



Title IX's Three-Prong Test in Athletics

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TITLE IX's THREE-PRONG TEST IN ATHLETICS

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I. OVERVIEW OF TITLE IX

On June 23, 1972, President Richard Nixon signed Title IX of the Education Amendments of 1972 ("Title IX") into law.¹ Title IX bars sex discrimination by education programs and activities that receive federal financial assistance. Such institutions include colleges, universities, and secondary and elementary schools. Title IX provides in pertinent part:

*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. . . .*²

Title IX was an outgrowth of the Civil Rights Act of 1964.³ While Title VII of the Civil Rights Act of 1964 protected specific classifications from discrimination in employment, it did not apply to all components of an academic institution's program.⁴ Title IX served to fill the void that allowed the discriminatory treatment of women by barring discrimination based on sex in the entirety of an institution's program, not just employment.

History credits several legislators with championing the Title IX legislation including, Congresswoman Edith Green of Portland, Oregon; Congresswoman Patsy Minks of Hawaii; and Senator Birch Bayh of Indiana.⁵ Congresswoman Green supported Title IX because she was particularly dismayed with the discriminatory treatment of girls and women in academics. For example, she was concerned with the exclusion of girls from specific education programs, the deterring of girls from taking advanced math and science classes, the lack of principal positions for female teachers, and the quota system used by law schools and medical schools to limit the enrollment of women to less than ten percent of the class.

In writing a brief legislative history of Title IX, Senator Bayh stated:

¹ 34 C.F.R. § 106.

² 34 C.F.R. § 106.1.

³ 42 U.S.C. § 2000e *et seq.*

⁴ 42 U.S.C. § 2000e-1(a) *et seq.*

It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

⁵ Bunny Sandler, a part-time professor, from the University of Maryland, is often credited as the catalyst behind the Title IX legislation. <http://sundial.csun.edu/2015/07/title-ix-did-you-know/>

Prior to Title IX, women students were denied equal opportunities under the law in academics; women applicants were routinely denied equal access to medical, law and other graduate disciplines; and women athletes were denied equal participation in sports. Similarly, female faculty members were denied equal compensation and promotion.⁶

Title IX did not apply to all education programs. Military schools were exempted from the requirements of Title IX, and several elite private schools were exempted because they were concerned that an increase in the number of women to their programs would "underutilize" their science classes and "hurt alumni gift giving."⁷ Further, some religious schools either opted entirely out of Title IX or out of part of the law. To opt entirely out of Title IX, the school must refuse any federal grants or aid. To opt in to only part of Title IX obligations, the school must request the exemption from the U.S. Department of Education, Office for Civil Rights.⁸

II. THE EVOLUTION OF TITLE IX

Prior to the enactment of Title IX, opportunities for girls and women to participate in organized interscholastic and intercollegiate sports were limited. While sports were encouraged for boys and viewed as beneficial, girls were discouraged from participation in organized athletics. For example, in 1971, when a female student was not permitted to participate on her school's male cross country team, she took the matter to court. In rejecting the girl's request to compete on the cross country team, the judge said, "Athletic competition builds character in our boys. We do not need that kind of character in our girls, the women of tomorrow. . . ."⁹

The original intent of Title IX was not to address inequities in athletics based on sex, but to promote equity within an academic institution in areas such as teaching positions and enrollment. In fact, the words "sports" or "athletics" do not appear anywhere in the statute. In 1973, Congress formalized the inclusion of athletics under Title IX when it directed the Department of Health, Education, and Welfare to prepare regulations that included athletics.¹⁰

After the passage of Title IX, equity in intercollegiate athletics became part of a national debate. While there were several legislative attempts to limit the reach of Title IX, none were successful. For example, the 1974 Tower Amendment, supported by the National Collegiate Athletic Association ("NCAA"), sought to exempt the revenue-producing sports from Title IX jurisdiction.¹¹ After the Tower Amendment failed, Congress adopted the Javits Amendment which charged the United States Department of Education's Office for Civil Rights ("OCR") as the primary agency for enforcing Title IX's anti-discrimination requirements.

⁶ Birch Bayh, Legislative History of Title IX, available at <http://www.birchbayh.com/id8.htm>.

⁷ 20 U.S.C. § 1681(a)(4).

⁸ 20 U.S.C. § 1681(a)(3).

⁹ Shelley Smith, *Not Quite the Game Intended*, in *NIKE IS A GODDESS: THE HISTORY OF WOMEN IN SPORTS* 300 (Lissa Smith, ed., 1998).

¹⁰ S. Conf. Rep. No. 1026, 93rd Cong., 2d Sess. 4271 (1974).

¹¹ 120 Cong. Rec. 15-322-23.

III. OCR POLICY INTERPRETATIONS

A. OCR's 1979 *Policy Interpretation* ("1979 Policy Interpretation")

In 1979, OCR issued a Policy Interpretation which provided guidance to higher education institutions regarding how to comply with the Title IX regulations in the intercollegiate arena. In the 1979 Policy Interpretation, OCR issued a compliance test that included three parts: 1) Athletic Financial Assistance/Scholarships; 2) Equivalence in other Athletic Benefits and Opportunities; and 3) Effective Accommodations of Student Interest and Abilities.¹²

To comply with the "Athletic Financial Assistance" requirement, OCR stated that financial assistance had to be awarded based on the number of male and female athletes, and the total amount of athletic aids had to be substantially proportionate to the ratio of male and female athletes.

The "Equivalence in Other Athletic Benefits and Opportunities" test developed by OCR in the 1979 Policy Interpretation contained a list of ten program components to determine whether the educational institution was in compliance with Title IX.¹³ The program components included:

- Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
- The provision of equipment and supplies;
- Scheduling of games and practice time;
- Travel and per diem allowances;
- Opportunities to receive coaching and academic tutoring;
- Assignment and compensation of coaches and tutors;
- Provision of locker rooms, practice and competitive facilities;
- Provision of medical and training facilities and services;
- Provision of housing and dining facilities and services;
- Publicity

OCR explained in the 1979 Policy Interpretation that the "Effective Accommodation of Student Interests and Abilities" test was met when an institution of higher education could demonstrate that the interests of students were effectively accommodated in one of three ways: 1) a showing that the rate of participation in athletic programs by members of the underrepresented sex is substantially proportional to their rate of undergraduate enrollment; 2) by producing evidence of a history of "continuing practice" of program development for members of the underrepresented sex; or 3) by producing evidence that the existing program "fully and effectively" accommodates the interest and abilities of both sexes.¹⁴

¹² 44 Fed. Reg. 71413.

¹³ 34 C.F.R. § 106.41 (c) (1) – (10).

¹⁴ *Supra* at 12.

OCR clarified in the 1979 Policy Interpretation that the "equivalency" standard of Title IX does not mean that identical benefits, opportunities, or treatments are required.¹⁵ In its 1979 Policy Interpretation, OCR explained that the appropriate analysis for determining equivalence in athletic benefits and opportunities is to compare the:

. . . availability, quality and kind of benefits, opportunities, and treatment afforded members of both sexes. Institutions will be in compliance if the compared program components are equivalent, that is, equal or equal in effect. Under this standard, identical benefits, opportunities, or treatment are not required, provided the overall effect of any difference is negligible.¹⁶

OCR further explained that Title IX does not require that male and female programs be "mirror images" of each other, nor does it require that the same benefits be provided for male and female teams in the same sports. The Title IX regulations require institutions that receive federal assistance to provide equal athletic opportunities for members of both sexes.¹⁷

B. Clarification of Intercollegiate Athletic Policy Guidance: The Three-Part Test ("The 1996 Clarification")

On January 16, 1996, OCR issued a policy clarification ("the 1996 Clarification") explaining the agency's interpretation of the "equal participation opportunities requirement" as proposed in the 1979 Policy Interpretation. The 1996 Clarification was prepared in response to continued requests from colleges and universities for additional guidance on how to comply with the requirements of Title IX. In the 1996 Clarification, OCR clarified that an educational institution could comply with the three-prong test by meeting one of the prongs and, as such, it was not necessary to meet all three of the test's prongs.¹⁸

C. OCR's 2003 "Dear Colleague" Letter ("Further Clarification")

On July 11, 2003, OCR issued a *Dear Colleague* letter clarifying continued areas of concerns raised by educational institutions. The Further Clarification reaffirmed the policies, practices, and enforcement framework outlined in the 1979 Policy Interpretation and the 1996 Clarification. Aside from outlining continued support for OCR's enforcement policies and practices, the Further Clarification outlined the following five points:

¹⁵ OCR Policy Interpretation, 44 Fed. Reg. 71415.

¹⁶ *Id.*

¹⁷ OCR Policy Interpretation states, "neither the statute nor the regulations calls for identical programs for male and female athletes. Absent such a requirement, the Department cannot base noncompliance upon a failure to provide arbitrarily identical programs, either in whole or in part." (44 Fed. Reg. 71422.)

¹⁸ 44 Fed. Reg. 71418.

1. The Three-Prong Test for accessing compliance with the participation portion of Title IX provides schools with flexibility and will continue to be used by OCR to determine compliance;
2. Title IX does not require the cutting or reduction of teams, and such a practice is disfavored;
3. Although OCR will "aggressively enforce Title IX standards, including the implementation of sanctions for institutions that do not comply," it will also work with schools to achieve compliance and thereby avoid sanction;
4. Private donations to athletic programs are not exempt from Title IX equity considerations; and
5. OCR enforcement will be uniform throughout the country.

D. OCR'S 2005 Additional Clarification of Intercollegiate Athletic Policy: Three-Part Test ("The 2005 Clarification")

On March 17, 2005, OCR issued another policy clarification document. The 2005 Clarification was issued without prior notice or opportunity for comment. The 2005 Clarification primarily addressed the third part of the Three Part Test: whether and how colleges and universities demonstrate that the interests and abilities of the underrepresented sex in intercollegiate athletics have been fully and effectively accommodated by the institution's program. The 2005 Clarification was highly criticized because it purportedly made it easy for schools and colleges to avoid offering equal opportunities for women in athletics. The new policy allowed schools to use a simple survey of women as its evaluation and to combine non-responses with negative responses. Critics of the 2005 Clarification said that by allowing the use of electronic surveys as a measure of compliance, institutions were afforded an easy way to avoid providing equal athletic opportunities for females.

E. OCR 2010 *Dear Colleague Letter* ("The 2010 Clarification")

On April 20, 2010, Russlynn Ali, Assistant Secretary for Civil Rights, formally rescinded the OCR's 2005 *Additional Clarification of Intercollegiate Athletic Policy: Three-Part Test*. In her letter, Ms. Ali makes the following comments:

Although there has been indisputable progress since Title IX was enacted, notably in interscholastic and intercollegiate athletic programs, sex discrimination unfortunately continues to exist in many education programs and activities. I am committed to the vigorous enforcement of Title IX to resolve this discrimination and to provide clear policy guidance to assist a recipient institution (institution) in making the promise of Title IX a reality for all.

To that end, on behalf of the Office for Civil Rights (OCR) of the U.S. Department of Education (Department), it is my pleasure to provide you with this "Intercollegiate Athletics Policy Clarification: The Three-Part Test – Part Three." *With this letter, the Department is withdrawing the "Additional Clarification of Intercollegiate Athletics Policy: Three Part Test – Part Three" (2005 Additional Clarification) and all related documents accompanying it, including the "User's Guide to Student Interest Surveys under Title IX" (User's Guide) and related technical report, that were issued by the Department on March 17, 2005.* (Emphasis added.)

IV. TITLE IX COMPLIANCE

To comply with Title IX in the area of athletics, a covered institution must not engage in sex discrimination in interscholastic, intercollegiate, club, or intramural athletics offered by the institution, including with respect to: (a) athletic participation opportunities; and (b) athletic benefits and treatment.¹⁹ With regard to athletic participation opportunities, a covered institution must provide equal athletic participation opportunities for members of both sexes and must effectively accommodate students' athletic interest.²⁰

Title IX requires equivalence in athletic benefits and treatment. Specifically, a covered institution must provide equal athletic opportunities, benefits, and treatment for members of both sexes. In determining whether equal opportunities are available, OCR considers the following factors: (1) whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes; (2) the provision of equipment and supplies; (3) scheduling of games and practice times; (4) travel and per diem allowance; (5) opportunity to receive coaching and academic tutoring; (6) assignment and compensation of coaches and tutors; (7) provision of locker rooms, practice and competitive facilities; (8) provision of medical and training facilities and services; (9) provision of housing and dining facilities and services; and (10) publicity.²¹ Covered institutions will be in compliance, if the compared program

¹⁹ OCR Policy Interpretation, 44 Fed. Reg. 71418.

²⁰ *Id.*; 34 C.F.R. § 106.41.

²¹ 34 C.F.R. § 106.41(c)(1-10); OCR Policy Interpretation, 44 Fed. Reg. 71418.

components are equivalent; that is, equal or equal in effect.²² Under this standard, identical benefits, opportunities, or treatment are not required, provided the overall effects of any differences is negligible.²³

A. Effective Accommodation of Athletic Interests and Abilities

OCR assesses compliance with the interests and abilities section of Title IX by examining the following factors: (a) the determination of athletic interests and abilities of students; (b) the selection of sports offered; and (c) the levels of competitions available, including the opportunity for team competitions.²⁴

B. Equivalence in Other Benefits and Opportunities

1. Provision of Equipment and Supplies

Among other factors, OCR assesses this factor of Title IX's athletic benefits and treatment compliance prong by examining the equivalence for males and females of: (1) the quality of equipment and supplies; (2) the amount of equipment and supplies; (3) the suitability of equipment and supplies; (4) the maintenance and replacement of the equipment and supplies; and (5) the availability of equipment and supplies.²⁵

2. Scheduling of Games and Practice Times

OCR assesses compliance with this program component by examining, among other factors, the equivalence for males and females of: (1) the number of competitive events per sport; (2) the number and length of practice opportunities; (3) the time of day competitive events are scheduled; (4) the time of day practice opportunities are scheduled; and (5) the opportunities to engage in available pre-season and post-season competition.²⁶

3. Travel and Per Diem Allowance

OCR assesses compliance with this program component by examining, among other factors, the equivalence for men and women of: (1) modes of transportation; (2) housing furnished during travel; (3) length of stay before and after competitive events; (4) per diem allowances; and (5) dining arrangements.²⁷

²² *Id.*

²³ *Id.*

²⁴ OCR Policy Interpretation, 44 Fed. Reg. 71417.

²⁵ *Id.*

²⁶ OCR Policy Interpretation, 44 Fed. Reg. 71416.

²⁷ *Id.*

4. Opportunity to Receive Coaching and Academic Tutoring

OCR evaluates compliance with this program component by examining, among other factors: (a) relative availability of full-time coaches; (b) relative availability of part-time and assistant coaches; and (c) relative availability of graduate assistants.²⁸

5. Assignment and Compensation of Coaches and Tutors

Compliance with this program component will be assessed by examining, among other factors, the equivalence for men's and women's coaches of: (a) rate of compensation (per sport, per season); (b) duration of contracts; (c) conditions relating to contract renewal; (d) experience; (e) nature of coaching duties performed; and (f) working conditions.

Compensation of Tutors - Compliance will be assessed by examining, among other factors, the equivalence for men's and women's tutors of: (a) hourly rate of payment by nature of subjects tutored; (b) pupil loads per tutoring season; (c) tutor qualifications; and (d) experience.²⁹

6. Provision of Locker Rooms, Practice and Competitive Facilities

Among other criteria, OCR examines compliance with this program component by examining the equivalence for males and females of: (1) quality and availability of the facilities provided for practice and competitive events; (2) exclusivity of use of facilities provided for practice and competitive events; (3) availability of locker rooms; (4) quality of locker rooms; (5) maintenance of practice and competitive facilities; and (6) preparation of facilities for practice and competitive events.³⁰

7. Provision of Medical and Training Facilities and Services

Among other criteria, OCR assesses compliance with this program component by examining the equivalence for men and women of: (1) availability of medical personnel and assistance; (2) health, accident and injury insurance coverage; (3) availability and quality of weight and training facilities; (4) availability and quality of conditioning facilities; and (5) availability and qualifications of athletic trainers.³¹

²⁸ *Id.*

²⁹ OCR Policy Interpretation, 44 Fed. Reg. 71417.

³⁰ *Id.*

³¹ OCR Policy Interpretation, 44 Fed. Reg. 71417.

8. Provision of Housing and Dining Facilities and Services

OCR assesses compliance with this program component by examining, among other factors, the equivalence for men and women of: (1) housing provided; and (2) special services as part of housing arrangements (e.g., laundry facilities, parking space, and maid service).³²

9. Publicity

OCR evaluates compliance with this program component by examining, among other factors, the equivalence for men and women of: (1) availability and quality of sports information personnel; (2) access to other publicity resources for men's and women's programs; and (3) quantity and quality of publications and other promotional devices featuring men's and women's programs.³³

V. THE THREE-PRONG TEST

The Three-Prong Test provides covered institutions with three methods for compliance. Specifically, the Three-Prong Test permits an institution to be compliant by meeting one of the following prongs:³⁴

Prong I - Substantial Proportionality Test

Whether participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments.

Under the Substantial Proportionality test, each sex's representation in athletics must be substantially proportionate to its full-time representation in the student body. In 1996, the OCR clarified that athletic opportunities are "substantially proportionate when the number of opportunities that would be required to achieve proportionality would not be sufficient to sustain a viable team, i.e., a team for which there is a sufficient number of interested and able students and enough available competition to sustain an intercollegiate team."

Considerations:

- Actual athletes, not "unfilled slots;"³⁵
- Exact proportionality is not required; "there is no magic number at which substantial proportionality is achieved."³⁶

³² *Id.*

³³ *Id.*

³⁴ *Supra*, n. 18.

³⁵ *Ollier v. Sweetwater Union High School District*, 768 F.3d 843, 856 (9th Cir. 2014)

³⁶ *Id.*

- Substantial proportionality is determined on a case-by-case basis in light of “the institution's specific circumstances and the size of its athletic program.”³⁷
- As a general rule, there is substantial proportionality "if the number of additional participants . . . required for exact proportionality 'would be sufficient to sustain a viable team."³⁸

Prong II – Continuing Practice of Program Expansion

Where the members of one sex have been and are underrepresented among athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex.

Considerations:

- The test "looks at an institution's past and continuing remedial efforts to provide nondiscriminatory participation opportunities through program expansion."³⁹
- There are no fixed intervals of time within which an institution must have added participation opportunities.
- The focus is on whether the program expansion was responsive to developing interests and abilities of female students.⁴⁰
- An institution must show more than a *history* of program expansion; it "must demonstrate a continuing (i.e., present) practice of program expansion as warranted by developing interests and abilities."⁴¹

Prong III - Effective Accommodation of Athletic Interests and Abilities

Where the members of one sex are underrepresented among athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

OCR considers a multitude of indicators in the context of evaluating the following three questions to determine whether an institution is in compliance with Part Three:

- (1) Is there unmet interest in a particular sport?
- (2) Is there sufficient ability to sustain a team in the sport?
- (3) Is there a reasonable expectation of competition for the team?

³⁷ *Id.*

³⁸ *Id.*

³⁹ 44 Fed. Reg 77418

⁴⁰ *Id.*

⁴¹ *Id.*

Considerations:

- Consider whether a gender imbalance in athletics is the product of impermissible discrimination or merely of the genders' varying levels of interest in sports.⁴²
- A school where fewer girls than boys play sports does not violate Title IX, if the imbalance is the result of girls' lack of interest in athletics.⁴³

Title IX does not require institutions to integrate their teams nor to provide exactly the same choice of sports to males and females. Rather, a key component of Title IX compliance for both contact and non-contact sports with regard to the selection of sports offered is that there be sufficient interest and abilities among the members of the excluded sex to sustain a viable team and a reasonable expectation of intercollegiate competition for that team.⁴⁴

In assessing the levels of competition available, OCR assesses compliance by reviewing, among other factors: (1) whether the competitive schedules for men's and women's teams, on a program-wide basis, afford proportionally similar numbers of male and female athletes with equivalently advanced competitive program opportunities; or (2) whether the institution can demonstrate a history and continuing practice of upgrading competitive opportunities available to the disadvantaged sex as warranted by developing abilities among the athletes of that sex.⁴⁵

VI. THE COURTS' INTERPRETATION AND TRANSFORMATION OF TITLE IX

Almost from its inception, Title IX faced court challenges in regard to its application to women's sport programs and opportunities. Over the years, Title IX has been interpreted by the application of Title IX to female athletic programs and opportunities, but courts have also been asked to determine the reach of Title IX. The following are samples of key Title IX cases.

1. *Grove City College v. Bell*, 465 U.S. 555 (1984)

In *Grove City College*, the U.S. Supreme Court reviewed whether a private college's entire institution was subject to Title IX because some of its students received federal Basic Education Opportunity Grant monies. In ruling Title IX did not apply to the entire institution, the Court stated "We conclude that the receipt of BEOG's by some Grove City students does not trigger institutionwide coverage under Title IX. In purpose and effect, BEOG's represent federal

⁴² *Ollier*, supra at 858.

⁴³ *Id.*

⁴⁴ 44 Fed. Reg 77418.

⁴⁵ *Id.*

financial assistance to the College's own financial aid program, and it is that program that may properly be regulated under Title IX."⁴⁶

2. *Cohen v. Brown University*, 809 F. Supp. 978 (D.R.I. 1992)

In a class action lawsuit brought by "all present and future Brown University women students and potential students who participate, seek to participate, and/or are deterred from participating in intercollegiate athletics funded by Brown," the court found that the university failed to meet any part of Title IX's Three-Prong Test. As a result, the court granted an injunction ordering the university to reinstate the women's gymnastics and volleyball teams to full intercollegiate varsity status after they were demoted to intercollegiate club status along with the men's water polo and golf teams. The court found that in the absence of injunctive relief, the plaintiffs would be unable to attract varsity caliber athletes in the sports of gymnastics and volleyball, and the women's teams will be unable to maintain the same level of intercollegiate competition in their demoted capacity as they did when they were varsity sports. The court further held that the amount of money in restoring the two women's team was minuscule in relation to the university's overall budget.

The injunction was upheld by the First Circuit Court of Appeals in *Cohen v. Brown University*, 991 F.2d 888 (1st Cir. 1993).

3. *Miami University Wrestling Club v. Miami University*, 302 F.3d 608 (6th Cir. 2002)

The Sixth Circuit Court of Appeals upheld the district court's rejection of members of the University of Miami's men's wrestling, tennis, and soccer teams' Title IX and Equal Protection claims raised as a result of the university decision to eliminate those programs. The students argued that the university's elimination of the teams discriminated against them based on gender in violation of Title IX and Equal Protection. The Court, in sustaining the lower court's dismissal of the complaint, affirmed the holding in *Cohen v. Brown University*, 101 F.3d 155 (1996), that Title IX focuses on opportunities for the underrepresented gender, and does not bestow rights on the historically overrepresented gender.⁴⁷

4. *Communities for Equity v. Michigan High School Athletic Association*, 459 F.3d 676 (6th Cir. 2004)

In *Communities for Equity*, the court held that the Michigan High School Athletic Association violated Title IX, the Equal Protection Clause, and Michigan's Elliott-Larsen Civil Rights Act by scheduling sports seasons in a manner that discriminated against female athletes on the basis of gender. The court concurred with the lower court's finding that the plaintiff class sustained its burden of establishing that the sports season for female athletes that was developed by the

⁴⁶ *Grove City College v. Bell*, 465 U.S. 555, 573 (1984).

⁴⁷ *Cohen v. Brown University*, 101 F.3d 155, 174 (1996).

state association was in disadvantageous, nontraditional seasons, thereby resulting in the disparate treatment of female athletes. The court also sustained the district court's ruling that the state high school association is a "state actor" for purposes of application of the plaintiffs' Equal Protection Clause and Section 1983 claims.

5. *Jackson v. Birmingham Board of Education*, 544 U.S. 167 (2005)

In *Jackson*, a male high school basketball coach and teacher complained to his supervisor that female athletes did not receive equal funding and equal access to athletic equipment and facilities. After the coach complained, he received a negative evaluation and was eventually removed as the team's coach. The coach brought suit against the school district for retaliation under Title IX. In ruling for the plaintiff and sustaining the lower courts' holdings, the Court reasoned:

"But if Title IX's private right of action does not encompass retaliation claims, the teacher would have no recourse if he were subsequently fired for speaking out. Without protection from retaliation, individuals who witness discrimination would likely not report it, and coaches such as Jackson are often in the best position to vindicate the rights of their students because they are better able to identify discrimination and bring it to the attention of administration."⁴⁸

VII. EXAMPLES OF TITLE IX VOLUNTARY RESOLUTION PLANS

- *Mainland Regional High School*, OCR Case No. 02-13-1141
- *Lodi Unified School District*, OCR Case No. 09-15-1232
- *Eanes Independent School District*, OCR Case No. 0615535
- *Lafayette County School District*, Complaint No. 06111239
- *Louisiana State University*, OCR Case No. 06-11-6001

VIII. CONCLUSION

Today, Title IX is synonymous with "athletic equity for women," and it has forever changed the landscape for women participating in interscholastic and intercollegiate athletics. In 1971, there were approximately 300,000 girls participating in interscholastic sports in the United States. As a direct result of Title IX, there were approximately 3,324,326 girls participating in high school athletics in the United States during the 2015-2016 school year.⁴⁹

With the change in the nation's leadership, the application and enforcement of Title IX against educational institutions may shift. Will the focus of Title IX return to academics and away from

⁴⁸ *Jackson v. Birmingham Board of Education*, 544 U.S. 167, 181 (2005).

⁴⁹ Data from the National Federation 2015-2016 High Schools Athletic Participation Survey.

athletic equity? Will the new Department of Education's administration continue to focus on inequities in athletic opportunities for women? Will OCR voluntary resolution plans continue to require school districts to expend funds on the building of new facilities or the refurbishing of existing structures? As of the present, Title IX remains a cornerstone in establishing equity in athletics for women, and schools should continue to recognize that discrimination in athletic opportunities and programs based on gender is unlawful under the current law.