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Peter S. Finley
Nova Southeastern University

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Title IX and Booster Club Management: Experts' Suggestions for Managing Challenging Scenarios

Peter S. Finley

Nova Southeastern University

Abstract

Title IX law prohibits discrimination at academic institutions that receive federal funding. Athletic programs fall under the purview of the law. As booster clubs, and the money they raise, become more important to successful sport programs, athletic directors must work diligently to ensure that their contributions do not cause inequity between the boys' and girls' programs. A number of challenges are presented by boosters who earmark giving to a single sport, booster clubs that represent only one sport and outperform those representing other sports, and in the process of transferring money from booster activities to the sports programs. This essay presents the suggestions of six leading Title IX experts to assist coaches, athletic directors, and all school administrators in successfully managing these challenges.

Background

Title IX of the Education Amendments of 1972 is a federal law prohibiting gender discrimination at academic institutions that receive federal funding. Signed into law by President Richard Nixon, it went into effect in July, 1975. Title IX states:

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

Unfortunately, a concerted move towards gender equity in sports did not begin for another decade. In 1984 the U.S. Supreme Court, in *Grove City College v. Bell*, 465 U.S. 555 (1984), dealt a blow to women in sports by deciding that only the specific education programs receiving federal funding were obligated to satisfy Title IX. Since no athletic departments received direct assistance from federal money, they were exempt from Title IX under this ruling. Fortunately, Congress legislatively reversed this decision by passing the Civil Rights Restoration Act of 1987, which asserted that Title IX would be broadly applied to include athletic programs. Today, athletic departments are often the focus of Title IX litigation.

Demonstrating compliance with Title IX generally requires passing any one of three tests. First, and most commonly, schools can demonstrate that the number of

participation opportunities for males and females in athletics is substantially proportional to the percent of males and females in the general student body. For example, a school with a 52% female student body should have 52% of its athletic opportunities reserved for females. Exact proportionality has not typically been required, with 5% differences being considered acceptable in some cases (Coakley, 2004). Second, schools can comply by demonstrating a history of expansion of offerings for the under-represented gender (almost always the females). In this case, only programs added in very recent years generally warrant consideration. The third, and most difficult argument for the school to make, is showing that the institution has fully accommodated the interests and abilities of the underrepresented gender. This position cannot be successfully argued when a school is attempting to cut a women's team or to demote one from varsity to club status. Recently, schools have begun to explore the viability of using campus wide interest surveys to substantiate that the interests of female students are being met, in spite of the schools failing the substantial proportionality and history of expansion prongs of the test.

Satisfying any of these tests, however, does not guarantee that a school is complaint with Title IX. According to the Office of Civil Rights (OCR), there are many areas relative to athletics that can be compared in assessing Title IX compliance at any institution. These include equipment and supplies, scheduling of games and practice time, travel and per diem allowances, tutoring, coaching, locker rooms and other facilities, medical and training services, housing and dining facilities, publicity, support services, and recruitment of student-athletes (Epstein, 2003). Therefore, for example, a school that demonstrates an exact match in the proportion of athletic opportunities for women with the proportion of women on campus, could still run afoul of Title IX if the women play on lower quality fields and use older and inferior equipment as compared to the men's teams, provided the women receive no benefits of their own that balance the overall treatment of the genders.

Coeducational colleges and universities are required, by the Equity in Athletics Disclosure Act, to prepare a yearly report detailing their participation by gender, their staffing, and revenues and expenses by men's and women's teams. This is submitted to the Department of Education and is used to provide Congress with a means to assess college athletics. Middle and high school programs are not required to submit such a report. Some states, such as Washington, do require that schools conduct an annual self-evaluation. Otherwise, monitoring compliance is left to the discretion of the local school boards, activists (who often begin as interested parents of female participants), the courts, or the Office for Civil Rights (Pennington, 2004). When schools are found to be non-compliant, they generally agree to (or are ordered to) remedy the inequity in a timely manner. Many women's rights advocates would like to see stronger measures used by the Office for Civil Rights. According to Deborah Brake, a University of Pittsburgh law professor, there are no cases in which a school has actually had federal funds withdrawn for a Title IX athletics violation (Pennington, 2004).

Currently, Title IX complaints to the Department of Education are far more likely to involve the lower level athletics. Since 2001, the Department of Education has handled five times as many sexual discrimination complaints involving middle or high

schools as compared to colleges and universities (Pennington, 2004). According to Bob Gardner, the chief officer of the National Federation of High School Associations, “High school is where the Title IX action is. The colleges get all the attention, but Title IX isn’t about the nation’s elite college athletes. It’s about providing a grass-roots gateway to sports that benefits millions” (Pennington, 2004, p. 1).

In light of the tremendous growth in sports participation among females since 1972, it is clear that Title IX has had a profound impact. At the time the law was passed, only one in 27 females participated in high school sports. Today, that number is one in three (Pennington, 2004). Between 1972 and 1998, the number of women participating in intercollegiate sports increased from an estimated 30,000 to 157,000 (Epstein, 2003). It is important to note that over the period from 1981 to 1999, the number of male participants in collegiate sports and the number of men’s teams also increased, contrary to the widely believed myth that Title IX is decreasing participation opportunities for men (Epstein, 2003).

One of the challenges faced by high school athletic directors is working with parent run booster clubs to ensure that male and female participants are being treated equitably. Booster clubs often generate considerable amounts of money that is used to support athletic teams, only sometimes with the oversight of the athletic director. In fact, some booster clubs strongly resist being told how to spend “their” money. This leads to problems when their generosity positively impacts one gender more than the other.

Title IX does not require that budgets for sports be equal for each gender. In fact, the law allows schools to take into account the very real differences in outfitting athletes in equipment that is of comparable quality. Outfitting football players, for example, is more costly than outfitting field hockey players. The criteria for equality of equipment and supplies, then, are to assess the quality, quantity, suitability, maintenance, and availability of equipment for the athletic programs on the whole. Further, schools are allowed to privilege one sport over another, provided a gender bias does not exist and that the overall quality of opportunities is equal for boys and girls. For example, a school district can choose to provide better facilities for baseball than softball teams, provided this gap is balanced elsewhere in the programs (say, by providing outstanding facilities for field hockey).

Often, it is money generated and earmarked for a specific sport that leads to an overall imbalance between boys’ and girls’ sports. When inequity results from gifts given along gender lines, it is the responsibility of the district to correct the inequity by allocation of their own resources. When powerful booster clubs garner strong community support, this task can be difficult.

The Douglas County Schools (Colorado) faced the difficulty of asking a highly successful booster club to actually scale back its giving due to the large gaps it was creating between football and the girls’ sports. The Quarterback Club raised up to \$65,000 annually (Sanchez, 2003), which was greater than the total budget the district allocated to the entire sports program. The booster money was spent directly on football

equipment, including helmets and uniforms, and to fly 55 New York high school players to Colorado for a program entitled Operation Enduring Friendship. When it was suggested the district should have oversight for the expenditures, the booster president responded, “We’re not anxious to give away control of our club to the district. No way.” (Sanchez, 2003, 20A).

Surprisingly, the money generated by the Douglas County Quarterback Club pales compared to figures generated by some other powerful booster clubs. A similar organization, The Westlake Chaps Club in Central Texas, raised and spent over \$300,000 between July 2003 and June 2004 through such fundraising activities as the Guitars ‘n Golf Tournament and the “Meet-the-Team” barbecue, which raised \$55,000 and \$18,000 respectively (Obernauer, 2005).

District officials have several responsibilities in these situations. They must assess whether booster gifts are creating disparate athletic opportunities and experiences along gender lines. Then, if inequity exists, they must remedy the problem. The district can allocate greater funds to the gender that does not receive booster support, they can seek to control the booster budget and to allocate it to create equality of experience for both genders, or in extreme cases, it can reject the donations outright. Whatever a district chooses, it has the sole responsibility for complying with Title IX and cannot shift the responsibility to the booster club. It is not uncommon for this requirement to force the district to incur unforeseen expenses when it is balancing booster gifts. For example, when a football team won a state title, it was lavished in gifts at an extravagant banquet through booster donations. When the girls’ cross country team won the state title the athletic director had to draw money from the general budget to provide an equitable experience (Meade, 2005).

A Florida case underscores the difficulty of treating athletes equitably when booster money is flowing to a specific sport. First heard in 1997, the case involved Merritt Island High School’s disparity in baseball and softball facilities. Booster money had been used to outfit the baseball field with new bleachers, an announcer’s booth, an electronic scoreboard, a batting cage, bathrooms, and lights for night games. The softball field featured none of these things (Berry, 2001). Further, there was no other girls’ team receiving such favorable treatment that the inequity between baseball and softball was offset. The court ordered the district to equalize the situation. Claiming it did not have the funds to improve the softball facility, the district began to dismantle the baseball facility. The court ordered the district to cease the dismantling and gave it a timeline to rectify the situation through improvements to the softball field (Berry, 2001). The most important outcome, for this district, was that the School Board directed the building principals to oversee expenditures, regardless of funding source (whether it be school funds, district funds, or booster donations), to ensure gender equity.

Research Goal

The goal of this essay was to allow Title IX experts to suggest appropriate and equitable ways to handle difficult booster-related issues. Their insights are invaluable to athletic directors and those considering entering this field.

Twenty Title IX experts were approached via email and were invited to share their thoughts for the best practice regarding three scenarios. Each expert had publications in the subject area, participated on panels and appeared as a guest lecturer, and worked as an advocate for women in sport.

The scenarios asked the participants to suggest the best way to handle unique situations that frequently challenge athletic directors. The situations were developed through analysis of Title IX cases that have resulted from mismanagement of booster funds. Specifically, the first scenario dealt with earmarked giving, the second dealt with sport-specific booster clubs, and the third dealt with oversight of the allocation of money raised by a booster club. Six Title IX experts agreed to participate by providing written responses to each scenario.

Participants

Donna Lopiano is the Executive Director of the Women's Sports Foundation and has been listed as one of "The 100 Most Influential People in Sports" by *The Sporting News*. Dr. Lopiano previously served for 17 years as the Director of Women's Athletics at the University of Texas.

Nancy Hogshead-Makar served as President of the Women's Sports Foundation from 1993 to 1994 and has served on its Board of Stewards since 1996. A law professor at Florida Coastal School of Law, Dr. Hogshead-Makar specializes in Title IX law. She became a household name after winning four Olympic medals in swimming at the 1984 Los Angeles Olympiad.

Donna J. Nelson is an associate professor at the University of Oklahoma, where she has extended concern about equity in education beyond the sports realm to the classroom. Specifically, Dr. Nelson used her Title IX expertise to raise concerns about the under-representation of females in college faculties in the science and engineering disciplines.

Darcy Lees is the Equity Coordination Program Supervisor for the Washington State Office of the Superintendent of Public Instruction. In this capacity, Lees speaks on Title IX law and maintains a Web site that helps school officials understand all aspects of the law. The site also offers assistance for school officials in the process of evaluating their programs, which is a legal requirement in Washington State.

Valerie Bonnette is the President of Good Sports, Inc., Title IX and Gender Equity Specialists. She has worked as a consultant for more than 60 schools in

determining their Title IX compliance. As a staffer with the education department's Office of Civil Rights, she co-authored the Title IX investigator's manual.

Jean Kinn Ashen is Athletic Director at North Salinas High School, California. She has been trained by the California Interscholastic Federation to answer questions and provide practical solutions to Title IX issues for coaches, athletic directors, and administrators in her area.

Scenario One

The baseball and softball teams are wearing old uniforms, but the athletic budget does not allow for their replacement this year. One month prior to the season, a booster offers to buy new uniforms for the baseball team, for which his son plays. He will not, however, give money to the general athletic fund, nor will he give money to the softball team. How would you suggest a new athletic director handle this situation?

On its face, this scenario does not necessarily suggest that a Title IX violation will occur should the Athletic Director accept the donation. As noted, a school can choose to privilege one team over another provided the difference is balanced in other areas of the athletic program so that the total offerings for males and females are equal. Further, it is remotely possible that the females at this school are the privileged gender and that this gift will, in effect, serve as a remedy for the male participants. However, given the general state of girls' sports relative to Title IX, athletic directors should be cautioned about accepting gifts specifically for boys' teams without careful consideration of whether it will create imbalance and how such imbalance can be remedied prior to accepting the gift. As such, four of the respondents recommended accepting the donation while exploring creative means for ensuring that it does not cause imbalance in the overall treatment of the male and female participants.

Donna Lopiano suggested that the athletic director should consider moving the baseball team into the slot of a boys' team currently scheduled to receive new uniforms and move that team into the baseball slot. This would allow the school to benefit from the booster's generosity with minor change to the uniform replacement schedule. Lopiano noted, however, that, "Title IX doesn't require baseball and softball be treated equally. It requires men's and women's participants be treated equally."

Donna Nelson suggested that the athletic director use the offer as a challenge grant. She recommended appealing publicly for similar donations from the community to match the booster's gift. Under this plan, the athletic director could publicize the gift, recognize the charity of the booster (which is certainly better than alienating him by rejecting the gift outright), and stimulate the community to show support for softball.

Similarly, Jean Kinn Ashen believes it better to educate and win over parents than to simply turn them away. She wrote, "I would thank the parent and try to involve him in our athletic program. I would ask him to come in and sit down and discuss our athletic program as a whole. I would try to appeal to his parent status and imagine the scenario if

he had a daughter and challenge him to find a way to outfit both groups of students. Equity is important and must be taught to our parents and boosters. We are the educators.”

Valerie Bonnette wrote, “The athletic director should accept the donation of new uniforms for the baseball team. Administrators need never reject donations.” She adds that there are many means for offsetting potential imbalance, such as by giving the females an advantage in another area of the sports program. “If the benefits are of equivalent weight or importance, they may ‘offset’ each other; in effect complying with Title IX.”

It is important to note, again, that accepting such earmarked donations can cause Title IX issues, should the athletic director fail to fully assess the impact on the total athletic programs, or fail to carefully plan how equity will be ensured.

Darcy Lees reminded the athletic director to be wary of obligating the school district to unplanned expenditure of funds. If accepting the donation is likely to cause inequitable treatment for male and female participants in the total athletic program, “the athletic director should not accept the donation unless the district is willing to provide or raise money to provide softball uniforms in a timely manner. No later than the following school year.”

According to Nancy Hogshead-Makar, “Many schools avoid this situation by prohibiting gifts other than to the athletic department generally. A recipient cannot hide different and discriminatory treatment behind the donor’s gift. A recipient cannot say, in effect, ‘It isn’t me discriminating, it’s the donor.’ Otherwise, racially segregated schools might never have integrated fully as school gifts would have had ‘white only’ earmarks on it.”

Scenario Two

A recently hired athletic director quickly becomes aware that each team at her new school has its own booster club. The booster clubs for the boys’ teams are very active and garner strong community support. Clubs representing girls’ sports try very hard to raise funds through a variety of innovative means, but get little support. As a result, the boys’ teams have the best equipment available while the girls’ teams wear old uniforms and use questionable equipment. How should this new athletic director proceed?

In this scenario, the new athletic director has inherited a problem common to schools with splintered booster groups. Given that boys’ sports have a longer history, receive greater media attention, and have greater numbers of participants (both historically and currently), it should surprise no new athletic director to find that support is more frequently given for boys’ sports.

Donna Lopiano suggested varied courses of action. First, the athletic director should assemble the booster clubs to explain Title IX law and to describe how it applies to booster clubs. The explanation that the actions of the boosters are, in effect, causing discriminatory treatment might be initially rejected. After all, parents in booster clubs are working hard and believe their children should benefit. They may not understand the deep-seeded social issues that make it harder for one club to match the fund-raising potential of another club. Lopiano suggested the athletic director use race as an example. She wrote, “The Civil Rights Act would not permit a separate booster club for white and black athletes...why should we send the message that girls and boys be treated differently based on sex?” Lopiano further suggested, “The athletic director should be very positive about the need to be sure our sons and daughters understand that we believe in equality of treatment.”

From there, the athletic director could form one umbrella booster club that raises funds for the entire athletic program rather than for individual teams. However, in the event that separate clubs are maintained, it is the athletic director’s job to ensure the funds do not create inequity. Lopiano suggested the athletic director oversee the expenditure of the funds and that strong relations with the boosters could be maintained by forming an advisory council with representatives from each club so that the athletic director can explain her decisions.

Darcy Lees suggested “The athletic director may want to personally evaluate the inequities he/she sees and initiate correction...which may mean using district funds only for improvements of the girls’ program in the current year.” She also endorsed conducting an annual review related to eight factors of Title IX compliance (interest and ability, equipment and supplies, scheduling, facilities, coaching, publicity, medical and training, and travel and per diem), and development of a plan to correct inequity. School officials interested in conducting self-analysis of their program should visit <http://www.k12.wa.us/equity/AthleticEquity/> which is a well maintained and thorough resource.

Nancy Hogshead-Makar and Donna Nelson both recommended pairing booster clubs (baseball with softball, for example). This will allow boosters to have greater manpower as they raise funds which can then be more readily divided to promote equity. One problem with the umbrella booster club (one club for all sports) concept is that parents of students in a few sports can bear the burden for support of students in all sports. This can lead to resentment when funds are allocated to sports from which there is little or no parental contribution to the boosters. By pairing teams, a spirit of togetherness can be fostered. Nelson suggested that once booster groups are paired, they should maximize publicity opportunities, including taking photos with the teams and boosters together.

Nelson also recommended creation of an “overhead charge” for all donations. A special overhead account would then be created with the express purpose of benefiting the athletic department on the whole at the director’s discretion. Nelson recommends this fund be used to ensure the quality and safety of all equipment in the athletic program.

Similarly, this recommendation could be extended to creation of an “equity charge” on gifts, which would be used to address issues of shortcomings in the equity of the programs when they are discovered through annual evaluation.

Valerie Bonnette wrote, “Title IX does not prohibit the existence of booster clubs for each team, and the athletic director should not discourage the great success of the booster clubs that support the boys’ teams. The athletic director should explore ways to improve the success of boosters clubs that support the girls’ teams.” Bonnette went on to explain that the athletic director does have the responsibility to remedy disparity and that several options exist to do so. While the boys’ teams receive better equipment, the girls could be given benefits in another area of the program, such as better transportation to away contests. She concluded by suggesting, “Another alternative is to reallocate the school funds to the girls’ program that would have been budgeted to the boys’ program to provide the girls’ program with equipment and supplies comparable to such items provided to the boys’ teams.” In doing so, the athletic director relies on the boosters to largely fund the boys’ programs while concentrating school funds on providing equity for the girls’ programs.

Through her position as an Athletic Director, Jean Kinn Ashen has met the problems presented in this scenario head on and is a proponent of having one unified booster club. She wrote, “The Athletic Director must be in control of fund raising in the community to allow coordination for the boys’ and girls’ programs. When you have so many different clubs, it is impossible to monitor raising and spending of funds. I have one booster club that supports all sports, plus I can attend the meetings. Each sport is still encouraged to participate in fund raising, but everything goes through one central control.”

Scenario Three

An athletic director has organized parents to form a new booster club to help raise funds for the athletic programs. Parents will oversee door-to-door sales, car washes, a golf outing, concessions sales, etc. The athletic director is not sure how to transfer the funds from the booster club to the teams in a way that ensures equity. He calls you for advice. What do you suggest?

Donna Lopiano allowed for the inclusion of parents through the formation of an advisory council with elected representatives. She suggested that the athletic director can then “explain how the decision-making process must comply with Title IX and be fair to all teams.” Further, “Decisions should be based on stated policies that conform to Title IX such as gender equitable team uniform replacement schedules, or replacement based on equal standards of wear.” By including the parents the athletic director will allow the parents to feel ownership and pride, as they will be involved in the allocation of funding and not just its generation. However, in the end the athletic director will be responsible for Title IX compliance.

Similarly, Darcy Lees recommended creating an advisory committee of parents that can work with the athletic director to establish needs and priorities. She suggested these be based on an annual review of the factors of gender equity discussed in detail on the aforementioned Website.

A problem inherent to booster clubs is that some parents are likely to participate more than others and will wish to see their own children rewarded through their work. It is permissible for this athletic director to reward the teams that have the most involved parents, provided they are balanced by gender so that there is no over-all inequity between girls' and boys' teams. Nancy Hogshead-Makar noted that, "It is permissible to elevate some teams to some sort of elite status while other teams get bare-boned resources. For example, giving the men's football and basketball teams fancy perks, and the same treatment for the women's crew and soccer teams."

If the athletic director wishes to elevate the quality of offerings for all teams, it will be necessary to seek participation from parents representing students in all sports. Donna Nelson recommended that the new athletic director work to "ensure at the beginning that parents from boys' and girls' teams are both involved in a proportion at least somewhat matching the ratio of boys to girls (or boys' teams to girls' teams) in the overall athletic program." By doing so, it is less likely that there will be squabbling about allocation of money later, since all have fairly worked to raise it. Problems are more likely to arise when parents work hard to raise money then see it go to other sports from which no parents lifted a finger in the fund-raising process.

Valerie Bonnette suggested, "The funds should go into a general athletic fund so the athletic director and other administrators may control expenditures for all benefits provided to student-athletes. This approach is not required by Title IX. It simply provides administrators the necessary control to ensure compliance."

Jean Kinn Ashen offered the suggestion that emphasis on sports rotate annually, perhaps by upgrading the softball facilities one season and the baseball facilities the next, so everyone feels important. She also stressed the need for the booster club to have a written constitution and set of bylaws that spells out the procedures that will be used.

Conclusion

Athletic Directors can face any number of difficult situations as they work with booster clubs. The job of raising and allocating funds while ensuring gender equity is not an easy one. Through the challenges of handling earmarked gifts, managing splintered booster clubs, and in transferring money from boosters to teams, athletic directors have a clear legal responsibility provide equitable treatment to those under their charge. These recommendations from the experts can be used as guidance for navigating the dangerous waters that booster club management can present.

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