



Title IX and Athletics

PROVEN BENEFITS, UNFOUNDED OBJECTIONS

FOR MANY, TITLE IX IS synonymous with expanded opportunities in athletics. Before Title IX, women and girls were virtually excluded from most athletic opportunities in schools. Since the legislation passed, girls and women have been able to participate in athletics at much higher rates. Opportunities for girls to participate in high school athletics in particular have increased exponentially.

The benefits of increased participation affect not just female athletes but society as a whole. Research has found that girls who play sports are less likely to get pregnant or take drugs than those who don't play sports; they're also more likely to graduate and go on to college. Furthermore, sports participation reduces the risk of developing illnesses such as obesity, heart

disease, osteoporosis, and breast cancer, all of which have huge associated social and financial costs.

Although the athletic provisions of Title IX are probably the most well known aspects of the legislation, myths about the requirements and impact of Title IX are prevalent. The law requires that schools treat the sexes equally with regard to participation opportunities, athletic scholarships, and the benefits and services provided to male and female teams. It does not require that schools spend the same amount on both sexes, nor has it resulted in reduced opportunities for boys and men to play sports.

Despite the substantial benefits of participation in sports and Title IX protections against sex discrimination in athletics, the playing field is still not level for girls. Girls are twice as likely to be inactive as boys, and female students have

KEY FINDINGS

- 1. Title IX has increased female participation in sports exponentially.** In response to greater opportunities to play, the number of high school girls participating in sports has risen tenfold in the past 40 years, while six times as many women compete in college sports.
- 2. Huge gains in the number of female athletes demonstrate the key principle underlying the legislation:** Women and girls have an equal interest in sports and deserve equal opportunities to participate.
- 3. Participation in sports confers both immediate and long-term benefits:** Female athletes do better in school, are less likely to engage in risky behavior, and are healthier than girls and women who do not participate in sports.
- 4. Attacks on Title IX often spring from misconceptions about how the law works.** Courts have consistently upheld the validity of the law.
- 5. Despite many gains over the past 40 years, barriers remain to participation in sports for girls and women.** Greater enforcement of the law by the federal and state governments, self-policing of compliance by schools, and passage of the High School Athletics Transparency Bills will help bring about greater equity.

fewer opportunities to participate in both high school and college sports than their male counterparts. Greater enforcement of Title IX and diligent efforts to advance women and girls in sports are still necessary to achieve truly equal opportunity on the playing fields.

Impact of Title IX on Sports Participation

Opportunities for girls and women in athletics have increased exponentially since the passage of Title IX. During the 1971–1972 school year, immediately before the legislation passed, fewer

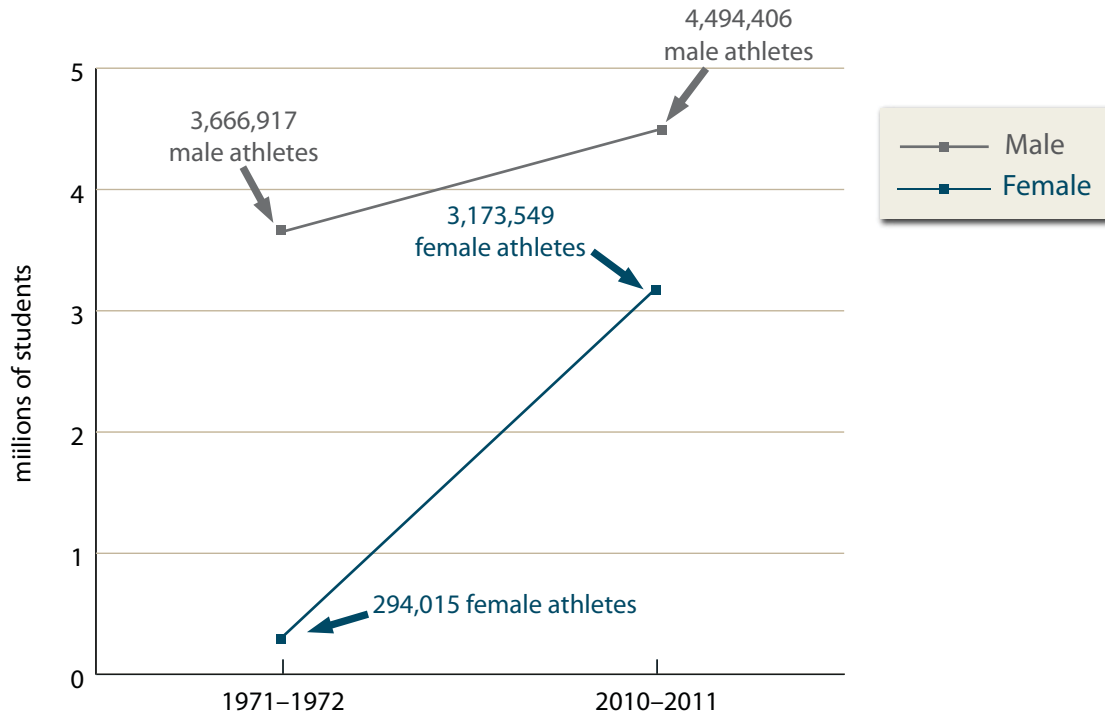
than 300,000 girls participated in high school athletics. To put that number in perspective, just 7% of all high school athletes were girls. In 2010–2011, the number of female athletes had climbed by more than tenfold to nearly 3.2 million, or 41% of all high school athletes (see the figure on the opposite page).¹

Title IX has also had a huge impact on women's participation in college athletics. In 1971–1972, fewer than 30,000 women participated in college sports. In 2010–2011 that number exceeded 190,000—about 6 times the pre-Title IX rate (see the figure).² In 1972, women received only 2% of schools' athletic budgets, and athletic scholarships for women were nonexistent.³ In 2009–2010, women received 48% of the total athletic scholarship dollars at Division 1 schools, although they received only 40% of total money spent on athletics, despite making up 53% of the student body.⁴

Despite huge gains over the past 40 years, much work still needs to be done. Although overall sports participation rates have grown for both males and females, girls' and women's participation still lags behind that of their male counterparts, and increases among females have remained stalled for the past five years. Given the proven health and social benefits of athletics, it is essential that woman and girls be given equal opportunities to participate.

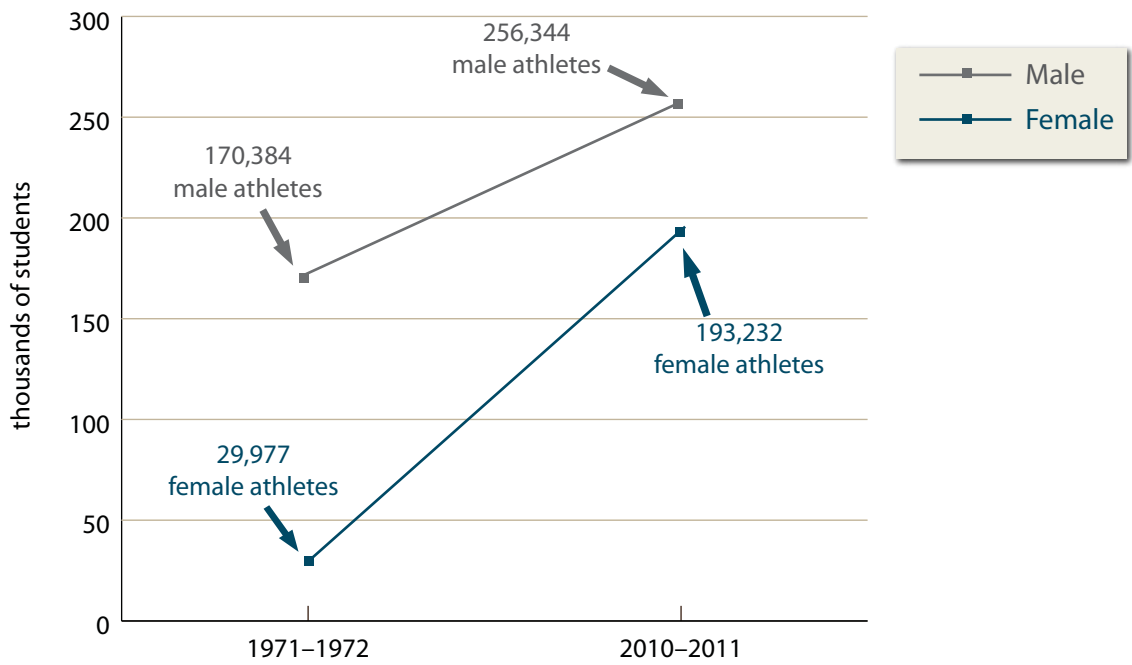
As the numbers show, male participation in both high school and college athletics has continued to increase since Title IX's enactment. Although the rate of increase among males hasn't matched growth among females, that is no doubt because opportunities were already so prevalent for boys and men. In fact, males continue to have more opportunities to participate in sports than females at all school levels.

Male and Female Participation in High School Sports, 1972–2011



SOURCE: National Federation of State High School Associations, 2011.

Male and Female Participation in College Sports, 1972–2011



SOURCE: NCAA Sports Sponsorship and Participation Report, 1971-72–2010-11.



Benefits of Sports for Women and Girls

The benefits of participation in athletics for girls and women encompass both immediate and long-term health advantages, as well as a range of other benefits that have a deep and lasting impact on society as a whole.

SPORTS LEAD TO BETTER SHORT- AND LONG-TERM HEALTH

Obesity is an emerging children's health epidemic and a particular concern for girls of color. Of girls aged 6 to 11, 25% of African-American girls and just under 16% of white girls are overweight. Of girls aged 12 to 19, 24% of African-American girls and 15% of white girls are overweight.⁵ It is well documented that regular physical activity can reduce the risk of obesity for adolescent girls, making it an important strategy for combating obesity and related illnesses.⁶ Minority girls are more likely to participate in sports through their schools than through private organizations,⁷ rendering it even more critical that they have equal access to school-sponsored sports to enable them to be physically active.

Participation in school athletics can also have positive health effects later in life. *The New York Times* recently highlighted research showing that women who played sports while young had a 7% lower risk of obesity 20–25 years later, when women were in their late 30s and early

40s.⁸ The study notes that while a 7% decline in obesity is modest, “no other public health program can claim similar success.”

In addition to combating obesity, sports participation decreases a young woman's chance of developing a range of other diseases, including heart disease, osteoporosis, and breast cancer.⁹ The combined social and financial impact of reducing these health issues through school sports programs can be enormous.

ATHLETES ARE LESS LIKELY TO ENGAGE IN RISKY BEHAVIORS

The direct health benefits of increased activity may come as no surprise, but participation in sports can have less obvious benefits as well. These benefits extend well beyond the girls and women affected to include their families and broader social structures.

For example, high school athletes are less likely to smoke cigarettes or use drugs¹⁰ than their peers who don't play sports. One study found that female athletes are 29% less likely to smoke than non-athletes.¹¹ Given the high costs of smoking-related illnesses and deaths, these figures are significant.

Adolescent female athletes also have lower rates of both sexual activity and pregnancy than their non-athlete counterparts. In fact, female athletes are less than half as likely to become pregnant in adolescence as their peers who are not athletes.¹² This is true for white, African-American, and Latina athletes.¹³

FEMALE ATHLETES FARE BETTER IN SCHOOL AND BEYOND

Studies have found that female participation in sports offers a range of academic benefits. Young women who play sports are more likely to graduate from high school, have higher grades, and score higher on standardized tests than non-athletes.¹⁴ This pattern of greater academic achievement is consistent across

community income levels. One statewide, three-year study by the North Carolina High School Athletic Association found that athletes achieved grade point averages that were nearly a full point higher than those of their non-athlete peers, in addition to higher graduation rates.

These benefits go some way toward closing certain educational gaps for girls and women. For example, female athletes are more likely to do well in science classes than their classmates who do not play sports.¹⁶ In addition, female athletes of color consistently benefit

from increased academic success throughout their education. For example, female Hispanic athletes are more likely than non-athletes to improve their academic standing, graduate from high school, and attend college.¹⁷

The lessons of teamwork, leadership, and confidence that girls and women gain from participating in athletics can help them after graduation as well as during school. A whopping 82% of female business executives played sports, with the majority saying that lessons learned on the playing field contributed to their success.¹⁸

The Blame Game: Title IX Myths and Facts

Opponents of Title IX claim that there is a negative impact on boys' and men's sports arising from attempts to increase opportunities for girls and women in athletics. These criticisms are based on misinterpretations of the law and are not supported by the facts.

WHAT THE LAW SAYS

Title IX requires that schools treat both sexes equally with regard to three distinct aspects of athletics: participation opportunities, athletic scholarships, and treatment of male and female teams.

Participation. The Department of Education uses a "three-part test" to evaluate schools' compliance with the requirement to provide equal participation opportunities (see the boxed insert for details). This test was set forth in a Policy Interpretation issued by the Office for Civil Rights (OCR) in 1979¹⁹ and has withstood legal challenges.

Athletic Financial Assistance. Title IX requires that scholarships be allocated in proportion to the number of female and male students participating in intercollegiate athletics.²⁰ OCR has made clear that schools will be found in compliance with this requirement if the percent-

age of total athletic scholarship dollars received for each sex is within one percent of their levels of participation.²¹ In other words, if women comprise 42% of the athletes on campus, the school must provide between 41% and 43% of its athletic scholarship dollars to female athletes.

Equal Treatment of Athletes. Title IX also requires equal treatment of male and female teams.

Title IX does not require that each men's and women's team receive exactly the same services and equipment, but it does require that male and female athletes receive equal treatment overall in areas such as locker rooms, practice and game facilities, recruitment, academic support, and publicity.²²

THE THREE-PART TEST

Under the three-part test, schools are in compliance with the law if:

- Males and females participate in athletics in numbers substantially proportional to their enrollment numbers; *or*
- The school has a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of members of the underrepresented sex; *or*
- The institution's existing programs fully and effectively accommodate the interests and abilities of the underrepresented sex.

INCREASED OPPORTUNITIES FOR FEMALE ATHLETES: SUCCESS STORIES

Increased participation by women and girls in sports since Title IX has led to a new generation of athletes and fans who pack stadiums and spend a growing number of consumer dollars on women's sports.

- In 1989, the University of Connecticut women's basketball team played before just 287 fans in the front half of a doubleheader shared with the men. During the 2009-10 season, UConn women set the NCAA record for invincibility with a 90-game winning streak, supported by a total of 357,627 fans attending the team's 39 games.
- Women's rowing and soccer programs have experienced some of the biggest gains since Title IX was enacted. The number of women's crew teams nationwide increased from 12 in 1991 to 146 in 2009. The number of NCAA women's soccer teams increased from 318 in 1991 to 959 in 2009.
- Professional women's soccer continues to grow in popularity. When the United States hosted the Women's World Cup in 1999, the final game between the U.S. and China drew 90,185 fans—the largest crowd ever to witness a women's athletic event. The 2011 Women's World Cup played multiple sold-out matches and, during the final, broke the Twitter world record in number of tweets per second. All 32 games were broadcast live.
- U.S. women won a record 53 medals in the 2008 Summer Olympics, including gold medals in basketball, soccer, and doubles tennis. The U.S. women's basketball team has won the gold medal at the last four Olympics. U.S. women won 12 medals at the Winter Olympics in 2010, including the silver in ice hockey. In 2002, the first African-American ever to win a gold medal in the Winter Olympics was a woman.

SOURCE: National Women's Law Center. *The Battle for Gender Equity in Athletics in Colleges and Universities*, 2011.

COURTS REJECT MALE DISCRIMINATION ARGUMENT

Recent court challenges highlight the way these provisions have been misinterpreted. For example, a coalition of wrestlers sued the Department of Education in 2002 and 2007, alleging that the three-part test unlawfully discriminates against males.²³ These and similar allegations have been resoundingly rejected by all of the federal appellate courts that have considered them.²⁴

COMMON MYTHS ABOUT TITLE IX

Myths abound about how Title IX affects athletics, particularly at the high school and college levels. Most of these myths reflect the unfounded fear that increasing athletics opportunities for girls and women will correspondingly decrease opportunities for boys and men. In fact, boys and men have continued to make gains in athletics as opportunities for

their female counterparts have grown, with corresponding benefits for all students.

Myth 1: Title IX requires quotas. Title IX does not require quotas; it simply requires that schools allocate participation opportunities in a nondiscriminatory way. The three-part test is lenient and flexible, allowing schools to comply even if they do not satisfy the first part. The federal courts have consistently rejected arguments that Title IX imposes quotas.

Myth 2: Title IX forces schools to cut sports for boys and men. Title IX does not require or encourage the cutting of any sports. It does allow schools to make choices about how to structure their programs as long as they do not discriminate. Instead of allocating resources among a variety of sports, many college administrators are choosing to take part in the basketball and football "arms race" at the expense of other athletic programs. In Division I-FBS (formerly Division I-A), for example,

basketball and football consume 80% of total men's athletic expenses. Average expenditures on football alone in this division (\$12+ million) exceed average expenditures on *all* women's sports (\$8+ million).²⁵

Myth 3: Men's sports are declining because of Title IX. Opportunities for men in sports—measured by numbers of teams as well as athletes—have continued to expand since the passage of Title IX. Between the 1988–1989 and the 2010–2011 school years, NCAA member institutions added 3,727 men's sports teams and dropped 2,748, for a net gain of nearly 1,000 men's teams. The teams added and dropped reflect trends in men's sports: wrestling and gymnastics teams were often dropped, while soccer, baseball, and lacrosse teams were added. Women made greater gains over the same period, but only because they started at such a deficit; 4,641 women's teams were added and 1,943 were dropped. During the 2010–2011 school year, NCAA member institutions actually dropped slightly more women's teams than men's teams.²⁶

Myth 4: Title IX requires schools to spend equally on male and female sports. The fact is that spending does not have to be exactly equal as long as the benefits and services provided to the men's and women's programs are equal overall. The law recognizes, for instance, that football uniforms cost more than swimsuits; therefore, a discrepancy in the amount spent on uniforms for men's teams versus women's teams is not necessarily a problem. However,



the school cannot provide men with top-notch uniforms and women with low-quality uniforms, or give male athletes home, away, and practice uniforms and female athletes only one set of uniforms. A large discrepancy in overall funding is a red flag that warrants further scrutiny. There is currently a large gap among Division I-FBS schools, where women receive just 28% of the money spent on athletics.²⁷

Myth 5: Men's football and basketball programs subsidize female sports. The truth is that these high-profile programs don't even pay for themselves at most schools. Even among the most elite divisions, nearly half of men's football and basketball programs spend more money than they generate.²⁸

Recent Legislative Action: Attacks and Advances

LEGAL AND OTHER CHALLENGES

Even though much work remains to be done to achieve gender equity in athletics, Title IX opponents continue to try to undermine the law through media attacks, legal challenges, and appeals to Congress and the Executive Branch. The basic claim made by these oppo-

nents is that women and girls are inherently less interested in sports than are men and boys, and that providing females with equal opportunities therefore discriminates against males.

The most recent attacks have targeted secondary school programs. In July 2011, the Ameri-

ADDITIONAL RESOURCES

The Battle for Gender Equity in Athletics in Colleges and Universities. National Women’s Law Center (NWLC), 2011. Available at http://www.nwlc.org/sites/default/files/pdfs/2011_8_battle_in_college_athletics_final.pdf.

The Battle for Gender Equity in Athletics in Elementary and Secondary Schools. NWLC, 2012. Available at <http://www.nwlc.org/resource/battle-gender-equity-athletics-elementary-and-secondary-schools>.

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NCAA Gender Equity Report, 2004–2010. National Collegiate Athletic Association, 2012. Available at <http://www.ncaapublications.com/productdownloads/GEQS10.pdf>.

Title IX Still Applies: The Battle for Gender Equity in Difficult Economic Times. NWLC, 2012. Available at <http://www.nwlc.org/resource/title-ix-still-applies-gender-equity-athletics-during-difficult-economic-times>.

can Sports Council filed a lawsuit against the U.S. Department of Education, claiming that Title IX should not apply to secondary schools. This case, like other similar cases,²⁹ was dismissed. The court said that the group could not show that Title IX is the cause of their injuries (which they describe as the potential reduc-

tion of athletic opportunities for boys) because the law does not require schools to reduce opportunities.³⁰

A MAJOR STEP FORWARD

On April 20, 2010, the Department of Education issued a new policy document revoking the harmful 2005 Additional Clarification that weakened schools’ obligations under Title IX to provide women and girls with equal athletic opportunities. The 2005 Clarification created a major compliance loophole by eliminating the requirement (under part three of the three-part test) for schools to look broadly and proactively at whether they are satisfying female students’ interests in sports. Instead, the 2005 policy allowed schools to show that they were fully meeting their female students’ interests in sports simply by sending an email survey to all female students and assuming that a failure to respond indicated a lack of interest.

The 2010 Clarification reverses and replaces the 2005 document, stating that schools cannot rely solely on surveys to demonstrate that they are in compliance with part three. Instead, the Department made clear that schools must adhere to a longstanding policy requiring them to evaluate multiple indicators of interest to show that they are fully and effectively accommodating their female students’ interests.³¹

Barriers to Women’s and Girls’ Participation in Sports

Despite great gains over the past 40 years, barriers to true equality still remain:

- Girls have 1.3 million fewer chances to play sports in high school than boys.³² Opportunities are not equal among different groups of girls. Fewer than two-thirds of African American and Hispanic girls play sports, while more than three-quarters of Caucasian girls do.
- Three-quarters of boys from immigrant families are involved in athletics, while fewer than half of girls from immigrant families are.³³
- In addition to having fewer participation opportunities, girls often endure inferior treatment in areas such as equipment, facilities, coaching, scheduling, and publicity.
- At the most competitive level, Division I-FBS schools, women make up 51% of students, yet they have only 45% of the opportunities to

play intercollegiate sports. Female athletes at these schools receive 42% of the total athletic scholarship dollars, 31% of the dollars spent to recruit new athletes, and just 28% of the total money spent on athletics.³⁴

- Since Title IX was passed, there has been a dramatic decrease in the proportionate role

of female coaches. In 1972, 90% of women's teams were coached by females, while today 43% are. Only 2–3% of men's teams are coached by women. As the number of women's teams has increased, the percentage of female coaches has continued to drop.³⁵

NCWGE Recommendations

- OCR must receive adequate funding and strengthen its efforts to enforce Title IX by initiating proactive compliance reviews at more educational institutions and providing technical assistance and guidance on emerging Title IX questions.
- Congress should pass the High School Athletics Transparency Bills, which require that

high schools report basic data on the numbers of female and male students and athletes, as well as the budgets and expenditures for each sports team. Since this information is already collected, just not made public, this legislation would allow communities to be informed about how their schools are treating boys and girls in sports without creating an additional burden on schools.³⁶

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Title IX, Girls' Sports Participation, and Adult Female Physical Activity and Weight, 34 EVAL. REV. 52 (2010).

9. See D. Sabo et al., *Her Life Depends On It*, Women's Sports Foundation, 2009; Dorothy Teegarden, et al., "Previous Physical Activity Relates to Bone Mineral in Young Woman," *Medicine and Science in Sports and Exercise*, Vol. 28, 105–13 (1996); Leslie Bernstein et al., "Physical Exercise and Reduced Risk of Breast Cancer in Young Women," *Journal of the National Cancer Institute*, Vol. 86, No. 18 (1994); Marilie D. Gamon, et al., "Does Physical Activity Reduce the Risk of Breast Cancer?" *Meno-pause*, Vol. 3, No. 3, 1996, 172–80.

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12. See, e.g., T. Dodge and J. Jaccard, *Participation in Athletics and Female Sexual Risk Behavior: The Evaluation of Four Causal Structures*, 17; *Journal of Adolescent Research* 42 (2002); *The Women's Sports Foundation Report: Sport and Teen Pregnancy* (1998), 5–7; The President's Council on Physical

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15. D. Sabo and P. Veliz, *Go Out and Play: Youth Sports in America*, 115–117 (Women's Sports Foundation, 2008).

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17. D. Sabo, *Minorities in Sports: the Effect of Varsity Sports Participation on the Social, Educational, and Career Mobility of Minority Students*, 14 (Women's Sports Foundation 1989).

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19. 44 Fed. Reg. 71413 et seq (1979).

20. 34 C.F.R. § 106.37(c).

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22. 34 C.F.R. § 106.41(c) (1–10).

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24. See, for example, *Williams v. Sch. Dist. of Bethlehem*, 998 F.2d 168, 171 (3d Cir. 1993); *Pederson v. La. State Univ.*, 213 F.3d 858, 880 (5th Cir. 2000); *Miami University Wrestling Club v. Miami University*, 302 F.3d 608, 612–13 (6th Cir. 2002); *Chalenor v. Univ. of N.D.*, 291 F.3d 1042, 1046 (8th Cir. 2002); *Roberts v. Colo. State Univ.*, 998 F.2d 824, 828–29 (10th Cir. 1993), among others.

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30. *American Sports Council v. United States Department of Education* (D.D.C. Mar. 27, 2012), available at http://www.gpo.gov/fdsys/pkg/USCOURTS-dcd-1_11-cv-01347/pdf/USCOURTS-dcd-1_11-cv-01347-0.pdf.

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