

Major Themes in Economics

Volume 8

Article 5

Spring 2006

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Recommended Citation

Irons, Alicia (2006) "The Economic Inefficiency of Title IX," *Major Themes in Economics*, 8, 27-44.

Available at: <https://scholarworks.uni.edu/mtie/vol8/iss1/5>

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The Economic Inefficiency of Title IX

Alicia Irons

ABSTRACT. Title IX of the Educational Amendment Act of 1972 has expanded the opportunity for women in athletics. At the same time, it has been detrimental to men's athletics. The elimination of men's teams is analyzed through a theoretical model and empirical evidence. College athletic departments have used an inefficient method to comply with Title IX because they use the method the NCAA encourages. The NCAA needs to reevaluate the methods that it has encouraged and improvements should be made to Title IX.

I. Introduction

During the summer of 1999, the United States Women's Soccer Team stole the hearts of Americans as they triumphed over China to win the Women's World Cup. The victory was not just for the women on the soccer field; it was a triumph for all women. Media coverage of women's athletics increased to an all-time high. This was not just a sports story; it was a political story. Politicians and the media quickly associated the success of the U.S. Women's Soccer Team with Title IX of the Educational Amendment of 1972; this law provided equal opportunity for women in federally funded educational institutions. Politicians jumped at the opportunity to show their support for the law that changed the perception of women's athletics forever [Gavora, 2002, 11-12].

Title IX affected many lives that summer. The Providence College baseball team had just completed the most successful season in school history, but the university had an eleven-point gap between the percentage of female athletes and female students. Because of Title IX, administrators were forced to eliminate this gap or face a lawsuit and/or federal investigation. Providence College decided not to add any women's teams. Instead, the men's baseball program and a total of fifty-seven male athletes were cut from the athletic program [Gavora, 2002, 14]. This is one of numerous stories about the demolition of men's tennis, swimming, baseball, and wrestling teams during the 1990s.

Title IX of the Education Amendment of 1972 paved the road to gender equality in many areas. A provision of the Civil Rights Act of 1964, Title IX states that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education program or activity receiving federal financial assistance [Gavora, 2002, 15].

Title IX did not initially refer to sports. The first impact of Title IX was felt by educational providers who were forced to equalize opportunities for women. During the past 34 years, the number of women in specialized fields, such as law and medicine, has skyrocketed. Recently, however, women's athletics have been the focus of debate. Title IX has led to monumental strides for women's athletics, as evidenced by Olympic and World Cup Triumphs, the organization of a professional women's basketball league (WNBA), the organization of a professional women's soccer league (WUSA), and the increase in the number of women participating in youth, college, and professional athletics. But the gains came at a cost. Title IX is under scrutiny for unintended consequences, specifically the elimination of men's teams. A theoretical model and empirical evidence will show that men's teams were eliminated following Title IX implementation.

II. Background

Title IX mirrors the Civil Rights Act of 1964, with a substitution of the word "sex" in place of "race, color or national origin." The original purpose of Title IX was to break down barriers that restricted women from participating in federally funded activities. It covers everything a federally funded educational institution offers. Gavora [2002, 15] states that "if it is touched by federal money and has an 'educational' purpose, it falls under the jurisdiction of Title IX." Even though Title IX covers areas such as counseling, testing, employment, and course offerings, these areas are rarely involved in Title IX controversy. It is women's athletics that has become synonymous with Title IX [Gavora, 2002, 15-18]. The law does not specifically refer to women, but rather "the underrepresented sex." It is possible for men to be the underrepresented sex, but it is typically women [Putnam, 1999, 90].

Before Title IX was passed in June 1972, congressional sponsors showed reluctance to let the law stand as it was written. They feared it would lead to sex quotas in schools. Therefore, a caveat was added to the

law that would prevent preferential treatment to any sex. This caveat states that:

Nothing [in the law] shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area [Gavora, 2002, 19-20].

In 1972, a Title IX gap was acceptable if it was not created by discrimination [Gavora, 2002, 20].

The congressmen who implemented Title IX only laid framework for increasing educational opportunity for women. A key factor in the effectiveness of a law is how the law is interpreted. Since the caveat asserts that the overrepresented sex should not be harmed to achieve equality, the elimination of men's teams in order to meet Title IX requirements was an unintended consequence due to misinterpretation.

Title IX did not contain specific regulations for athletics until July 21, 1975. A provision required schools to "provide equal athletic opportunity for members of both sexes" [OCR, 2005, 1]. There are three areas in which Title IX applies to athletics: financial assistance, "other program areas," and equal opportunity [Anderson and Cheslock, 2004, 307]. Access to cheerleaders, band, and facilities are examples of "other program areas." The Office for Civil Rights (OCR), a subdivision of the United States Department of Education, monitors compliance in these three areas [Putnam, 1999, 91].

The first athletic regulation required schools to accommodate both genders with the selection of sports and level of competition. But athletic programs did not know how to fulfill these requirements. On December 11, 1979, the OCR released the Intercollegiate Athletics Policy Interpretation. This interpretation asserted that athletic departments, while accommodating interests of both genders, must provide competitive team schedules equal to ability level. In the interpretation, the OCR released a three-part test to evaluate equal opportunity. The three-part test states that a school is in compliance if they achieve ANY of the following:

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1. The percent of male and female athletes are substantially proportionate to the percent of male and female students enrolled at the school (first prong)
2. The school has a history and continuing practice of expanding participation opportunities for the underrepresented sex (second prong)
3. The school is fully and effectively accommodating the interests and abilities of the underrepresented sex (third prong) [OCR, 2005, 2].

The committee did not specify which component was favored, which gave schools flexibility [OCR, 2005, 2]. A proportionality gap is the difference between the percentage of female students and the percentage of female athletes. The OCR did not give a specific percentage to which schools must reduce their gap to comply with the first prong, but 3-5% has held up in courts [Cheslock and Anderson, 2005, 308].

In the three-part test, “athlete” does not refer to scholarship athletes only. The three-part test only evaluates equal opportunity. All walk-ons, partial-scholarship, or full-scholarship athletes are considered during the three-part test. A full scholarship athlete is counted the same as a non-scholarship athlete when determining compliance with the first prong. Scholarship amounts and equal spending are evaluated separately.

Title IX did not always apply to athletics. In 1984, a Supreme Court ruling made Title IX non-applicable to college athletics. In the case of *Grove City v. Bell*, the Court ruled that Title IX applied only to programs that received direct federal funding. Since no college athletic program received direct federal funding, gender equality in athletics was no longer enforced by Title IX. Yet, in 1988, Congress overruled the Supreme Court’s decision. Congress passed the Civil Rights Restoration Act which declares that all athletic programs of schools receiving federal funds, whether directly to the athletic department or not, are subject to Title IX [Putnam, 1999, 93].

In 1994, the Equity in Athletics Disclosure Act (EADA) was passed that required schools to report statistics on enrollment and athletic opportunities [Anderson and Cheslock, 2004, 127]. The Act provides the data necessary to fuel inequality research and lawsuits.

Even with clarifications from the OCR, athletic departments demonstrated confusion by their failure to correctly comply with Title IX. A number of schools had cut men’s programs to comply with the first prong. In July 2003, the OCR declared that it opposed cutting men’s

teams in order to equalize athletic and student gender proportions [OCR, 2005, 2]. Schools that attempted to comply through the third prong did not have a set standard by which they could prove accommodation of interests and abilities. The OCR clarified its position on the third prong in March 2005. Schools can conduct a reliable and valid online survey to determine compliance. Athletic departments are not in compliance if there is:

1. Unmet interest sufficient to sustain a varsity team
2. Sufficient ability to sustain an intercollegiate team AND
3. Reasonable expectation of intercollegiate competition for a sport [OCR, 2005, 4].

The OCR provides athletic departments with sample surveys and directions for conducting the survey to encourage the use of this method [OCR, 2005, 3-12]. The sample surveys were established by statisticians within the federal government. The recommended process for distribution was via email. If a student failed to return the survey, he/she could be considered as not interested in athletic opportunity [NCAA(b), 2005]. These clarifications caused the third prong to replace the first prong as the most common method for compliance [Cheslock and Anderson, 2005, 128].

Even though the OCR is in charge of monitoring compliance with Title IX, schools that fail to comply do not fear the OCR. The OCR has never withheld funding or given a school a deadline by which it needs to eliminate its proportionality gap [Putnam, 1999, 91]. Schools fear lawsuits or federal investigations. For a large university, a federal investigation results in negative media attention, which may lower financial support and reputation.

III. Lack of Support for Third-Prong Changes

The NCAA does not support the March 2005 clarification by the OCR, which allows internet surveys to evaluate athletic interest. Many representatives of the NCAA, including NCAA president Myles Brand, believe an internet survey can not evaluate athletic interest sufficiently. The NCAA's main objection to the clarification is the ability of athletic departments to count a non-response to an internet survey as non-interest in athletics [NCAA, 2005(b)]. Stanford University Athletic Director Ted

Leland noted that freshman students receive several surveys and that a lack of response does not necessarily imply lack of interest. He stated that the new clarification “would be like counting everybody in your community that didn’t vote as a no vote” [Hosick, 2005]. But, Leland also believes that this change may have a positive effect at some schools.

On April 28, 2005, the NCAA Executive Council adopted a resolution that urged the removal of the third-prong clarification by the OCR. Along with the resolution, the council urged NCAA members to avoid using this method for compliance. The NCAA Executive Committee argued that the new clarification is inconsistent with the basic principles of Title IX. The members of the Executive Committee feel that it puts the burden on female students, lacks a sufficient monitoring process and will stunt the growth of women’s athletics [Brown, 2005(a)]. Opponents to this new method of compliance believe that schools that are “committed” to equality will shun the new clarification and comply with methods previous to the March 2005 clarification [Hosick, 2005].

IV. Gender Statistics in Athletics

Data from the past thirty years show a drastic change in gender composition in athletics. The General Accounting Office (GAO) [2001, 4] found that from 1981-1999, male participation in college athletics increased by only five percent while female participation increased eighty-one percent. From 1972-1996, the total number of men’s teams in Division I declined by 115. In the same period, the number of women’s teams increased by 471. For all divisions in that period, men had a net increase of 74 teams while women’s teams increased by 1,658 [Sabo, 1998]. In 1999, women’s basketball had a larger number of teams than any other sport, male or female [Putnum, 1999, 97].

From 1995-2002, Division I institutions had the biggest gains for women and losses for men. It was the only division that had a net decrease in the number of men’s teams and participants [Anderson and Cheslock, 2004, 308]. Media pressure is higher for Division I institutions to achieve compliance [Anderson and Cheslock, 2004, 308-309]. The passage of EADA also made data more readily available. Since many universities with high-profile athletic departments have faced Title IX lawsuits, other large universities decreased their proportionality gap on their own to avoid facing legal action [Putnam, 1999, 92].

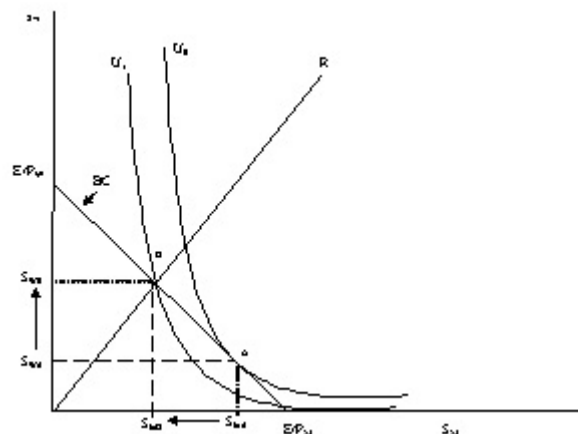
Even though statistics show that women's athletic programs have expanded more rapidly than men's athletic programs, they fail to prove that the decrease in the number of men's teams was in response to Title IX. In order to determine whether a correlation between Title IX and the cutting of men's programs exist, one must first understand the decision techniques of a college athletic program.

V. The Elimination of Men's Teams

Title IX has been heavily scrutinized for the elimination of men's teams. A theoretical model will show that athletic directors, with a large proportionality gap and a regulation such as Title IX, will eliminate men's athletic programs. Also, empirical evidence shows that men's teams were cut following Title IX implementation.

A. THEORETICAL MODEL

The response to a regulation such as Title IX will depend on the initial number of support staff for men's and women's programs. The initial difference in the allocation of jobs between men's and women's sports is what causes one athletic director to cut men's teams while another adds women's teams. The following graph demonstrates that concept:



Men's staff size (S_M) and women's staff size (S_W) serve as proxy variables for quantity of programs. Suppose an athletic department has a budget of

E. Let P_w be the price of women's support staff and P_m be the price of men's support staff. For ease of exposition, assume that $P_m = P_w$. BC represents the budget constraint of the athletic department. U_0 represents the utility maximum subject to the budget constraint. The indifference curve has a steep slope. According to Carroll and Humphreys [2000, 361-373] the men's sports staff increases the prestige and revenue of the athletic department. The slope of the indifference curve represents the rate of substitution of women's staff members for men's staff members necessary to hold utility constant. Typically, men's sports yield higher utility to athletic departments than women's sports.

Suppose a school starts at point A. At this point, the athletic department has more men's staff than women's staff ($S_{MA} > S_{WA}$). Now assume that a restriction, such as Title IX, is enforced that requires schools to have a ratio of female to male student athletes equal to R. This constraint is represented by the line R. The line would become steeper as the ratio increased. The extra constraint requires schools to operate at point B. The quantity of men's support staff decreases from S_{MA} to S_{MB} while women's staff increases from S_{WA} to S_{WB} . Point B is on a lower indifference curve, U_1 . The utility from the additional women's staff did not compensate for the eliminated men's staff. This school was forced to equalize down in order to achieve compliance.

Notice that the reduction in men's staff depends on the original composition of staff in the athletic department. The higher the ratio of men's staff to women's staff, the more men's staff that will be eliminated after Title IX implementation. Schools that have close to equal number of men's and women's staff may be able to raise funds to equalize up. This would be represented by an increase in E and a shift of the budget constraint to the right. The school would be able to achieve higher utility and therefore have an increase in women's sports while maintaining men's programs. This is only possible if schools are able to raise money through donations, ticket sales, or grants. Schools with a large proportionality gap and lack of funding would be forced to decrease the amount of men's support staff. The opportunity cost of not increasing women's programs and facing lawsuits forces schools who cannot completely achieve compliance through equalizing up, to cut men's sports [Cheslock and Anderson, 2005, 137].

It was assumed that $P_m = P_w$. If this assumption was relaxed, the budget constraint would rotate. Typically, men's sports staff earn higher wages than women's sports staff ($P_m > P_w$), represented by a rotation of

BC inward on the S_M axis. The school would start out with less men's support staff than the previous example, and the reduction of men's staff would not be as drastic following a regulation such as Title IX. Also, the budget constraint might not be linear and could be concave.

B. EMPIRICAL EVIDENCE

Many schools have argued that cutting teams is necessary to meet Title IX criteria. Some athletic departments have even cut successful men's programs to reduce the number of male athletes [Leeds et al, 2004, 137]. A congressional hearing on Title IX's effect on men's collegiate athletics found that between 1982 and 1996, many men's programs, other than basketball and football, were discontinued [Putnam, 1999, 95].

When a school is forced to comply, it can achieve equality by "equalizing up" or "equalizing down." "Equalizing up" happens when a school adds women's teams and/or athletes until it reaches proportionality. "Equalizing down" happens when a school cuts men's teams and/or athletes to reach compliance [Cheslock and Anderson, 2005, 129]. A study by the GAO [2001, 14-20] found that schools tend to use both methods to achieve compliance.

Anderson and Cheslock [2004, 310] found two responses to a proportionality gap between 1995/1996 and 2001/2002. The greatest response was to add female teams and athletes. The other response was to drop men's teams and athletes. Due to the rising costs of education and the instability of revenue sources for an athletic department, it is unlikely that athletic departments can completely adjust proportionality through the addition of females. Athletic departments are therefore forced to decrease the number of male athletes in order to achieve proportionality.

The three divisions of NCAA athletics each use different methods to comply with Title IX. Cheslock and Anderson [2005, 132-133] found that Division I institutions complied faster than the other divisions between the 1995/1996 and 2001/2002 academic years. Media pressure may have increased the rate at which Division I schools complied. These schools used a combination of "equalizing up" and "equalizing down" to achieve compliance quickly. Division II and III schools primarily used "equalizing up" methods and took longer to comply.

McBride et al [1999, 324-328] found a net decrease in the number of men's sports following Title IX. More college athletic departments offered sports that the NCAA offers for both sexes to women than men.

The total number of sports offered to men, including gender-specific sports, was 19. Women were offered 17 sports, but the NCAA had eight emerging women's sports that would increase the total number of women's sports to 25 [McBride et al, 1999, 328-332].

"Equalizing up" was attempted by many schools during the 1990s. Athletic departments rely on donations, grants, and fees as their source of funds. Revenue sources depend on the success of the athletic department and therefore tend to be unstable. At the same time, tuition costs are rising. Some athletic departments may face an unsuccessful athletic department and rising tuition at the same time. This is one type of university that will be forced, due to lack of funds to support an additional women's team, to "equalize down."

As athletic departments get closer to compliance, the effectiveness of adding female athletes/teams begins to diminish. Schools are looking to comply fast to avoid lawsuits. Once 46-50% of athletes are women, dropping male athletes will provide greater gains towards compliance than adding women [Cheslock and Anderson, 2005, 142-143].

Schools begin their process of "equalizing down" by reducing the number of male athletes before cutting entire teams. Most schools initially cut walk-ons and non-scholarship athletes. Non-scholarship means the marginal cost of providing this athlete the opportunity to participate in athletics is very low [Kocher, 2005, 150]. A student who truly wants to be involved and is of low cost compared to a scholarship athlete is turned away, not because of talent or ability, but rather because he is a number. The department is forced to lower utility with little decrease in cost. The athletic department is only able to see the opportunity cost of not complying with Title IX. The school must comply or face a possible lawsuit and/or public humiliation. This may be a risk athletic directors of high-profile athletic programs are unwilling to take.

VI. "Equalizing up" through women's rowing

Many schools that approach compliance through "equalizing up" choose to add new women's sports rather than increase the number of women in established sports. The number of women's rowing teams has increased rapidly since the implementation of Title IX. Rowing teams can have 90 or more members [Tanner, 2001, 4]. Football programs, with 85 scholarship athletes and around 120 total players, have been criticized for being "the fat man tipping the canoe of gender equity in sports" [Kocher,

2005, 157]. Some schools have added rowing teams to compensate for the number of football athletes. This quick-fix idea for adding female athletes has become problematic for many athletic departments. Coaches have turned to recruiting in dorm rooms and hanging signs on campuses to fill positions on the squad. To entice women to try the sport, coaches offer scholarships. Recruitment is not the only problem. Equipment is costly for schools and suitable rivers on which to train are hard to find in certain areas of the country [Tanner, 2000, 4-5]. Arizona State University, located in one the driest areas in the United States, added a rowing team in 2002. The team practices on a stretch of water the town built by flooding a dry gulch [The Wall Street Journal, 1999].

With intense workouts, the dropout rate of women rowers is extremely high. Teams start the season with a full roster but end with a fraction of the original number of members. Athletic departments can turn in preseason numbers to count for Title IX compliance, but these numbers are not representative of participation for the entire year. Adding a rowing team is a way for schools to artificially inflate the number of female athletes without having to provide for these athletes the entire year [Tanner, 2000, 4-5].

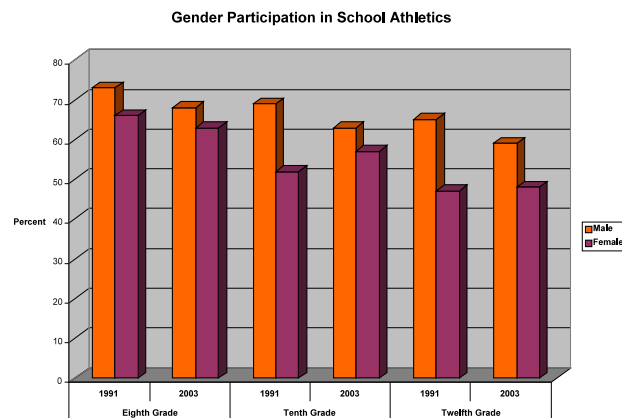
The strongest argument against adding rowing teams is not the artificial inflation of the number of female athletes. Worse is the practice of creating rowing teams with students who lack ability and interest in the sport. There are only 34 high school rowing teams in the United States. By recruiting dorm to dorm or on bathroom walls, athletic departments are giving women who have never rowed a boat the opportunity to be a college scholarship athlete [Tanner, 2000, 5]. These same schools are turning away men who have participated in a sport, such as wrestling and baseball, since elementary school.

VII. The Inefficiency of Proportionality

The first prong of the three-part test for compliance requires schools to show that the gender proportion of students is mirrored by the gender proportion of athletes. Women were only 42% of the student body in 1970. The low percentage was one of the motivations for instituting Title IX. Today, the percentage of female students is 56% and is projected to grow to 57% by 2013 [NCES, 2006]. Title IX has done exactly what it was written to accomplish: to increase opportunity for women. While opportunity has increased for women, the proportionality gap in athletics

has become harder to reach as women have become a larger percentage of students. Athletic departments had trouble allocating resources to balance out athletic opportunity when women were 42% of the student body; they now face even harder challenges to allocate 56% of athletic opportunities to women. By 2013, schools will have to readjust budgets and resources to accommodate the one percent increase in the number of females. The first prong has required athletic departments to allocate resources to a moving target. Constant changes may cause athletic directors to take the knife to men's programs once again. This leaves many questions unanswered. Are there enough experienced women athletes on campuses who want the opportunity that is taken away from male athletes? More importantly, since school enrollments have shown instability, how long will athletic programs have to adjust to meet Title IX criteria?

Requiring schools to have equal gender proportions in athletics does not reflect the interests of each gender in athletics. Males outnumber females in college intramural sports by three-to-one. Also, there are approximately one million more high school male athletes than female athletes [Kocher, 2005, 148]. According to the Child Trends DataBank [2003, Table 1], 58.9% of high school senior males and 48% of high school senior females participate in athletics. The following graph illustrates interest in high school athletics by gender:



Child Trends DataBank (2003), "Participation in School Athletics," *Child Trend*, <http://www.childtrendsdatabank.org/indicators/37SchoolAthletics.cfm>.

Notice that males have a higher rate of participation in all age brackets. Since both intramurals and high school athletics are voluntary and open to all students, these statistics show that college men have more interest in athletics than women. Implementing equality requirements in college athletics is too late. Gender equality in college athletics should result from equal interest and participation in elementary, high school and intramural athletics. But the interest is not equal. It is unreasonable to expect colleges to undo the socialization process that starts before elementary school.

Is Title IX discriminating against athletics? Athletics are the only extracurricular activities required to exactly mirror their participation numbers to enrollment characteristics. Other extracurricular activities are not forced to allocate a proportionate number of opportunities to its female and male participants. Female dominated activities such as art and dance do not reflect the gender proportions of the university. Females were not asked to leave the band because there were not enough men in the program. Are these programs discriminating against males? It is a stretch to accuse these programs of discrimination; the proportion of females and males in these departments is determined by interest and ability, not by quotas. This leaves the question as to why athletic departments are not allowed to determine participation based on interest and ability. Recall that men have shown more interest in athletics than women. Athletic departments, like other departments, should be allowed to determine opportunity based on level of interest and ability. The third prong gives schools this option. Athletic departments should choose to follow the third prong of Title IX compliance and avoid the inefficient first prong.

VIII. The Purpose of College Athletics

In the late 1800s, athletics were student-run organizations. As public interest in athletics grew rapidly, college administrators thought athletics had become too “visible” to be a student-run organization. During this same time period, colleges were searching for financial resources. College athletics became appealing to presidents and trustees. “College presidents believed that a successful football program legitimized their institution as a major, big-time university” [Gerdy, 1997, 29]. Athletics were rapidly incorporated into colleges as a way for schools to gain prestige and visibility, which increased financial support. At the beginning of university athletics, there was little mention of character development and personal benefits of athletic participation. Sports were

incorporated into higher education as a source of revenue [Gerdy, 1997, 29-30].

Even though athletics are incorporated into colleges, they are part of the entertainment industry. Because of revenue control, athletics have become property of the public rather than universities. As sports became a more prominent fixture at college universities, administrators were forced to justify how college athletics benefited society. Administrators argued that athletics provided lessons that one could not learn in a classroom. This included teamwork, discipline, and perseverance [Gerdy, 1997, 31]. Athletic programs were initially incorporated into higher education as a source of revenue; character and personal benefits were as a justification for adding athletics into the educational environment.

IX. Possible Changes

Several committees have attempted to find ways to prevent the unintended consequences of Title IX. One recommendation is to ignore football during the evaluation of Title IX. According to Rische [1999, 708], this would decrease proportionality gaps and eliminate financial gaps. Sigelman and Wahlbeck [1999, 1] found that for schools with football programs to come close to compliance, football needs to be exempt from Title IX coverage or rosters need to have a fifty player cap.

The effect of football on women's athletics has been a hot topic in debates over Title IX. Athletic directors and policy makers need to determine if football contributes to women's athletics positively or takes opportunities away from women. Rische [1999, 706], using data from 1995-1996, found that the more prestigious a Division I-A football team is, the greater expenditures female athletes receive in absolute terms, but they receive less in relative terms. Football makes the proportion of money spent more unequal. Yet removing football programs, or reducing the program, will decrease the amount of money unprofitable women's teams receive in absolute terms. Financial gains from football teams allow women's programs and smaller men's programs to exist. An athletic program can also preserve the prestige of the university by maintaining the football team. Cutting or reducing a football program might reduce the extra revenue given to unprofitable teams, as well as the prestige of the athletic program.

A substitute for removing football from Title IX coverage is to implement a player cap on college football. Currently, Division I-A football teams offer 85 scholarships and have roughly 120 total participants. The National Football League (NFL) only allows teams 45

players on their active roster per game. These NFL teams have several other players but can only activate 45 per game. Colleges could lower their proportionality gap by limiting the number of scholarship players to 60. Since football has the highest percentage of walk-ons, an additional cap could also be placed on the total number of players [Putnum, 1999, 95]. Supporters of a player cap believe that 60 scholarship players would be enough to produce a successful football team; the money saved from the reduction in scholarships could be used to hire a coach that can achieve the same results with a smaller squad. A scholarship cap and/or reduction in football will reduce the proportionality gap of schools that fail to comply because of football numbers [Sigelman and Wahlbeck, 1999, 1].

One recent recommendation is to eliminate non-traditional students from school enrollment totals during Title IX review. Students over the age of 23 are considered non-traditional students. Women are usually the higher percentage of this age bracket. Non-traditional students are also less likely to participate in athletics than younger students. Eliminating non-traditional students from enrollment totals will bring schools closer to compliance and generate enrollment numbers that reflect student-athlete characteristics [Wall Street Journal, 2003].

Another change that committees have considered is counting only athletes who were recruited or are on scholarship. Walk-ons would not count in Title IX compliance. Teams would be able to find talented, virtually cost-free athletes who would fill positions on the athletic team without violating Title IX. Both of these changes were recommended to the Education Secretary in 2003. There is no deadline for a decision [Wall Street Journal, 2003].

Since the NCAA does not support the use of online surveys to demonstrate interest and ability, the OCR could implement additional requirements. First, the survey should be given to all males and females to determine the interest and ability of both sexes at each campus. This would eliminate the NCAA's argument of female burden. The survey should not be optional. A school could require students to complete the survey before they can register for classes. This would eliminate the discrepancy of counting a non-response as non-interest.

X. Arguments against the Proposed Changes

There have been arguments that the elimination of men's teams was not due to Title IX. People have argued that the increase in the cost of high profile sports, such as men's football and basketball, caused athletic

programs to cut unprofitable sports. Changes in preferences of athletes and viewers could also cause less favored sports to be cut [Anderson and Cheslock, 2004, 308]. Yet as presented earlier, research from unbiased sources, such as the GAO, have found that men's sports were eliminated as a response to Title IX compliance pressure.

In 1972, girls were only 7% of all high school interscholastic athletes. This number increased to 37% by 1992 [Putnam, 1999, 95]. The Child Trends DataBank [2003] found that the gap between the percentage of high school senior female and the percentage of high school senior male students that participate in athletics decreased gradually between 1991 and 2003. The increase in women's interest in athletics should be accommodated. As noted earlier, women also increased their proportion of college enrollment during this time period. Even though Title IX provided women equal opportunity for continuing education, growing interest in athletics may have caused part of the increase in women's participation in college athletics. Opponents to change feel that Title IX is necessary to accommodate the recent increase in women's interest in athletics.

There are benefits to counting walk-ons in Title IX. Recall, walk-ons are the first to be cut from teams to decrease a proportionality gap. Even though walk-ons are cheap in comparison to scholarship athletes, reducing the number of walk-ons may increase the competitive balance of football. Scholarship players may receive more repetitions during practice and contact time with coaches [Terry and Ramirez, 2003, 67]. Title IX may benefit team performance by eliminating walk-ons and non-scholarship athletes.

Even though athletics were initially incorporated into universities as a source of revenue, they are non-profit organizations. Profit maximization should not be the main goal of athletic departments. Myles Brand, the NCAA President, urges people to not view college athletics as a business. Education should be the main goal of college athletics, not revenue maximization [Brown, 2005b]. Sports that generate higher revenue should not receive preferential treatment to those that do not gain revenue or run at a deficit.

XI. Conclusion

Title IX needs change. Walk-on and non-scholarship athletes should not be included in Title IX coverage and non-traditional students should not be included in enrollment numbers. A provision needs to be added

regarding football. A scholarship cap would reduce the proportionality gap of schools that fail to comply because of football numbers. An alternative would be to disregard football during the evaluation of Title IX. The OCR should address these possible changes in order to improve Title IX.

Congressional supporters of Title IX wrote the caveat to Title IX in fear of sex quotas. Their fear is now a reality. Several programs have cut teams as a quick-fix way to comply with the first prong of the three-part test for equal opportunity. Title IX is proof that how courts interpret and enforce laws counts more than the intention of the lawmakers. The interpretation of Title IX has encouraged inefficient methods, such as “equalizing down,” that were not intended by the original writers.

Many athletic departments achieve compliance with Title IX through the first prong, which is the method the NCAA encourages. The first prong is inefficient. The theoretical model demonstrates that the first prong diminishes utility. Studies have shown that more college men are interested in athletics than college women. Research also found that men’s teams were eliminated following Title IX. Compliance through the third prong is more efficient. The third prong would allow athletic departments to allocate resources based on interest and ability. The OCR should change the online survey method to make it required of all students and not optional. With these changes, the NCAA should encourage the third prong for Title IX compliance.

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