be, subjected. The Clarification provides an incentive for schools to use a flawed and unfair interest survey as the sole means to measure whether they are providing equal opportunities to their female students. For the reasons set forth above, the survey results will likely understate the extent of women's interest in playing sports, and will thus likely freeze women's participation at its current level – a level that continues to reflect continuing discrimination against female athletes. The Clarification also eliminates the incentive for schools to provide truly equal opportunities for female athletes or to take initiative to continue enhancing participation opportunities for them. See Appendix B for a full discussion of the limitations of the survey.

Moreover, the Clarification conflicts with a key purpose of Title IX – to encourage women's interest in sports and eliminate stereotypes that discourage them from participating.¹⁵ In fact, it is a core purpose of education to expose students to new ideas and to cultivate the undeveloped talents of our nation's youth. If young children were never exposed to new ideas, all of our five year olds would grow up to be firefighters, ballerinas, police officers, astronauts and super heroes. By undercutting the incentive for schools to provide this type of exposure, the Clarification is not only inconsistent with Title IX, but undermines a fundamental educational goal.

20. May a survey alone permissibly be used to demonstrate compliance with the law?

- A. No. While the new Clarification allows schools to use surveys alone to demonstrate compliance with the law, prior and long-standing Department of Education policies make clear that a survey of student interest may be only one of many factors that a school is required to evaluate to show that it is fully meeting women's interests. Under those prior policies – which meet the requirements of the law -- schools are also required to consider: requests by students to add a particular sport; participation rates in club or intramural sports; participation rates in sports in high schools, amateur athletic associations and community sports leagues in areas from which the school draws its students; and interviews with students, coaches, and administrators.¹⁶ The new Clarification eliminates the obligation to consider these important criteria.

¹⁵ *Neal v. Board of Trustees of the California State Universities*, 198 F.3d 763 (9th Cir. 1999).

¹⁶ See, e.g., Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (1996), available at www.ed.gov/about/offices/list/ocr/docs/clarific.html.

21. Should female students have the burden of showing that they are entitled to additional sports opportunities?

- A. No. Where schools are not providing equal participation opportunities for women or continuously improving opportunities for them – the premise for the use of the interest survey sanctioned under the new Clarification – long-standing Department of Education policies make clear that schools have the burden of showing (and the Office for Civil Rights the burden of rigorously evaluating) that they are nevertheless fully meeting the athletic interests and abilities of their female students. The new Clarification instead forces women to prove that their schools are *not* satisfying their interests and that they are entitled to additional sports opportunities. Further, the Clarification makes no provision for the Department of Education to monitor or investigate schools' implementation of the model survey or its results, meaning schools' assertions that they are in compliance with the law can go largely unchallenged. This reversal of prior policy is inconsistent with fundamental principles of equity and is a disservice to girls and women.

22. Does the new “Clarification” apply to high schools?

- A. Yes. The new Clarification states that the same general principles will often apply to intercollegiate and high school athletics programs.¹⁷ The Clarification's approach is particularly damaging for students in high schools. At the secondary level, female students are likely to have had few or no sports opportunities that would inform their response to an interest survey. At this stage of their education, it is especially important that students be encouraged to try many different sports, not have their future opportunities limited by what they might have experienced or be interested in at that time.

23. Should schools be permitted to restrict their surveys to enrolled and admitted students?

- A. No. By allowing institutions of higher education to restrict their surveys to enrolled and admitted students, the Clarification ignores the reality that female students interested in a sport not offered by a school are unlikely to attend that school. Moreover, the Clarification ignores the ways in which colleges typically recruit for men's teams. Most colleges assess prospective players regionally or nationally and entice them with scholarship offers or non-financial benefits to apply to and attend an institution. The new Clarification effectively requires women to show that they can fill a new team by relying entirely on students within their schools' current student bodies – a requirement that is not imposed upon men's teams.

24. Should schools be permitted to treat a failure to respond to the survey as evidence of a lack of interest in participating in sports?

- A. No. Response rates to surveys in general – let alone to e-mail communications – are notoriously low. There are numerous reasons that students may fail to complete a

¹⁷ Additional Clarification on Intercollegiate Athletics Policy: Three Part Test – Part Three (March 17, 2005), page 3.

survey. Students may not have access to – or regularly use -- university e-mail. (Indeed, experts suggest that there are systematic gender and other demographic differences in use of the Internet and e-mail.) Students may not receive an e-mailed survey if that e-mail gets caught in a spam filter, or they may delete an e-mail that looks like it might carry a virus. They may be too busy with other academic or extracurricular commitments to respond to a survey. Even if the e-mail accompanying the online survey states that failure to respond will be treated as evidence of lack of interest (as is required by the Clarification), students may delete the e-mail without reading this warning. To treat non-response as evidence of lack of interest is methodologically unsound, unacceptable by any research standard and unfair to young women.

25. Is it valid to presume that young women’s self-assessment of lack of ability to compete at the varsity level reflects an actual lack of ability?

- A. No. The Clarification states that “OCR will presume that a student’s self-assessment of lack of ability to compete at the intercollegiate varsity level in a particular sport is evidence of actual lack of ability.” But as the Clarification itself recognizes, “a student may have athletic skills, gained from experience in other sports, which are fundamental to the particular sport in which the student has expressed an interest.”¹⁸ A high school swimmer may, for example, have the fundamental skills to participate on a collegiate crew team; a former soccer player may be able to compete in track. Under prior Department policies, moreover, schools are expected to seek the opinions of coaches and other experts in making assessments about women’s abilities to compete at a varsity level.¹⁹ The new Clarification relieves schools of any obligation to conduct an independent assessment.

26. Should schools be permitted to create club teams to “further assess the depth and breadth” of interest that is expressed through the on-line survey?

- A. No. The new Clarification allows schools that are “unsure whether the interests and abilities they have measured will be sufficient to sustain a new varsity team” to “create a club or intramural team to further assess those interests and abilities.”²⁰ This means that schools may postpone providing equal opportunity to their female students, even where those students have already surmounted the extraordinarily high hurdles set by the Clarification for them to prove their interest and ability to compete.

27. Are schools at risk if they use the survey approved in the Clarification?

- A. Yes. Because the new Clarification authorizes an approach to providing equal opportunity for female athletes that falls far short of Title IX requirements, schools that choose to use the survey authorized by the Clarification as their sole means of evaluating compliance with the law could be vulnerable to legal challenges by students

¹⁸ *Id.*, page 10.

¹⁹ See 1996 Clarification.

²⁰ Additional Clarification on Intercollegiate Athletics Policy: Three-Part Test – Part Three (March 17, 2005), page 10.

denied access to participation opportunities as a result. If those challenges are successful, students could be entitled to monetary relief, among other remedies.

PART III.
**TRENDS IN THE DISCONTINUATION OF MEN’S AND WOMEN’S
SPORTS**

Neither Title IX nor its policies, and particularly the three-part test, explicitly or in practice require the discontinuation of men’s teams. Title IX requires that members of both sexes have equal opportunities to participate in sports (participation numbers, not numbers of sports teams) and receive the benefits of competitive athletics. As a general matter, institutions do not have to offer any particular sport; neither men nor women have a right to play on particular teams. As long as a school provides *equal* participation opportunities to men and women overall, it has the flexibility to decide how those opportunities should be allocated among sports or teams.

28. What was the net outcome with regard to total number of teams added and discontinued over what time period?

A: Tables 12 NCAA data and Table 13 GAO data on NCAA and NAIA institutions indicate that over varying time periods, both the total of male and female teams increased.

TABLE 12
**NCAA - NET OUTCOME OF ADDED AND DISCONTINUED
TEAMS**

	1981-82	2004-05	Change in # of Teams	Percentage Change
Female	4,776	9,074	+4,298	90%
Male	6,843	8,135	+1,292	19%

- Vicente, 2006

TABLE 13
**NCAA AND NAIA INSTITUTIONS - NET OUTCOME OF
ADDED AND DISCONTINUED TEAMS**

	1981-82	1998-99	Change in # of Teams	Percentage Change
Female	5,695	9,479	+3,784	66%
Male	9,113	9,149	+36	0.4%

- GAO, 2001

The June 2007 forthcoming study by J. Cheslock which examined a consistent sample of 738 NCAA institutions between the 1995-96 and 2004-05 seasons, also showed a net increase in the numbers of sports teams offered to both women and men, though men’s teams only had a small increase.

29. How did the experience of adding and discontinuing teams vary overall?

A: Overall, 80% (948 of 1,191) of institutions added one or more women's sports teams during the 1992-93 to 1999-00 period, and 72% of those did so without discontinuing any teams; 33% (391 of 1,191) of institutions added both men's and women's intercollegiate teams; and 1% (15 institutions) added only men's teams. (GAO, 2001)

30. What types of schools dropped teams versus added teams?

A: The institutions with the most competitive athletic programs (determined by competitiveness of division) and largest athletic budgets were more likely to discontinue men's teams, while the less competitive institutions with the smallest budgets were more likely to add men's teams.

TABLE 14
NCAA AND NAIA – ADDITION AND DISCONTINUATION OF MEN'S TEAMS

	Division I	Division II	Division III	NAIA
% of Schools That Added Men's Teams	15%	32%	39%	54%
% of Schools That Discontinued Men's Teams	30%	27%	18%	19%

-GAO, 2001

TABLE 15
NCAA ONLY – ADDITION AND DISCONTINUATION OF MEN'S TEAMS

	Division I	Division II	Division III
% of Schools that Added Men's Teams	34%	40%	43%
% of Schools that Discontinued Men's Teams	76%	60%	59%

- Vicente, 2006

31. Did any women's sports lose participants?

A: Yes. women's sports also reported losses. For example, there were decreases in gymnastics (-683), field hockey (-229) and fencing (-171) between 1981-82 and 1998-99. (GAO, 2001) The forthcoming Cheslock study on a consistent NCAA sample and larger community college and four-year college sample confirmed these losses. (Cheslock, 2007)

32. If wrestling lost participants while men's participation numbers increased on the whole, which male sports gained athletes?

A: The greatest participation increases were in the sports of football and baseball. Between 1981-82 and 1998-99, wrestling lost 2,648 participants, outdoor track lost 1,706 participants, tennis lost 1,405 participants, and gymnastics lost 1,022 participants, while football added 7,199 participants, baseball added 5,452 participants, lacrosse added 2,000 participants, and soccer added 1,932 participants. (GAO, 2001) The forthcoming Cheslock study on a consistent NCAA sample and larger community college and four-year college sample confirmed these losses and gains with net gains overall in men's participation. (Cheslock, 2007)

33. Was the large increase in football participation a function of schools adding more football teams?

A: No. The number of football teams decreased from 705 to 668 (a difference of 37 teams) over the 1981-82 through 1998-99 period. Football participation, on the other hand, increased by 7,199 participants: from 52,213 to 60,412 during that period. The result means fewer teams with more participants. According to the NCAA Participation Statistics Report, in 1981-82 football teams averaged 82 players, while in 1999-00 football teams averaged 94 players. (GAO, 2001, Vincente, 2006) The forthcoming Cheslock study on a consistent NCAA sample and larger community college and four-year college sample confirmed these losses and gains with net gains overall in men's participation. (Cheslock, 2007)

34. What was the impact of adding and discontinuing sports on athletic program expenditures?

A. According to the 2001 GAO report, in general, adding an intercollegiate team increased expenditures by 6% while discontinuing a team reduced expenditures by 4%, with schools with larger athletic programs experiencing smaller percentage increases for adding and smaller percentage decreases for discontinuing. Expenditures varied based on sport. When schools added football, the total athletic expenditures increased by an average of 31%, but when schools decided to discontinue wrestling, the expenditure budget decreased by only 2%. When schools decided to cut men's tennis, men's golf or men's outdoor track, they also only saved 2% of their total expenditures for each sport.

35. How do we know that Title IX was not the cause of the elimination of men’s sports?

A: The declines or changes in student interest are supported by looking at the sports in which teams were added contrasted with sports in which teams were discontinued:

TABLE 16
NCAA AND NAIA - EXAMPLES OF ADDED AND DISCONTINUED TEAMS IN
SELECTED SPORTS THROUGH 2001

Men’s Teams Discontinued	
Wrestling	-171
Tennis	-84
Gymnastics	-56

Women’s Teams Discontinued	
Gymnastics	-100
Fencing	-31
Field Hockey	-28

Men’s Teams Added	
Soccer	+135
Baseball	+85
Basketball	+82

Women’s Teams Added	
Soccer	+846
Cross-Country	+516
Softball	+432

- GAO, 2001²¹

²¹ Represents sports with highest frequencies of being added and discontinued during the 1981-1982 and 1998-99 period.

TABLE 17
NCAA - EXAMPLES OF ADDED AND DISCONTINUED TEAMS IN SELECTED SPORTS
THROUGH 2006

Men's Teams Discontinued		Women's Teams Discontinued	
Wrestling	-133	Gymnastics	-47
Tennis	-218	Fencing	-41
Gymnastics	-46	Field Hockey	-46
Men's Teams Added		Women's Teams Added	
Soccer	+88	Soccer	+565
Baseball	+80	Cross-Country	+341
Basketball	+21	Softball	+235

- Vincente, 2006

The forthcoming Cheslock study on a consistent NCAA sample and larger community college and four-year college sample confirmed these losses and gains with net gains overall in men's participation. (Cheslock, 2007)

Any claim that the decline in men's wrestling teams is due to Title IX's policies is particularly unfounded. During the period from 1984-1988, Title IX's application to intercollegiate athletics was suspended due to the Supreme Court's decision in *Grove City College v. Bell*, which held that only parts of schools directly receiving earmarked federal funds (which intercollegiate athletics do not) were covered by Title IX. **In that four-year period, when the three-part test was not in effect, colleges and universities cut wrestling teams at a rate almost three times as high as the rate of decline during the 12 years after Title IX's application to intercollegiate athletic programs was firmly reestablished through the Civil Rights Restoration Act of 1987.** From 1984 to 1988, the number of NCAA institutions sponsoring men's wrestling teams dropped by 53, from 342 to 289. During the 12 years from 1988 to 2000, the number dropped by 55, from 289 to 234. Men's overall participation also dropped during the years that Title IX was not being enforced, declining from 201,063 in 1984-85 to 178,941 in 1987-88.

Declining interest in wrestling is also manifested by high school trends. High school wrestling participation peaked in 1976-77 at 355,160. By 1981-82, it declined to 245,029, and by 1998-99, to 235,973.²²

In gymnastics, most athletic administrators would agree that the most likely reason for the elimination of teams is liability. The significant loss of women's gymnastics teams over the same time period supports this contention (see Table 6). Certainly no one would consider blaming Title IX for the loss of so many women's teams.

²² These data were supplied by the National Federation of State High School Associations.

In addition, over the last 20 years, student-athletes have been encouraged to specialize in one sport rather than compete in multiple sports, thereby reducing the number of athletes who previously had been counted as participants in each sport.

36. Why are some higher education institutions blaming equal opportunity laws for budgetary decisions?

A: The real problem is the increasing share of expenses claimed by football, basketball and the “arms race”, but rather than finding funds or reallocating expenses, schools blame Title IX. The “arms race” is a term amply used through the report of the Commission On Intercollegiate Athletics, *A Call to Action: Reconnecting College Sports and Higher Education*, Knight Foundation, June 2001. Further, throughout the next section, newspaper reports are amply quoted to demonstrate that an arms race exists. Oftentimes, association surveys and reports limit reporting of data (i.e., base salary rather than total salary, no requirement for audited year end financials from all accounts, no reports of contract period or financial incentives for completing contract period, housing allowances, etc.) and thus understate expenditures and liabilities.

Moreover, blaming Title IX may be an effort to simplify complex decisions that can be based on numerous factors, including declining interest in specific sports, liability considerations, the poor performance of specific teams, the absence of competitors within a school’s conference or region and choices about how to allocate budget revenues among the sports teams the school wishes to sponsor.

37. A recent report by the College Sports Council (CSC)²³ based on data from the 1981-82 NCAA Sports Sponsorship and Participation Rates Report presents estimates showing declines in men’s sports and claims that these declines are related to Title IX. Is this report accurate?

A: No. A detailed analysis of the report appears in Appendix A beginning on page 41. This report is inaccurate, misleading and not credible and should be disregarded.

²³ College Sports Council (CSC) Longitudinal Study of NCAA Participation Data (College Sports Council), 2007.

PART IV. FINANCIAL ISSUES FACING SCHOOLS AND POSSIBLE SOLUTIONS

As has been noted, schools choose to eliminate teams for numerous reasons. However, financial choices play a significant role in decisions about whether to add, maintain or discontinue teams. This section will discuss the financial issues facing schools, the financial choices schools make and some possible solutions to these problems.

38. Why is it important to address financial solutions?

A: Fiscally responsible athletic programs are essential predicates for public confidence in higher education. A “pull-back” on the nation’s commitment to civil rights cannot be precipitated by institutional decisions to emphasize one sport program, reduce the size of men’s sports programs or in other ways determine the appropriate size and expense of athletics programs. Institutions of higher education should not expect the federal government to weaken its commitment to gender equity, as embodied in an important civil rights law, in response to their inability to control expenditures. These institutions must instead address budgetary issues and excesses in intercollegiate athletics.

39. Are collegiate athletic programs self-supporting?

A: No. The latest results from the NCAA analysis of revenues and expenses in intercollegiate athletics (see Tables 18 & 19) show that 60% (70) of Division I-A programs are in deficit spending, as are the vast majority of schools in other divisions. The average annual deficit for those in the red is now \$4.4 million, which is up from \$2.8 million in 1997.

TABLE 18
2003 DIVISIONS I & II PROFITS/DEFICITS
Excluding Institutional Support

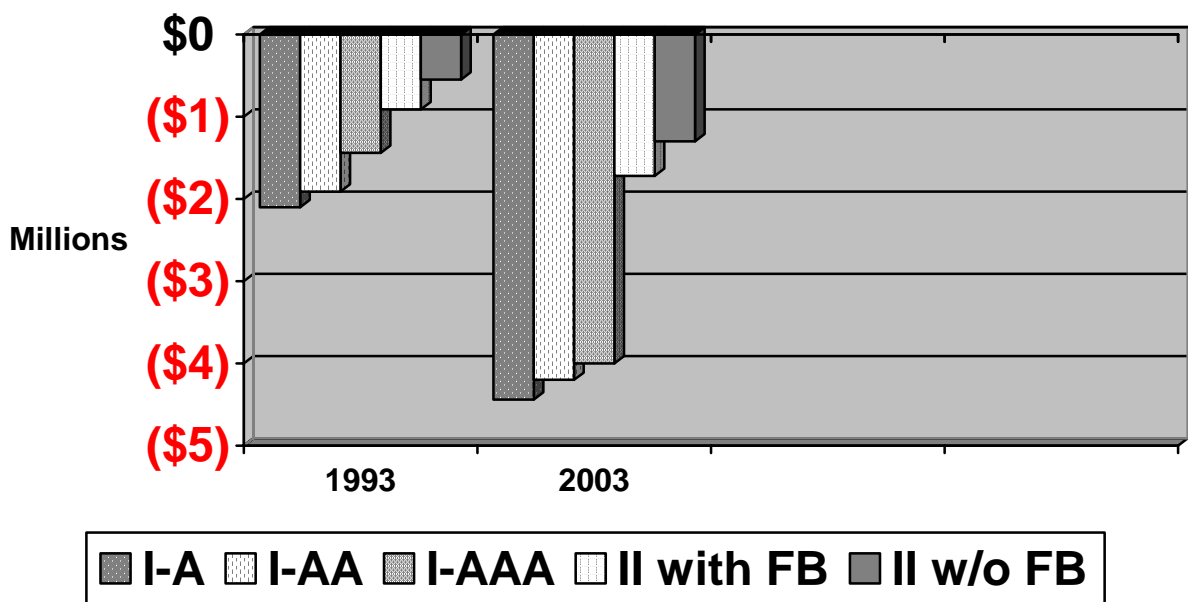
Division	Profit			Deficit		
	Number	%	Avg Amount/ school	Number	%	Avg Amount/ school
I-A	47	40%	\$5m	70	60%	(\$4.4m)
I-AA	10	9%	\$1.25m	101	90%	(\$4.2m)
I-AAA	9	11%	\$360,000	72	89%	(\$4m)
II w/FB	6	5%	\$410,000	121	93%	(\$1.72m)
II w/o FB	7	7%	\$180,000	96	93%	(\$1.3m)
Total	79	14%		1,325	85%	

-Fulks, 2005

These deficits in all subsections of Divisions I and II have been steadily increasing over the past decade – from 22% making profits in 1993 to 14% in 2003 and 78% running deficits in 1993 to 85% in 2003. Expenses have increased more quickly than have revenues, and the average deficit has also increased. Chart 3 illustrates the growing deficits:

CHART 3
GROWING DEFICITS IN ATHLETIC PROGRAMS

Excluding Institutional Support



- Fulks, 2005

40. Are football and men’s basketball programs self-supporting?

A: No. “Revenue-producing” and “profit-generating” are not equivalent terms. Many sports produce revenues, but few produce profits. Revenues are simply the money a team brings in to the school, while profits are the team revenues minus the team’s expenses. Tables 19 and 20 on page 27 reveal that 52% (187 of 359) football programs and 52% (285 of 549) basketball programs operate with budget deficits, spending more than they bring in and contributing nothing to other sport budgets.²⁴ Even among Division I-A football programs, 28% are running deficits averaging \$1.08 million per year.

²⁴ Fulks, Daniel L. 2002-03 NCAA Revenues and Divisions I and II Intercollegiate Athletics Programs Report. Indianapolis, IN: NCAA, 2005. with data extrapolated to avoid averaging averages; taking Fulks computation of % reporting deficits applied to total number of FB and BB programs in that division.

Considering the fact that significant administrative and program support expenses are not assigned to men's or women's sports and therefore not included in these operating budget figures, the sport deficit picture is undoubtedly underreported.

TABLE 19
PERCENT OF FOOTBALL PROGRAMS WITH DEFICIT BUDGETS

Division	% w/ Deficit	Total Programs	# of Programs w/ Deficits
I-A	28%	117	33
I-AA	64%	112	72
II	63%	130	82
TOTAL		359	187

- Fulks, 2005

TABLE 20
PERCENT OF BASKETBALL PROGRAMS WITH DEFICIT BUDGETS

Division	% w/ Deficit	Total Programs	# of Programs w/ Deficits
I-A	26%	117	30
I-AA	59%	112	65
I-AAA	51%	84	43
II w/ FB	63%	133	82
II w/o FB	63%	103	65
TOTAL		549	285

- Fulks, 2005

41. What is the extent to which institutions are “subsidizing” their athletic programs?

A: In 2003, Division I-A public schools received an average of \$2,239,000 in institutional support, while private schools received an average of \$7,968,000.

In addition to substantial support from the academic budget, some institutions receive student activity fees. In Division I-A public institutions, the average contribution to athletics programs from student activity fees at public schools was \$2 million and at private schools that number was \$703,000. (Fulks, 2005)

Examples:

- The *Minnesota Star-Tribune*, January 27, 2002, reported that, “Michigan [football team] led the nation in attendance for three consecutive years, but without institutional support, has barely stayed in the black.”
- In a speech to the National Press Club on January 21, 2001, University of Indiana President Myles Brand stated, “Yet, despite increased revenue, athletic departments

tend to overreach; the vast majority of Division I-A athletic programs cannot balance their budgets without university subventions. These subsidies are sometimes overt, but mostly they are buried in the [university] operating budget, for example in support for physical plant and debt service.”

- Between 80% and 95% of Division I-A athletic departments still rely on either the university's general fund or student fees to balance the budget (*USA Today*, November 16, 2006)

42. Are there financial data to support the existence of a Division I “arms race”²⁵ that may influence the ability of educational institutions to comply with Title IX and maintain men’s and women’s participation rates?

A: Yes. Myles Brand, then President of Indiana University, explained in a January 21, 2001, speech, *Academics First: Reforming Intercollegiate Athletics*, to the National Press Club, “In pursuit of even more entertainment dollars, many universities have launched an ‘arms race’ in the building of new settings for these dramas. They replace adequate, if aging, sports facilities, with stadiums and arenas matching the best that pro franchises have to offer. Coaches’ and athletic directors’ salaries rise rapidly, with many exceeding seven figures. Little expense is spared in training aids, such as video equipment and workout rooms, and there are increased ancillary personnel, including media and marketing people. The number of Division I-A athletic departments with expenditure budgets exceeding \$50 million annually is increasing.”

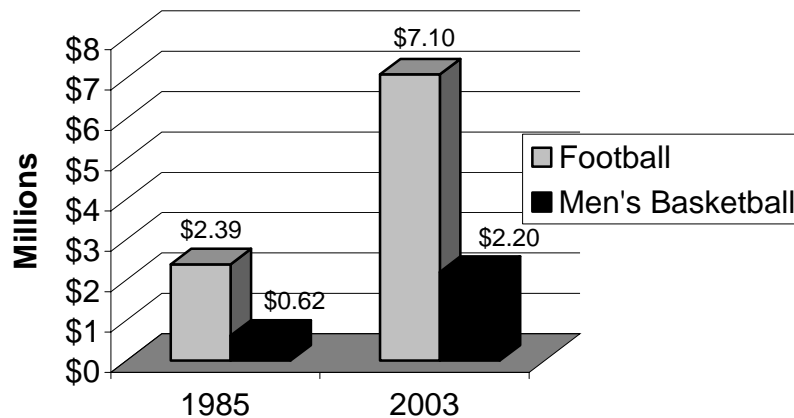
a. Operating Budgets

Chart 4 documents the increasing costs in football and men’s basketball between 1985 and 2003. (Fulks, 2005) In that time frame, average football expenditures in Division I-A nearly tripled while men’s basketball budgets grew two and one half times larger.²⁶

²⁵ The “arms race” is a term amply used through the report of the Commission On Intercollegiate Athletics, *A Call to Action: Reconnecting College Sports and Higher Education*, Knight Foundation, June 2001. Further, throughout this section, newspaper reports are amply quoted to demonstrate that an arms race exists. Oftentimes, association surveys and reports limit reporting of data (i.e., base salary rather than total salary, no requirement for audited year-end financials from all accounts, no reports of contract period or financial incentives for completing contract period, housing allowances, etc.) and thus understate expenditures and liabilities.

²⁶ However, it should be pointed out that in 1993 there was a change in the reporting form in order to more accurately determine the true costs of specific sports. Thus, “Unrelated Expenses” were decreased and sports budgets increased. Some of the increases in football and men’s basketball may be due to this factor.

**CHART 4
AVERAGE BUDGET FOR MEN'S FOOTBALL
AND BASKETBALL - NCAA DIVISION I-A**



- Fulks, 2005

b. Debt Service and Capital Expenditures

A costly trend in Division I athletic programs is the “arms race” to build new and luxurious facilities with which to entice elite student-athletes to attend a particular college or university in order to increase the odds of fielding winning teams. The Knight Commission reported that capital expenditures tied to sports at Division I-A institutions increased 250% in seven years. Even though only 15% of Division I and II intercollegiate athletic programs operate in the black, the Knight report said, more than \$4 billion is being poured into athletic facilities nationwide, with the resulting debt stretching far into the future.²⁷

In 2003, the NCAA commissioned economists Jonathan and Peter Orszag of Competition Policy Associates, Inc., to survey institutions about capital costs. The survey examined 56 institutions from Divisions I, II and III. The largest portion of capital costs is spent on football, which accounts for about 29.5% in all divisions. That number is driven by Division I-A, which spends 44.2% of capital costs on football. Divisions II and III spend a much smaller portion - 6.3% and 2.1% respectively - of capital costs on football. Football and men's basketball combined account for nearly half of capital costs in Division I, with the division-wide total estimated at 46.9% and Division I-A estimated at 54.5%. The two sports make up a smaller portion of Divisions II and III, estimated at 26.8% and 9.6%, respectively. Football and men's basketball account for 41.4% of capital costs across all three divisions.²⁸

Examples:

²⁷ Commission On Intercollegiate Athletics, *A Call to Action: Reconnecting College Sports and Higher Education*, Knight Foundation, June 2001.

²⁸ Study Reviews College Athletics Spending, April 29, 2005, <http://www.ncaasports.com/story/8429284>

- “After years of falling behind its competitors in the Big 12 Conference arms race, Baylor is finally getting its on-campus practice facility. Baylor President John Lilley announced Wednesday that the Baylor Board of Regents unanimously approved the proposal for a \$22 million football practice facility, tentatively scheduled to break ground in March. Assuming the construction plans follow through as expected, Baylor will become the last team in the Big 12 to construct a football practice facility.”
(<http://www.baylor.edu/lariat/news.php?action=story&story=43628>, Jan. 19, 2007)
- “The centerpiece of the Championship Vision Phase I was to be the Bright Football Complex and Academic Center. And, in the case of this \$27 million showcase, the vision proved to be 20/20. The complex, which houses the Aggie football locker room, meeting rooms, players lounge and coaches offices, not to mention its state-of-the-art academic support arm, has drawn rave reviews from staff personnel, players, coaches and recruits.”
(<http://www.12thmanfoundation.com/championship/P1-Introduction.aspx>, 2005)
- “The largest upcoming project — a \$14 million construction project of Bo Pilgrim Park — will be the largest financial outlay of a sports facility at Stephen F. Austin University, costing more than Homer Bryce Stadium (1973) and William R. Johnson Coliseum (1974). Hill said the athletic department will be responsible for 25 percent of the total — \$3.5 million — and the university the remaining balance through the sale of bonds. The facility will include a baseball park that will seat 1,500 fans, a softball park that will seat 600 fans, and a field house that will be home to both teams. The 29,000-square-foot field house will offer office space, meeting rooms, training and weight rooms and dressing rooms, as well as an indoor practice area and a maintenance garage.”
(http://www.dailysentinel.com/services/content/services/Special_Sections/Progress_07/stories/February_07/3prog1.html, February 18, 2007)
- University of Oregon Athletic Director, Bill Moos, “has been at the forefront of sweeping changes and \$160 million in athletic department construction, vaulting Oregon squarely ahead of all the other Northwest schools in vying for the national spotlight, both on and off the fields and courts of competition. Now, another \$120 million is being collected to build a new basketball arena to replace 76-year-old McArthur Court. There are the plasma televisions in the luxurious wood-paneled and climate-controlled \$11 million locker and weight rooms; luxury suites that ring the \$90 million addition to Autzen Stadium; and the \$14.6 million indoor practice building that set the stage for a facilities arms race among Northwest schools. And there are the \$300,000 Manhattan billboards, the links with the Yankees Entertainment and Sports Network and ESPN Regional to air games across the country, ad campaigns in USA Today, and the Nike-backed uniforms of audacious colors and designs.”
(http://seattlepi.nwsourc.com/cfootball/146327_oregon31.html, Oct. 31, 2003)

c. Football and Men’s Basketball Coach Salaries

Another significant trend in recent years is the extraordinary increase in salaries for football and men’s basketball coaches. There is no regular collection of salary data made available to the public, and the aggregated NCAA and EADA salary data

includes base salary only. The most accurate information comes from newspaper reports of institutional announcements of coach contracts or from Open Records Act requests by the media. It should be noted that the average salary for a full-time professor was \$91,548 in 2004-05.²⁹

The average pay for a Division I-A college football coach is \$950,000 this year, not counting benefits, incentives, subsidized housing or any of the perks they routinely receive. At least 42 of the 119 Division I-A coaches are earning \$1 million or more this year, up from five in 1999. Coaches' contracts these days offer far more than just the basic salary. In scrutinizing contracts, USA TODAY found all kinds of perks: personal use of private jets, low-interest home loans, land deals, million-dollar annuities, pricey luxury suites at schools' stadiums, use of vacation homes and family travel accounts. Incentive bonuses, raises and automatic contract extensions are promised for winning specific games or specific numbers of games, helping guide players to graduation, keeping players out of trouble and completing individual years of contracts. (*USA Today*, November 16, 2006)

Examples:

- Jim Tressel, coach of No. 1-ranked Ohio State, and Mack Brown, who steered Texas to the national championship a year ago, are among the nine coaches making more than \$2 million. Iowa's Kirk Ferentz will pocket a guaranteed \$4.6 million in an atypical 13-month period ending next June, including \$1.8 million in one-time payments. With the incentive bonuses he still can earn, he could push his take to more than \$4.7 million. That's the most among the 107 coaches for whom USA TODAY could obtain a contract or other official document showing compensation. Oklahoma's Bob Stoops is the only coach in that group who has cleared the \$3 million-a-year bar in guaranteed pay, although Ferentz likely will join him in 2007.
- Texas' head football coach Mack Brown received a \$1.6 million "special payment" for his 53rd birthday in 2004, before his contract was renegotiated. (*USA Today*, November 16, 2006)
- About 10% of coaches get a cut of ticket revenue; Oregon's head football coach, Mike Bellotti, got \$631,000 last season under such a provision. (*USA Today*, November 16, 2006)
- With Nick Saban's hiring for \$4 million a year, Alabama is paying him 9 percent of its football budget. According to the United States Department of Education, Alabama football generated \$44.4 million from July 1, 2005, to June 30, 2006. "This (percentage) is twice of what the acceptable, reasonable salary is I think a school can get away with," John Vrooman, sports economist at Vanderbilt University, said. Auburn football generated \$51.6 million in revenue during that span. Head coach Tommy Tuberville makes a reported \$2.2 million which is 4.3%. The University of Florida generated \$48.2 million in football revenue during

²⁹ American Association of University Professors, What Professors Earn – Average Salaries for Full-Time Faculty Members 2004-2005, Chronicle of Higher Education, April 22, 2005, <http://chronicle.com>, Section: The Faculty, Volume 51, Issue 33, Page A12, <http://chronicle.com/prm/weekly/v51/i33/33a01201.htm>

that time period and pays its coach, Urban Meyer, \$1.5 million. That's 3.3% of its football budget. Les Miles, who replaced Saban as LSU's head coach, makes \$1.45 million, about 3.7% of the Bengal Tigers' football budget. Tennessee head coach Phillip Fulmer's salary is at 7.3 percent, but the Vols' football revenue has dropped from around \$46 million to \$27.7 million. Alabama is not the only school with a high percentage level. Oklahoma pays Bob Stoops \$3.45 million, which is at 10%, and Notre Dame pays Charlie Weis a reported \$3.3 million, which is 5.3%. (*The Decatur Daily*, January 29, 2007)

- When Iowa State basketball coach Larry Eustachy made headlines last month, it wasn't just his after-hours partying with female students that raised eyebrows. More than one sports fan -- and not only those in Iowa -- were stunned to learn that Eustachy was the highest-paid public employee in the state, his \$1.1 million yearly package about four times what the university president earns. (SI.com, June 2, 2003, http://sportsillustrated.cnn.com/basketball/college/news/2003/05/30/bkb_coaching_salaries/)
- Just three years into his head-coaching job at his alma-mater, and Chris Lowery is getting the respect, and paycheck of one of the top basketball coaches in the Missouri Valley Conference. "We knew it was going to take some extra ordinary offerings to keep Chris here, particularly when Kansas, the third ranked team in the nation only beat us by three points," says Southern Illinois University President Glenn Poshard. And the university did make Coach Lowery an offer he couldn't refuse. Seven years, at \$750,000 a year. (*Heartland News*, April 4, 2007)

d. Football Bowls and Men's Final Four Expenditures

When football teams participate in bowl games or men's basketball teams travel to the Final Four (the NCAA Division I men's basketball championship), they are permitted to fund transportation, hotel, meals, gifts, and other activities for an unlimited number of alumni, spouses of players, and staff members in what many members in higher education believe to be an embarrassing expenditure of institutional funds. Potential profits from bowl appearances are used for these expenses or funneled back into the football or basketball program to further continue what many athletic directors term "the arms race."

Examples:

- The Atlantic Coast Conference allowed the (Clemson) Tigers \$1.1 million for bowl-related expenses (Humanitarian Bowl) and Clemson spent \$1.13 million total. (*The Charleston.Net*, Thursday, March 7, 2002)
- According to an April 2007 article in the *Iowa City Press-Citizen*, "Between the football players, coaches, band members, cheerleaders, promotions, food and travel expenses, the University of Iowa trip to San Antonio for the Alamo Bowl last year cost almost \$1.2 million, including \$141,000 in complimentary tickets, some of which went unsold." (*Iowa City Press-Citizen*, April 25, 2007)
- The Northern Illinois University (NIU) paper found that, "According to purchase orders, travel vouchers and other unknown expense obtained by the Northern

Star through the Freedom of Information Act and Williams, the Poinsettia Bowl cost a total of at least \$883,353.78. The university was responsible for at least \$694,308.29. Due to NIU not selling its allotted 10,000 tickets for the game, the Poinsettia Bowl reduced a \$750,000 payout to approximately \$600,000." (*The Northern Star*, April 11, 2007)

- "Indiana University didn't just lose the NCAA Championship basketball game on April 1 – it also lost almost \$85,000 for hotel rooms that were never used. The university was allocated 600 rooms in Atlanta during the [Men's] Final Four and was obligated to fill these rooms with fans for four nights. That's a total of 2,400 room nights." (*Associated Press*, April 20, 2002)

e. Other Financial Excesses

Additional examples of poor financial judgment and excessive expenditures abound in intercollegiate athletics, with no action by national sport governance organizations like the NCAA to curb such practices.

Examples:

- After Rutgers cut six sports in 2006, the *New York Times* reported that the football coach, Greg Schiano, "recently has said he wants Rutgers to commit to upgrading its facilities, particularly its 41,500-seat stadium. On Monday he said that school officials "are all on the same page with what we want to build here." (*New York Times*, December 4, 2006)
- The Bergen County newspaper *The Record* listed some of Rutgers excesses in November of 2006 including:
 - Coach Greg Schiano, who's led the Scarlet Knights to an 8-0 start, is the highest paid state employee and will make more than \$1 million this year. The university also pays \$998 a month for his Cadillac Escalade and has spent at least \$158,000 preparing a piece of its ecological preserve that Schiano bought to build a new home.
 - Despite a payout of \$1.25 million, Rutgers lost money on the Insight Bowl appearance in Arizona last year. The university paid the way for an entourage of nearly 300, including school officials and family members. Bonuses totaling more than \$200,000 were handed out to coaches and other staffers.
 - It cost nearly \$175,000 to put the team up at a local hotel for six home games; that item alone exceeds the entire budget for the tennis team, one of the six eliminated sports.
 - The university has plowed millions into new facilities for football; from \$12.5 million for a state-of-the-art training center to \$750,000 for synthetic grass. A flashy lobby display honoring the team ran \$450,000. (*The Record*, November 5, 2006)
- The University of Georgia spent \$179,243 recruiting this year's group of honor students, which approximates 525 per year. Between 25 and 30 football players were recruited at a cost of approximately \$470,000. (*The Athens Banner-Herald*, Sunday, February 3, 2002)

43. Even though football and basketball receive large portions of athletics budgets, do these programs support other sports? If so, should they receive special consideration?

A: Whether football makes a profit is not the point. Even if a sport does make a profit, that fact does not exempt it from compliance with civil rights laws. Similarly, if another educational program like the MBA program of the business school of a university makes a profit, that program is not exempt from Title IX.

Since in other areas of the university "pockets" of revenue are seldom considered the exclusive domain of those who produce them (e.g. grant monies, hospital revenues), it should be expected that any sport that produces more revenue than expenditures will help financially assist the institution in providing the necessary resources for other sports. This is the philosophical framework that guides decisions pertaining to the allocation of institutional funds. It does not affect the mandate that the university ensure that it offer equal opportunities in its athletics program overall.

44. Does Title IX enforcement hurt football programs?

A: No. Football programs already receive adequate consideration under Title IX as mandated by the Javits Amendment, which allows increased expenditures based on "the nature of a sport" (e.g., football uniforms and protective equipment cost more than uniforms in other sports).

Football participation and budgets have continued to grow during the 30 years since Title IX was adopted. The only thing hurting football is excessive spending and an arms race that limits profitability, thereby limiting its ability to generate revenues to help support other sports.

45. Is it true that winning football programs aid in institutional development (i.e., increased fundraising for non-athletic program purposes)?

A: No. The mere fact that some athletic programs generate enormous revenues and a high degree of public visibility does not mean that success in athletics yields higher rates or levels of philanthropic or charitable donations to colleges and universities. In fact, studies examining the relationship between athletic programs and higher education fund raising over 70 years suggest that there is either no relationship or a very weak relationship at best between the two. Well-respected scholars (Frey, 1985; Gerdy, 2002; Zimbalist, 1999, 2000; Sack & Staurowsky, 1998; Shulman & Bowen, 2001; Sperber, 2000; Thelin, 1994) have concluded that there is little if any empirical support for the notion that athletic success translates into increased levels of alumni support for non-athletic purposes to institutions of higher learning.

46. Do financial pressures show signs of abating?

A: No. Ced Dempsey, former President of the NCAA, posed the following critical questions in the NCAA Presidential Update dated June 17, 2002: "...where does reasonable investment in athletics as an educational component, entertainment for the university community or even a development tool end and misdirected fiscal folly begin? Are the expenses of colleges' sports aligned with the mission of an institution's athletics programs? Are our athletics budgets aligned with our broad-based programs or do the

majority of our resources go to elite programs? Are more new dollars allocated to athletics than any other aspect of the campus? Is responding to the funding dilemma as simple as making athletics live within the university's means?" In conclusion, he urged CEOs to not only consider the answers to such questions, but also summon "the will to act" when the answers recommend financial policies different from current practices.

47. Is it likely that financial pressures will continue to erode the ability of institutions to support broad-based athletic programs?

A: Yes. The "arms race" in Division I football and basketball shows no signs of abating. Deficits have been accumulating at some institutions for several years. At the University of Virginia, in 2001, it was revealed that there was a 10-year athletic deficit amounting to \$47 million.³⁰ Also in 2001, the University of Alabama at Birmingham athletic department was instructed to eliminate an athletic deficit of \$7.5 million by 2005 and the University of Minnesota projected a \$31 million cumulative revenue shortfall over the next five years.³¹

Another reality is that many state legislatures have had to or may have to reduce the state allocations to institutions of higher learning. Not only will academic programs be affected, but also there is likely to be faculty pressure to reduce the amount of institutional support that goes to athletic programs. For example, following three consecutive years of statewide deficits, the Tennessee Higher Education Commission recommended that over the next four years the \$25 million used to subsidize universities' athletics programs each year in the state should be eliminated.

48. What are some of the budget choices available to institutions that face budget constraints?

A: When resources are limited, schools have several options for achieving gender equity, such as:

1. Reduce the funding for bloated sports and use the financial savings to fund new women's opportunities.
2. Maintain funding of the most important men's sports, discontinue minor men's sports and use those savings to fund new women's sports.
3. Create a tiered funding structure where one or two men's sports and an equal number of participation opportunities for women are treated very well; a second tier where equal numbers of male and female athletes are treated in a less expensive

³⁰ Suggs, Welch. "Female Athletes Thrive, but Budget Pressures Loom", The Chronicle of Higher Education, May 18, 2001.

³¹ The Office of the Vice President and Chief of Staff, University of Minnesota, "Current and Future Financial Challenges in Intercollegiate Athletics", Dec. 7, 2001. Note: The Daily O'Collegian, Oklahoma, reported in its February 19, 2002, issue that "The University of Minnesota-Twin Cities faces a \$55 million deficit through the next five years, the worst in the NCAA, according to an article in the February 8 issue of the Chronicle of Higher Education" and "In 2000, the Minnesota Golden Gophers spent \$44.9 million on sports, with \$7.3 million alone going to the football team. During that same year the Gophers' football team brought in \$2.5 million net profit, the lowest profit margin in the Big Ten Conference."

way (e.g., regionally limited competition, 50% of maximum scholarship limits, etc.); and a third tier where equal numbers of male and female athletes are treated in an even lower cost way (e.g., part-time coaches only, no scholarships).

These are institutional choices, any of which can produce Title IX compliance. Choosing option 1 or 3 results in maintaining all opportunities for male athletes while increasing opportunities for female athletes. Option 2 results in loss of opportunities for male athletes. The spirit of Title IX is better served by expanding opportunities, not by decreasing them for men; the Department of Education finds that limiting opportunities for men is a disfavored method for compliance.³²

49. How have institutions that have added women’s sports programs without cutting men’s sports programs achieved that goal?

A: In the 2001 GAO Report, schools reported three means of adding women’s teams without cutting men’s teams: obtaining funding from non-school sources, finding ways to contain costs and/or reallocating existing revenues.

Obtaining additional revenues and reallocating existing revenues rather than containing costs were more frequently used strategies among the 693 schools that added one or more intercollegiate athletic teams over the 1992–93 to 1999–00 period without discontinuing a team. Sources of funds varied with the size of the intercollegiate athletic program. Schools with smaller programs (NCAA Division III and NAIA) were more likely to use additional funds from the institution’s general fund and/or reallocate savings from budgets cuts across all sports. Larger schools (NCAA Division I and II) were more likely to rely on increased donations from individuals and businesses and charging rental fees for the use of athletic facilities to outside entities.

Cost containment efforts among all institutions examined included:

- Recruiting most prospective student-athletes via telephone rather than in person,
- Denying requests for some teams to be elevated from club to varsity status,
- Replacing a retiring full-time faculty member with a coach who also assumed other administrative duties,
- Limiting the size of the football team roster,
- Trimming administrative costs,
- Not awarding the maximum number of scholarships allowed, and
- Limiting team travel outside the region to one trip every two to three years to minimize travel expenses.

50. Are there new financial solutions that should be considered to address the current budget crisis in intercollegiate athletics?

A: Yes, however, institutions of higher education must make a commitment to pursuing major financial reforms. The following options should be immediately explored to address those areas in which expenditures need to be controlled:

³² See, e.g., Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (1996), available at www.ed.gov/about/offices/list/ocr/docs/clarific.html.

1. **Contract Limitations.** Schools should consider creating one-year, renewable contracts for all coaches and staff in order to eliminate such practices as “buy-outs” and “golden parachutes.”
2. **Debt Service and Capital Expenditures.** Require the approval of the Faculty Senate for major renovation or the building of new athletic facilities.
3. **Recruiting Reform.** Reform the current recruiting system; consider allowing campus tryouts for prospective student-athletes (as is done in Division II) and other ways to restrict the excessive costs of off-campus recruiting.
4. **Size of Coaching Staffs.** Reduce coaching staffs and base the number on a reasonable coach/student-athlete ratio.
5. **Size of Non-Coaching Staffs.** Limit the number of non-coaching personnel to a figure based on the number of student-athletes in the athletic department (e.g. employees in the areas of sports information, marketing and promotions, administrative assistants, secretarial support, etc.).
6. **Size of Administrative Staffs.** Eliminate administrative assistants in specific sports.
7. **Excessive and Unnecessary Expenditures.** Prohibit football and men’s basketball practices such as staying in hotels before home games; non-player travel parties to bowl and championship games, entertainment and other non-essential expenditures during pre-season training periods, etc.
8. **Scholarships.** For example, change “head count” scholarships to “equivalency-based” scholarships and reassess scholarship limits in all sports to conform to commonly accepted team size.³³
9. **Travel Expenses.** Streamline all travel parties during the regular season by establishing maximum travel party limitations.
10. **Number of Competitions.** Reduce the length of seasons in appropriate sports and curtail the excessive number of competitions in some sports (e.g. softball and baseball) and consider reducing or eliminating institution-sponsored practice and competition in the off-season.
11. **Sport Budget Limits.** Establish legislation to limit overall maximum expenditures (all inclusive) on a per sport basis with differences in travel budgets based on geographical factors.
12. **Roster Limits.** Establish roster limits in every sport based on numbers of athletes required to practice and compete.

³³ If football scholarships in Division I-A were reduced from 85 to 65, using the 1999 average scholarship costs and applying a formula of 30% in-state student-athletes and 70% out-of-state student-athletes, there would be a savings of almost \$300,000 each year. (Fulks, 1999, p.12) In this division, the average expense for wrestling in 1999 was \$330,000; for men's gymnastics, it was \$270,000. (Fulks, 1999, p.38)

13. **Antitrust Exemption.** Some have suggested that Congress should give schools a limited exemption from anti-trust laws in order to tie the total compensation for head and assistant coaches to the top five full professors at the institutional or conference level or other justifiable salary levels.

PART V. POLICY RECOMMENDATIONS

It is the position of the NCWGE that the following policies be adopted:

1. Mandate Collection of Title IX Data for High Schools

Congress should pass the High School Athletics Accountability Act/High School Sports Information Collection Act, which would require high schools to report key data, including participation numbers and budgets and expenditures, which can be used to gauge schools' compliance with Title IX.

2. Rescind the March 2005 "Clarification"

The Department of Education should issue a policy statement rescinding the March 2005 Clarification and affirming the 1996 policy standards, which allow surveys to be used only as one of a multitude of factors to determine if schools are satisfying the interests of their female students.

3. Improve Title IX Education

The OCR recognized the wide-spread misinformation about Title IX's application to athletics in 2003. Despite its commitment in 2003 to launching a national education campaign on Title IX, the OCR has failed to do so. Yet in order to see progress in sports equity, parents, athletes and schools must be educated about Title IX and be able to knowledgably raise complaints and spur enforcement. The OCR must take affirmative steps to educate school administrators of their obligations under Title IX, and inform coaches, parents, and students of their rights to equality.

4. Control College Athletics Expenditures

While overall, schools have added more male teams than they have dropped, in the only competitive division showing a net loss of men's participation opportunities, NCAA Division I-A, the budgets for football and men's basketball consume three quarters (73%) of the total men's athletics operating budget. While these 117 Division I-A schools may argue that this lopsided resource allocation is an investment in increasing revenues, the numbers show otherwise. In these athletic programs, supposedly the "most profitable," 60% currently operate at an overall deficit averaging \$4.4 million per year. Of all NCAA Division I and II schools, 85% currently operate at a deficit. (Fulks, 2005) Putting huge sums of money into one or two men's sports reduces the likelihood that schools will be financially capable of adding women's participation opportunities or reducing inequalities in treatment (scholarships, operating budgets, etc.) to comply with Title IX and increases the likelihood that other men's sports will be eliminated. Unless educational institutions and athletic governance organizations do more to control costs, this financial squeeze will affect all competitive divisions. Of all NCAA D-I and D-II schools, 85% currently operate at a deficit (Fulks, 2005) Only by capping these spiraling costs will institutions be able to grow women's sports programs to comply with Title IX while maintaining existing participation opportunities for men.

5. Vigilant Enforcement

The OCR must strengthen its enforcement of Title IX. The OCR has never denied a school federal funding for failing to comply with Title IX, yet women and girls continue to be denied equal opportunity to participate in athletics and are not given equitable resources when they do compete. The OCR must initiate compliance reviews of educational institutions and not simply conduct investigations in response to complaints. In addition, when issuing findings in response

to complaints, the OCR must be more vigilant in following through to ensure that schools actually implement their compliance improvement plans.

APPENDIX A

Analysis of CSC Longitudinal Study of NCAA Participation Data by John J. Cheslock

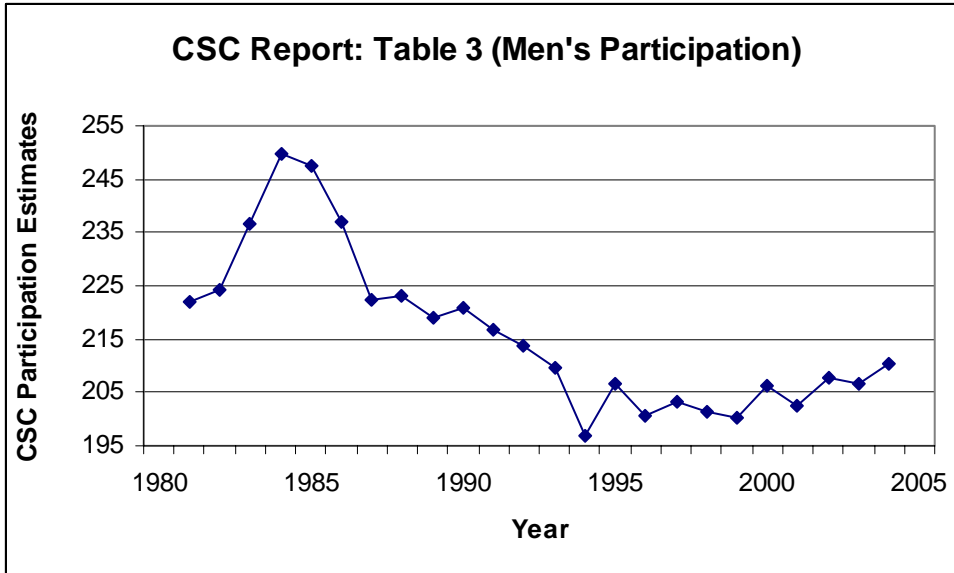
To describe changes in intercollegiate athletic participation over time, the College Sports Council (CSC) has recently released a longitudinal study that is based on data from a recent NCAA participation report. Commentators have since used these figures to claim that Title IX has led to substantial reductions in men's participation in intercollegiate athletics. Such claims are problematic because all of the reported figures in the CSC report contain serious flaws. When these flaws are corrected, estimates based on NCAA participation report data typically demonstrate increases in men's athletics rather than decreases. We discuss the three primary problems with the CSC report below.

Problem #1: Per-NCAA institution figures are highly misleading.

The CSC study correctly notes that the total participation figures from the NCAA report are based on all NCAA institutions in a given year and are not designed to accurately portray participation trends. Because the number of schools in the NCAA has grown, total participation levels can increase over time even if no individual institution increases participation levels. To adjust for this, the CSC study reports the number of participants per institution for each year. This adjustment, however, creates another set of problems, because the institutions joining the NCAA are much smaller in size than the existing members. As a result, per-institution participation figures can decline over time even if no individual school decreases participation levels.

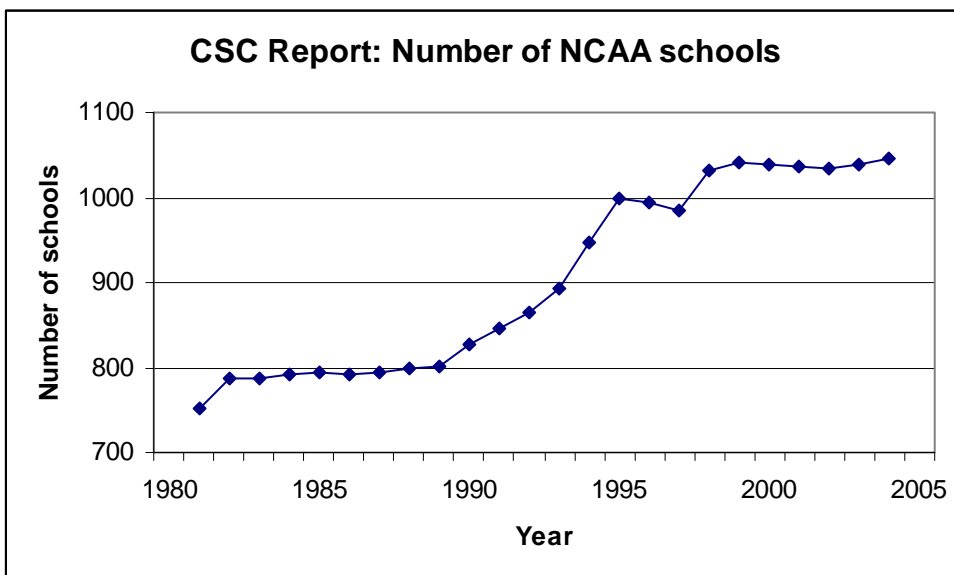
Table 3 of the CSC study reports a 5.3% decline in men's participation between 1981-82 and 2004-05. But these estimates assume that existing NCAA institutions and institutions that just joined the NCAA have athletic programs that are identical in size. If you instead assume that existing NCAA institutions have participation levels that are 50% larger, the 5.3% decline in men's participation turns into 4.6% increase. (Note: The growth in men's participation levels will be even higher if the 50% assumption is too low. According to Equity in Athletics Disclosure Act (EADA) data, existing NCAA institutions are 88% larger than the 20 institutions that joined the NCAA between 2001 and 2004.) This analysis clearly indicates the following: *If you adjust for the smaller size of incoming NCAA institutions, the NCAA Participation Report data suggests that men's participation increased rather than decreased between 1981 and 2004.*

One can also demonstrate the flaws of the CSC report by simply examining the periods in which the CSC claims reductions in men's sports occurred. In the below table, you see a replication of the figures reported in Table 3 of the CSC report. According to the CSC estimates, men's participation declined by 10.9% between 1984 and 1987 and by 10.8% between 1990 and 1994. For all other periods, there was no change or growth in men's participation.



Because the declines only occurred in these two periods, it is clear that the above table does not demonstrate that Title IX has led to substantial declines in men's sports. First, consider that *the CSC report indicates that the largest drop in men's sports occurred between 1984 and 1987, a period in which intercollegiate athletics was exempt from Title IX.* In 1984, the Supreme Court ruled (in *Grove City College vs. Bell*) that Title IX did not apply to intercollegiate athletics, and it was not until 1988 that Congress passed the Civil Rights Restoration Act, which mandated that intercollegiate athletics be subject to Title IX.

The only other decline occurred during the period of largest growth in the number of NCAA institutions (as indicated by the below table). Between 1990 and 1994, the number of NCAA institutions increase by 14.4%. *Given the much smaller size of athletics departments that recently joined the NCAA, the decline reported by the CSC report for the 1990-1994 period is simply a result of the growing size of the NCAA rather than any reduction in men's participation levels.*



Based on the above analysis, one should never attempt to examine intercollegiate athletic participation trends using “per-institution” figures from the NCAA Participation report. But 33 of the 40 tables in the CSC report do exactly that.

Problem #2: Percent of NCAA institutions offering a sport is also misleading.

For the same reasons listed above, one should not examine trends in the share of NCAA institutions offering a sport. Because the institutions joining the NCAA have smaller athletic departments than existing NCAA institutions, the share of NCAA institutions offering a sport could decrease even if no individual school drops the sport. But the CSC report includes this information on Tables 6, 12, 13 and 14.

There is no reason to report the percentage of NCAA institutions offering a sport, because the NCAA Participation Report contains information on the net change in sponsorship of men’s teams. These figures are not complicated by changes in NCAA membership, because they simply equal the number of teams added in a sport minus the number of teams dropped in a sport.

If one uses these superior figures, the results can differ substantially from those reported in the CSC study. In Tables 6 and 12, the CSC study indicates that the share of NCAA institutions offering football fell from around 66% to 58%. But figures from the NCAA Participation Report (on p. 214) demonstrate that, on net, 22 institutions added football teams between 1981 and 2004. *If one uses the more accurate data from the NCAA Participation Report, the results indicate that the number of football teams is growing rather than declining.*

Problem #3: Reporting reductions in men’s participation for specific sets of schools or specific sports can be misleading.

Only three tables in the CSC report are not suffering from the two problems listed above. Table 5 indicates an increase in the number of men’s teams (although it is probably an overestimate as it does not control for growth in NCAA participation). This leaves Tables 1 and 20 as the only information that suggests reductions in men’s sports. But these tables report information on only a small subset of institutions or on a specific sport.

According to Table 1, the number of men’s sports decreased, on net, by 239 teams among NCAA Division I schools. That information is correctly drawn from the NCAA participation report. But the CSC study fails to note that the same NCAA participation report indicates an increase in the number of men’s sports, on net, of 44 for Division II institutions and of 265 for Division III institutions. For the NCAA as a whole (including Division I), the number of men’s teams increased by 70 teams. *By reporting changes in net teams solely for Division I rather than for the NCAA as a whole, a reader of the CSC report may not realize that the number of men’s teams in the NCAA has increased rather than decreased between 1988 and 2004.*

According to Table 20 of the CSC report, the number of men’s gymnasts fell even when one doesn’t account for the growth in NCAA membership. The CSC report accurately reports that men’s gymnastics has experienced serious declines over time. According to the NCAA Participation report, 35 men’s gymnastics teams have been dropped on net between 1988 and 2004. But the same NCAA report also indicates that 37 women’s gymnastics teams have been dropped over the same period. Furthermore, the NCAA report suggests that the number of men’s lacrosse teams increased by 52, the number of men’s soccer teams increased by 35, and

the number of baseball teams increased by 35. *Because women's gymnastics has declined and numerous men's teams have expanded, any decline in men's gymnastics is likely due to pressures specific to that sport (such as rising insurance costs) rather than Title IX.*

APPENDIX B. LIMITATIONS OF THE DEPARTMENT OF EDUCATION'S ONLINE SURVEY METHOD FOR MEASURING ATHLETIC INTEREST AND ABILITY ON U.S.A. CAMPUSES³⁴

Don Sabo, Ph.D., and Christine H.B. Grant, Ph.D.³⁵

The Department of Education has endorsed using an online survey method as the sole means of assessing student interest in additional athletic participation opportunities. The March 17, 2005 *Additional Clarification on Intercollegiate Athletics Policy: Three-Part Test—Part Three* would allow colleges and universities to use a “Model Survey” alone to claim compliance with Title IX’s mandate that schools provide equal participation opportunities to male and female students. In particular, the results of the Department’s survey could be used to determine institutional compliance with the third prong of Title IX’s three-part participation test.³⁶ Under this prong, an institution may comply if it can show that its athletics program fully and effectively accommodates the interests and abilities of the underrepresented sex.

Until it issued its new “Clarification,” the Department had interpreted the third prong of the test to require a systematic evaluation of a host of factors, beyond surveys, to assess whether institutions had fully met the interests and abilities of their female students. See *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* (January 1996). The Department’s new “Additional Clarification” would eviscerate that interpretation and allow educational institutions to rely exclusively on a survey to measure unmet interest. But it would be methodologically misguided for institutions to utilize the Department’s online survey method as the sole measure of compliance with Prong 3. Instead, sound methodological guidelines dictate that multiple approaches to assessing the athletic interests and abilities of students be deployed. Moreover, the online survey authorized by the new Clarification suffers from serious methodological flaws.

³⁴ Preferred citation: Sabo, D. & Grant, C.H.B. (June, 2005). *Limitations of the Department of Education's Online Survey Method for Measuring Athletic Interest and Ability on U.S.A. Campuses*. Buffalo, NY: Center for Research on Physical Activity, Sport & Health, D'Youville College.

³⁵ Don Sabo is the Director of the Center for Research on Physical Activity, Sport & Health at D'Youville College. Christine H.B. Grant is an Associate Professor of Health and Sports Studies and the Women's Athletics Director Emerita at the University of Iowa.

³⁶ Under Prong 1 of the three-part test, a school will be in compliance if its representation of male and female athletes is substantially proportionate to its male and female enrollment. For example, if females comprise 54% of the student body, the school will comply with Prong 1 if about 54% of its athletes are female. Under Prong 2, a school will be in compliance if it demonstrates a history and continuing practice of expanding opportunities for the underrepresented gender. Adding teams for women in order to balance team offerings for men, for example, would support compliance. Prong 3 requires a demonstration that the interests and abilities of the underrepresented sex have been fully and effectively accommodated by the school's existing program.

Sound Methodology Requires the Use of Multiple Measures to Evaluate Interest and Ability and Shows the Limitations of a Survey

Basic methodological principles, as well as substantial research, demonstrate that exclusive reliance on a survey to evaluate women's interests and ability to participate in sports is not likely to fairly reveal the true extent of those interests and abilities. This is so for several reasons:

1. Research shows that an individual's disposition and willingness to express personal interest in athletics is influenced by social norms, culture, gender, race and ethnicity. For example:
 - a. Boys and men are apt to express interest in sports and identify as athletes because these interests are traditionally associated with appropriately "masculine" behavior and identity.³⁷
 - b. Girls and women often have a higher set of behavioral standards for what it means to be an "athlete." Researcher and author Catherine McKinnon, for example, practiced the martial arts for five years, two hours per night and five nights a week before she began to consider herself an "athlete."³⁸ For many young women, increased involvement with sports entails rethinking traditional cultural notions about femininity.³⁹
 - c. The pervasiveness of "Marianisma" in some Latina/Hispanic cultures (which emphasizes conformity to housewife-motherhood and discourages nontraditional roles for girls and women) can lead some Latinas to downplay interest and involvement in athletics.⁴⁰
2. Any failure to express interest likely reflects a lack of prior exposure, which in turn is the result of discriminatory limitations on women's opportunities. Interest cannot be measured apart from opportunity, particularly in the context of sports, where women's interest in

³⁷ See Connell, R. W. (2000), The Men and the Boys, Berkeley, CA: University of California Press; Messner, M. A. (2002), Taking the Field: Women, Men, and Sports, Minneapolis, MN: University of Minnesota Press; Pollack, W. (1998), Real Boys: Rescuing Our Sons from the Myths of Boyhood, New York: Henry Holt and Company; Senay, E. & Waters, R. (2004), From Boys to Men: A Woman's Guide to the Health of Husbands, Partners, Sons, Fathers, and Brothers, New York: Scribner.

³⁸ Stimpson, C. R. (2004), The Atalanta syndrome: Women, sports, and cultural values, Inaugural Helen Pond McIntyre Lecture, *Scholar & Feminist Online*, October 20.

³⁹ See The President's Council on Physical Fitness and Sports Report (1997), Physical Activity & Sport in the Lives of Girls: Physical and Mental Health Dimensions from an Interdisciplinary Approach, Washington, D.C.: Department of Health and Human Services; Sabo, D., Miller, K.E., Melnick, M.J. & Heywood, L. (2004), Her Life Depends On It: Sport, Physical Activity, and the Health and Well-Being of American Girls, East Meadow, N.Y.: Women's Sports Foundation.

⁴⁰ Melnick, M., Sabo, D. & Vanfossen, B. (1992), Educational effects of interscholastic athletic participation on African-American and Hispanic youth, *Journal of Adolescence*, 27(106):295-308; Melnick, M., Sabo, D. & Vanfossen, B. (1992), Effects of interscholastic athletic participation on the social, educational, and career mobility of Hispanic boys and girls, *International Review of Sport Sociology*, 17(1):57-75; Sabo, D., Melnick M. & Vanfossen, B. (1993), The influence of high school athletic participation on post-secondary educational and occupational mobility: A focus on race and gender, *Sociology of Sport Journal* (Winter, 1993).

athletics has been limited by the discrimination to which they have been – and continue to be – subjected. As a result, surveys cannot measure the extent to which women would show interest and ability if non-discriminatory opportunities were made available to them.

3. As a related matter, any survey of athletic interests is based on the problematic theoretical assumption that surveys of interest can be used to predict athletic behavior. Behavioral scientists have long observed the discrepancy between attitude and behavior. For example, millions of Americans who profess a keen interest in quitting smoking or losing weight continue to smoke and overeat. Particularly in the context of athletics, where women's opportunities have historically been limited, the converse is also true: individuals who fail to express interest in participating in sports will often embrace the chance to play if offered the opportunity. Many girls who would have expressed no interest in sports, for example, become enthusiastic participants after joining a team because a friend did so, because they were actively recruited by an enthusiastic coach or because they were taken to tryouts by a pro-sport parent.

For all of these reasons, the Department's long-standing prior policies, including its 1996 Clarification, make clear that a survey of students is only one of many factors that schools must consider in evaluating whether they are fully meeting the interests and abilities of their female students. The 1996 Clarification also requires schools to consider requests by students to add a sport; participation rates in club or intramural sports; participation rates in sports in high schools, amateur athletic associations and community sports leagues in areas from which the school draws its students; and interviews with students, coaches, teachers and administrators.

The use of multiple measures, as set forth in the Department's 1996 Clarification, is methodologically sound and enhances the likelihood that schools will accurately assess the extent of their students' interest in additional sports opportunities. Moreover, this approach has worked as a practical matter. According to the Additional Clarification, between 1992 and 2002, approximately two-thirds of schools complied with Title IX's athletic participation requirements under the third prong of the three-part test.⁴¹ The evidence thus supports the overall efficacy of the Department's long-standing policies, and their reliance on a multiple-measure approach, for promoting athletic opportunity and assessing compliance with Title IX for both sexes.

⁴¹ Additional Clarification at 2.

The Department's Survey Suffers from Methodological Flaws

Although the Department's Additional Clarification was issued with 177 pages of policy and text, the methodological procedures it authorizes and the rationales for those procedures need systematic review and assessment. Even a preliminary review of the Clarification, however, reveals serious concerns about the methodological efficacy of the Department's proposed survey.

1. The Department's Survey is Likely to Generate Low Response Rates. Online surveys often result in low response rates, thereby creating the risk of drawing conclusions based on inadequate sample sizes. Many campuses experience difficulty generating full responses to online surveys, which makes it likely that relatively few students would participate in the Department's online survey.

The problem of low response rates is exacerbated because the Department's survey does not take into account variation in student access to or use of e-mail. The Department's design deploys erroneous sampling logic by assuming that use of campus-based e-mail services is either supplied or utilized uniformly across student populations. But student access to and use of university and college e-mail services is varied and uneven. Some students frequently use college-based online services for e-mail; others do not use it at all. At institutions where frequent disruptions or periodic shutdowns of e-mail services occur, students may seek and secure commercial e-mail suppliers. Students who work full-time or part-time jobs may spend less time online and/or check e-mail less frequently. Poor students may not own a computer or be able to pay for convenient e-mail services. And numerous students may ignore campus e-mail systems in order to avoid real or perceived encounters with what they regard as bureaucratic or commercially invasive spam.

Some (but not all) campuses maintain policies requiring students to check e-mail at certain intervals—for example, once a week or once a day. But even on campuses that do have policies that require students to check e-mail regularly, one cannot guarantee that students actually conform to such policies or that the institution maintains current (and reliably accurate) directories of e-mail.

Moreover, the Department's survey methodology does not take into account the accelerating diversity in telecommunication preferences among college students. The campus-based online survey design ignores both national and international trends among young and tech-savvy consumers to increasingly rely on text messaging through cell phones as a vehicle for interpersonal communication. Those students who are opting for these regional, "off-campus" communication vehicles would likely not be included in campus-based online surveys.

For all of these reasons, the Department's survey is likely to yield a low response rate. Additionally, nothing in the new Clarification makes clear how policymakers will determine when a large enough sample has been generated by a particular administration of the Department's survey.

2. The Department's Methodological Procedure to Count Nonrespondents is Misguided. The User's Guide for the Department's survey recommends that institutions conduct a "census" of the student population. Under a census methodology, there is no attempt to draw a sample from the student population. Rather, a census involves polling *all* students. But unless completing the online survey is somehow made mandatory (e.g., student registration is

blocked until the survey is completed),⁴² it is highly unlikely that all students will complete it, based on the reasons set forth above, among others.

Recognizing this reality, the Department's survey guidelines treat the survey methodology as a "census" if all students are simply contacted and asked to go to a Web site and complete the questionnaire. If a student does not respond to the request, the Clarification specifically states that schools may interpret the nonresponse as evidence of lack of interest—in other words, that student is still "counted" as a respondent and, furthermore, operationally defined as someone with no interest in athletics. By equating nonresponses to a lack of athletic interest (past, present and future), the Office for Civil Rights' methodological procedures do not meet basic scientific criteria for establishing reliable and valid survey results and interpretations.

Furthermore, even if students are screened at the point of registration using a campus ID, one cannot be certain that the person completing the registration is the student who is being targeted; e.g., it is not uncommon for students to have other people register for them. On many campuses, some students, faculty and staff share their campus IDs and passwords, even though doing so is against University policy.

3. The Department's Survey is Properly Understood to Embody a Sampling Methodology, but is Unlikely to Generate a Representative Sample. Based on the foregoing analysis, what the Department's survey really relies on is a sampling methodology. But unfortunately, there is nothing in the new Clarification that ensures that the sample that responds to the online survey will be representative of the student population. One major problem is referred to as the "coverage error," which occurs, for example, when a researcher assumes that those who did not respond to the survey are similar in all other respects to those who did respond. In many instances, however, the respondents may be very different from the nonrespondents in ways that remain hidden or are not measured. When this occurs, the sample is compromised and the empirical results become suspect.

In addition, the Department's survey suffers from blind recruitment of respondents. A methodological bias often inherent in an online survey method is that participants are blind-recruited online, and thus, respondents self-select for participation rather than being randomly or strategically pre-selected from an existing population roster and individually targeted for recruitment by researchers. Much online survey research is done by posting a link to a survey on Web pages visited by the target demographic—e.g., a link to the National Basketball Association Web site, a Web site for cat or dog lovers or CNN.com. Analysis and inferences based on resulting data are limited in value because the respondents are entirely self-selected, compared to research designs in which respondents are contacted directly by phone, e-mail or face-to-face and then enlisted in a study.

4. Some Students May Misinterpret the Purpose of the Department's Survey. The Department of Education survey is called "Assessment of Students' Athletic Interests & Abilities." Because those terms are undefined, some students may misinterpret the goal of the survey as an assessment of their interest in participating in intercollegiate sports rather than the broad spectrum of real and potential recreational, intramural, club or junior varsity activities that

⁴² Even if the online survey is made mandatory, students who do not want to participate (irrespective of their interest or participation in athletics) may "protest" the requirement by providing inaccurate information (e.g., indicating "no interest/experience" at the beginning). This may be particularly likely since the survey will probably take many students more time to complete than is stated in the Clarification. The difficulty is that analysts would not know the extent of the inaccuracy.

might be part of campus life. But schools have an obligation to ensure gender equity in all athletic offerings, not just intercollegiate teams. Moreover, to the extent that these latter athletic activities are historically marginalized or comparatively under-funded within a specific campus community, students could fail to see them as viable or realistic choices in comparison with the notoriety and institutional centrality of the major intercollegiate sports. Personal interest in participating in a wide array of athletic activities could be skewed or dampened by a realistic assessment of the institutional inequalities that actually exist on campus. As a result, surveys are unlikely to capture the full range of athletic interests that institutions should consider in structuring each level of their sports programs.

Conclusion

The above deficits of the Department's online survey method call into question its empirical efficacy. As a result, it would be methodologically misguided for institutions to utilize the Department's online survey method as a sole measure of compliance with Prong 3. Moreover, the Clarification states that the Department "is not requiring that individual schools conduct elaborate scientific validation" of the procedures and results of the online survey.⁴³ But the procedures and results are suspect unless they are validated based on established scientific and methodological criteria.

We encourage policymakers, government officials, educators and researchers to fully evaluate the Department's proposed use of the online survey method to further elucidate these and other methodological concerns.

⁴³ See <http://www.ed.gov/about/offices/list/ocr/docs/title0guidanceadditional.pdf>