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A BIBLIOGRAPHY OF TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

CHRISTINE I. HEPLER

ABSTRACT

Title IX provides that no person shall be excluded from participation in any educational program or activity that receives federal funding. This legislation is credited with bolstering the participation rates of girls and women in athletics. Although athletics are not explicitly addressed in the statutory language, Title IX requires schools to offer male and female students equal opportunities to play sports, to give male and female athletes their fair share of athletic scholarship money, and to treat male and female athletes equally in all other respects, including equipment, facilities and coaching. Proponents of Title IX claim that participation in sports leads to important health and wellness benefits for female athletes. The critics of Title IX argue that the legislation has caused schools to cut male teams in order to comply with Title IX and claim that women are inherently less interested in sports than men. In order to gain a better understanding of Title IX and its effect on intercollegiate athletics, this article provides the researcher with a comprehensive bibliography on the topic, including those articles discussing how the courts have used Title IX to address sexual harassment on college campuses. This article starts with a discussion of the law's legislative history and its effect on participation rates of female athletes. This is followed by a comprehensive list of books on Title IX and an annotated list of law review articles on the law. Furthermore, the bibliography includes a list of Internet resources for Title IX, including relevant websites and blogs.

INTRODUCTION

While holding practice at school one day in 1976, the boys' basketball coaches noticed the listing on the bulletin board of those students with the best times in the fifty-yard dash. The coaches did not recognize the names of the two children with the best times. After finding the gym teacher, the coaches asked him why those two "boys" were not playing on the school's basketball team. The gym teacher's

response was not what the coaches expected. The “boys” with the fastest times were not playing on the boys’ basketball team because the times were not posted by boys—but by girls.

The two girls with the fastest times were my sister and me. Despite our speed and athletic ability, we could not play on the boys’ basketball team because we were girls and the school did not offer basketball for girls. To their credit, the coaches immediately made efforts to start a girls’ team at the school. After a year and a half of meetings and debates with city and school officials, the boys’ coaches finally obtained permission to start a girls’ team.

My twin sister and I were on that first team and we took full advantage of the opportunities opening up for us. We played sports throughout middle school and high school. In fact, my sister went on to a very successful college basketball career. We continue to be very active in sports as adults, playing in recreation leagues, coaching, and running on our own. Sports continue to enrich our lives every day.

Thousands of other women my age can share very similar stories, stories of the lack of opportunity followed by opportunity, competition, teamwork, camaraderie, challenge, success, and reward. This common narrative is due in no small measure to the passage of Title IX of the Education Amendments of 1972, which provides that “[n]o 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 educational program or activity receiving Federal financial assistance.”¹ Thus the legal landscape for women and sports in public education was about to change.

Although athletics are not explicitly addressed in the statutory language, Title IX requires schools to offer male and female students equal opportunities to play sports, to give male and female athletes their fair share of athletic scholarship money, and to treat male and female athletes equally in all other respects, including equipment, facilities, and coaching.²

There is no doubt the passage of Title IX has led to a dramatic increase in the participation opportunities for women at the collegiate level. Prior to the passage of Title IX, 170,000 men participated in

1. 20 U.S.C. §1681 (1986) [hereinafter Title IX].

2. WELCH SUGGS, *A PLACE ON THE TEAM: THE TRIUMPH AND TRAGEDY OF TITLE IX*, 5 (2005) (defining “equitable opportunities” in “all areas of a sports program[]” to include “scholarships . . . ; participation opportunities; scheduling of games and practice times; travel costs and per diems; coaching and tutoring . . . ; locker rooms; practice and competition facilities; medical facilities; housing and dining services; and publicity and media services”).

intercollegiate athletics.³ During the same time, only 30,000 women were involved in intercollegiate athletics.⁴ By the Thirtieth Anniversary of the passage of Title IX, 209,000 men and 151,000 women participated in athletics at the college level.⁵ Furthermore, the passage of Title IX has led to an increase in the number of women's varsity teams found on college campuses. In 1972, there was only an average of 2.5 women's varsity teams per school.⁶ By 2004, that number grew to 8.32, with a total of 8,402 women's varsity teams in the National Collegiate Athletic Association.⁷ The most recent participation numbers have women's intercollegiate teams at their highest level ever, with 9,274 teams, equaling 8.73 women's teams per school, and a total of 200,000 female athletes.⁸

Furthermore, the passage of Title IX has led to the growth of athletics at the high school level. In 1971, 294,015 girls participated in high school athletics, while 3,666,917 boys participated.⁹ "That is one girl for every 12 boys."¹⁰ The number of girls participating in high school athletics grew to 2,000,000 in 1978.¹¹ During 2002-2003 academic year, the number reached 2,800,000, the highest number of girls ever to participate in high school athletics.¹² Today there are 3,173,549 girls participating in high school athletics.¹³ "That is one girl for every 1.4 boys today."¹⁴

Proponents of Title IX claim that participation in sports leads to important health and wellness benefits for female athletes. These benefits include a reduction in both the occurrence of osteoporosis and the risk of breast cancer.¹⁵ Furthermore, girls who participate in

3. LINDA JEAN CARPENTER & R. VIVIAN ACOSTA, *TITLE IX* 171 (2005).

4. *Id.*

5. *Id.* at 171.

6. *Id.* at 170.

7. *Id.*

8. R. VIVIAN ACOSTA & LINDA JEAN CARPENTER, *WOMEN IN INTERCOLLEGIATE SPORT: A LONGITUDINAL NATIONAL STUDY THIRTY-FIVE YEAR UPDATE, 1977-2012*, at 1, available at <http://www.acostacarpenter.org/>.

9. *Id.*

10. *Id.*

11. Meg Sommerfeld, *Parity on the Playing Field: Title IX Became a More Prominent Tool for Expanding Athletic Opportunities for Girls*, *THE SCHOOL ADMINISTRATOR*, November 1998, available at <http://www.aasa.org/SchoolAdministratorArticle.aspx?id=15322>.

12. CARPENTER & ACOSTA, *supra* note 3 at 171.

13. ACOSTA & CARPENTER, *supra* note 8, at 1.

14. *Id.*

15. CARPENTER & ACOSTA, *supra* note 3, at 165.

athletics are less likely to smoke cigarettes or use drugs.¹⁶ They are less likely to be sexually active and less likely to become pregnant.¹⁷ Finally, studies have shown that girls participating in athletics have greater academic success, are more likely to graduate from high school, and are better able to perform under pressure.¹⁸

Critics of Title IX, on the other hand, argue that the legislation has caused schools to cut male teams in order to comply with the law's requirements.¹⁹ Research from the Women's Sports Foundation shows the majority of money allocated to college sports goes to men's teams, a disproportionate amount of which is funneled to men's football and basketball teams rather than supporting a large and varied array of men's sports teams.²⁰ Likewise, when difficult economic times arrive, schools cut non-revenue generating sports teams like men's wrestling and gymnastics rather than reduce any of the financial support going to football and basketball.²¹ There is also evidence to show that the decrease in wrestling and gymnastics at the collegiate level may be caused by the elimination of these programs at the high school level for such reasons as liability and insurance costs.²²

Despite the increase in the participation rates of female athletes in high school and college athletics, there is still work to be done before one can say there is true equality in athletics. The most striking evidence of this is the disparity between the numbers of men and women who hold coaching or other high level administrative position in athletics. Roughly seventy-nine percent of college athletic directors are

16. *Id.*

17. *Id.*

18. *Id.* at 165-66. See also WOMEN'S SPORTS FOUNDATION, HER LIFE DEPENDS ON IT: SPORT, PHYSICAL ACTIVITY AND THE HEALTH AND WELL-BEING OF AMERICAN GIRLS (2004), available at <http://www.womenssportsfoundation.org/home/research/articles-and-reports/mental-and-physical-health/her-life-depends-on-it>; WOMEN'S SPORTS FOUNDATION, HER LIFE DEPENDS ON IT II: SPORT, PHYSICAL ACTIVITY AND THE HEALTH AND WELL-BEING OF AMERICAN GIRLS (2009), available at <http://www.womenssportsfoundation.org/home/research/articles-and-reports/mental-and-physical-health/her-life-depends-on-it-ii>; Ross Knights, *Nike Ad: If You Let Me Play (1995)*, YOUTUBE (Mar. 4, 2007), available at http://www.youtube.com/watch?v=AQ_XSHplbZE (Nike advertising campaign that memorializes the benefits to girls who participate in athletics).

19. WOMEN'S SPORTS FOUNDATION, DROPPING MEN'S SPORTS—THE DIVISION I FOOTBALL/BASKETBALL ARMS RACE IS THE CULPRIT IN THE CUTTING OF MEN'S OLYMPIC SPORTS (2011), available at http://www.womenssportsfoundation.org/home/advocate/title-ix-and-issues/title-ix-positions/football_basketball_arms_race.

20. *Id.*

21. Robert P. Fleischman, Mark E. Byers, and C. Shawn Lincoln, et al., *Gender and College Athletics: 25 Years After Title IX*. 10 J. LEGAL ASPECTS SPORT 24, 28 (2000).

22. *Id.*

males, with Division I having the fewest female athletic directors at 36.²³ Of the 4,203 jobs in administration, 1,503 are held by females while 2,700 are held by males.²⁴ Only thirty percent of all athletic trainers are female and only 10 percent of sports information directors are female.²⁵ In the coaching ranks, the numbers are equally as stark. Although, the number of female coaches has increased by one hundred, roughly fifty-seven percent of women's teams are coached by men, while only three percent of men's teams are coached by women.²⁶ Less than half of women's teams are coached by a female.²⁷ These numbers need to improve before it can be said that Title IX has met its goal of gender equity in education.

I. LEGISLATIVE HISTORY

It was 1969, three years before the passage of Title IX. Bernice Sandler had completed her doctorate while teaching part-time at the University of Maryland. There were seven open faculty positions at the university and Ms. Sandler was not offered to fill any of those positions. The reason she was not considered for any of the positions? She was told she came on "too strong for a woman." Instead of being offended by this, Ms. Sandler began to question her actions during faculty gatherings and meetings and wondered if it was her fault she was not offered a position. It was her then husband who pointed out to her that she had been discriminated against on the basis of her sex. After some research, Ms. Sandler realized that sex discrimination was illegal in many circumstances but there were no laws prohibiting this type of discrimination in educational institutions. In fact, she found Title VII of the Civil Rights Act specifically excluded educational institutions in their educational activities and Title VI of this act prohibited discrimination on the basis of race, color, and national origin in federally

23. ACOSTA & CARPENTER, *supra* note 8, at A-C.

24. *Id.*

25. *Id.*

26. *Id.*

27. ACOSTA & CARPENTER, *supra* note 8 at Executive Summary A-C. The most notable female coach of a male team is Natalie Randolph, coach of the varsity football team at Coolidge High School in Washington, D.C. She was also successful. *See Natalie Randolph, coach of Coolidge High School football team, leads school to Washington, D.C. title game*, N.Y. DAILY NEWS, Nov. 22, 2011, *available* online at http://articles.nydailynews.com/2011-11-22/news/30431129_1_turkey-bowl-natalie-randolph-football-team. (Last visited May 13, 2013).

assisted programs, but did not cover sex discrimination.²⁸ Furthermore, The Equal Pay Act prohibited discrimination in salaries on the basis of sex but exempted all professional and administrative employees, including faculty.²⁹ In sum, the major civil rights legislation of the time did not prohibit discrimination on the basis of sex in educational settings.

Although this was discouraging, Ms. Sandler continued her research in hopes of finding a redress for the discrimination to which she was subjected. While reading a report of the U.S. Commission on Civil Rights, she learned of Executive Order 11246 which prohibited federal contractors from discrimination in employment on the basis of race, color, religion, and national origin.³⁰ Executive Order 11246 had been amended by President Johnson in October of 1968 to include discrimination on the basis of sex.³¹ Reasoning that since most universities and colleges had federal contracts, Ms. Sandler argued they were forbidden from discriminating in employment on the basis of sex, and she used the amended version of Executive Order 11246 (Executive Order 11375) to support her argument. Through persistence and hard work, Ms. Sandler had found a way to combat sex discrimination in education. After meeting with officials of the Department of Labor to confirm her findings, a class action complaint was brought against all universities and colleges in the country, with specific charges against the University of Maryland. This complaint was filed with the Department of Labor, requesting a review of all institutions holding federal contracts.³²

Several copies of the complaint filed with the Department of Labor made it to the members of Congress. As a result, twenty members of Congress had contacted the Secretary of Labor regarding this issue. Next, on March 9, 1970, still two years before Title IX was passed, Representative Martha Griffiths (D-MI) gave the first speech ever in Congress on discrimination against women in education.³³ Ms. Griffiths' involvement in the gaining equal rights for women did not start with Title IX. She fought for the inclusion of women in Title VII of the Civil Rights Act of 1964, an addition that passed the House by a vote

28. See Bernice R. Sandler, "Too Strong for a Woman"—*The Five Words That Created Title IX* (1997), available at www.BerniceSandler.com/id44.htm.

29. SUSAN WARE, TITLE IX: A BRIEF HISTORY WITH DOCUMENTS 35-37 (2007).

30. Equal Employment Opportunity, 30 Fed. Reg. 12,319 (Sept. 24, 1965).

31. Amending Executive Order No. 11246, Relating to Equal Employment Opportunity, 32 Fed. Reg. 14,303 (Oct. 17, 1967).

32. WARE, *supra* note 29, at 37-38.

33. 116 CONG. REC. 6,398 (1970).

of 168-133.³⁴

In June, 1970, the Department of Labor issued its Sex Discrimination Guidelines for federal contractors³⁵ and the Department of Health, Education, and Welfare issued a memorandum to all field personnel to routinely include sex discrimination in all contract compliance investigations.³⁶

Finally, the first congressional hearings on the education and employment of women were held. These hearings were led by Representative Edith Green (D-OR) in June and July of 1970.³⁷ The issue of sexual discrimination in education was not new to Ms. Green and as chair of the subcommittee that dealt with higher education she was urged to hold hearings on the issue. Ms. Green was hesitant to act until now, with the data from the class action complaint and a list of willing witnesses to testify at her disposal.³⁸ The seven days of hearings generated nearly 1,300 pages of testimony and became the basis of Title IX.³⁹

Title IX of the Education Amendments of 1972 was enacted on June 23, 1972.⁴⁰ As previously mentioned, Title IX called for an end to discrimination in education on the basis of gender. The legislation provided for a six-year period in which regulations for enforcement of Title IX had to be completed and in which schools had to comply with the law.⁴¹ However, this date came and went without compliance by the schools.⁴²

In the House, the bill was sponsored by Edith Green (D-OR) and Patsy Mink (D-HI) and was debated in the House on November 4, 1971, where opponents argued it set a dangerous precedent for two reasons. First, they argued it took away the right of colleges to determine the make-up of their student bodies and gave that right to the federal

34. KAREN BLUMENTHAL, LET ME PLAY: THE STORY OF TITLE IX: THE LAW THAT CHANGED THE FUTURE OF GIRLS IN AMERICA, 14-17 (2005).

35. Sex Discrimination Guidelines, 35 Fed. Reg. 8,888 (June 9, 1970) (to be codified at 41 C.F.R. § 60-20). See Sex Discrimination Guidelines, 34 Fed. Reg. 758-60 (Jan. 14, 1969) (these regulations in their proposed form).

36. WARE, *supra* note 29, at 39.

37. *Discrimination Against Women: Hearing Before the H. Spec. Subcomm. on Educ. of the Comm. on Educ. & Labor*, 91st Cong. (1970).

38. WARE, *supra* note 29, at 39-40.

39. *Id.* at 41-42. See also DISCRIMINATION AGAINST WOMEN: CONGRESSIONAL HEARINGS ON EQUAL RIGHTS IN EDUCATION AND EMPLOYMENT (Catherine R. Stimpson et al. eds. 1973) (providing an edited version of the hearings' testimony).

40. CARPENTER & ACOSTA, *supra* note 3, at 3.

41. *Id.*

42. *Id.*

government. Second, the schools were afraid this would lead to the establishment of a quota system for undergraduate admissions. Many of the major colleges and universities spoke out against Title IX for these reasons. As a result, John Erlenborn, a representative from Illinois, suggested Title IX be amended so that it apply only to graduate level programs, allowing undergraduate programs to still discriminate on the basis of sex.⁴³

Title IX sponsors were not happy. Ms. Green insisted she was opposed to quotas and fixed goals and wanted only that men and women to be treated equally when applying to colleges and universities. Likewise, Ms. Mink argued strongly in favor of the legislation, furious to think that her daughter was not admitted to Stanford because of the school's policy that only forty percent of its students would be women, not because she wasn't a good enough student. In the end, Title IX made it through the House, but not unscathed. Mr. Erlenborn's amendment was approved.⁴⁴

The primary supporter of Title IX in the Senate was Senator Birch Bayh of Indiana. He worked diligently and fought valiantly to bar sex discrimination in schools.⁴⁵ The only time the issue of whether Title IX would apply to sports came from an exchange between Senator Bayh and Peter Dominick, a Senator from Colorado, when Mr. Dominick asked whether Title IX would require men and women to share dormitories or athletic facilities or equipment. Mr. Bayh responded by insisting the law was only requiring that men and women have equal access to the education process and the extracurricular activities in a school, adding that the law did not call for women to play football or require men and women to share a locker room.⁴⁶

The first legislative challenge to Title IX was the Tower Amendment,⁴⁷ sponsored by Senator John Tower (R-TX) in May 1974.⁴⁸ Originally, the Tower Amendment called for all intercollegiate athletics to be exempt from Title IX. This was modified to apply to only revenue generating programs arguing football provided a crucial revenue base for the entire athletic program of many schools, and any

43. 117 CONG. REC. 39,248-64 (1971). *See also*, BLUMENTHAL, *supra* note 34, at 35-40.

44. 117 CONG. REC. 39,261 (1971).

45. 117 CONG. REC. 30,155-59 (1971). *See also* 117 CONG. REC. 30,399-415 (1971), 117 CONG. REC. 43080-81 (1971), 118 CONG. REC. 5,803-58,015 (1972).

46. BLUMENTHAL, *supra* note 34, at 43-44. *See also* 117 CONG. REC. 30,406-08 (1971).

47. 120 CONG. REC. 15,322-23 (daily ed. May 20, 1974).

48. *Id.*

interference with these teams in the name of gender equity would spell disaster for both the male athletes already playing and the female athletes who were seeking a chance to play.⁴⁹

Although the Tower Amendment made it through the Senate, it was taken out when it reached the conference committee on the Education Amendments of 1974. It was replaced by the Javits Amendment. The Javits Amendment required the Department of Health, Education and Welfare (HEW)⁵⁰ to promulgate regulations for the implementation of Title IX, including regulations for applying Title IX to intercollegiate athletics. This made it clear that Congress intended Title IX to apply to intercollegiate athletics.⁵¹ HEW was also responsible for enforcing the regulations.⁵²

The regulations were followed by the Policy Interpretations of 1979.⁵³ The Policy Interpretations were promulgated to provide more specificity to the regulations so as to produce compliance with the law.⁵⁴ As such, Title IX has three components—the text of the law, the regulations, and the policy interpretations—all of which need to be applied and analyzed to determine compliance.⁵⁵

Although the Policy Interpretations were helpful in applying Title IX, more information was needed. In July 1980, the Office for Civil Rights (OCR) produced the *Interim Title IX Intercollegiate Athletics Manual*, providing investigators instructions on how to investigate claims.⁵⁶ This was followed in March 1982 by *Guidance on Writing Title IX Intercollegiate Athletic Letters of Findings*.⁵⁷ These two documents were in place until 1990 when both were replaced by the *Title IX Athletics Investigator's Manual*.⁵⁸ The *Investigator's Manual*

49. *Id.* (statement of Sen. John Tower). See also Deborah Brake & Elizabeth Catlin, *The Path of Most Resistance: The Long Road Toward Gender Equity in Intercollegiate Athletics*, 3 DUKE J. GENDER L. & POL'Y 51, 54 (1996).

50. HEW changed its name to the Department of Education and the Office for Civil Rights, the part of the Department of Education that was given the authority to create and enforce the regulations governing Title IX. See CARPENTER & ACOSTA, *supra* note 3.

51. Nondiscrimination on the Basis of Sex Under Federally Assisted Education Programs and Activities, 40 Fed. Reg. 24,142 (June 4, 1975).

52. Brake, *supra* note 49, at 55.

53. *Id.* at 57.

54. Title IX of the Education Amendments of 1972; A Policy Interpretation; Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71413 (Dec. 11, 1979).

55. CARPENTER & ACOSTA, *supra* note 3, at 13.

56. *Id.* at 15.

57. *Id.*

58. Available on line at <http://www.starnewsonline.com/assets/pdf/WM1131244.PDF> (Last visited May 13, 2013).

was drafted to be an internal document used by OCR investigators as they evaluated the degree of compliance on a particular campus or in a particular program. It does not interpret the law or the regulations. Despite this, the manual is often cited in Title IX lawsuits to show how OCR sees various portions of the regulations or policy interpretations.⁵⁹ Although OCR has said it was going to update this manual, it has yet to do so.

The Office for Civil Rights has issued “Dear Colleague” letters, as a means of clarifying Title IX legislation and its regulations. The first came in 1996⁶⁰ and was issued to clarify the proportionality test laid out in the Policy Interpretations of 1979.⁶¹ This letter did not seek to change the proportionality test, only to clarify it.⁶² The 1996 clarification letter has become an integral part of Title IX litigation in applying the three-part test set forth in the 1979 Policy Interpretations, in particular, in applying the first part of the test, the proportionality prong.⁶³

The second clarification letter came in 1998 and was written to clarify the meaning of “substantially equal” as used in the requirement to provide equitable financial aid to both male and female students.⁶⁴

As a result of the continuing debate over the proportionality test first promulgated in the 1979 Policy Interpretations and later clarified in the 1996 clarification letter, Congress created the Commission on Opportunities in Athletics in 2002 (Commission).⁶⁵ Many feel the proportionality test is to blame for the termination of men’s non-revenue sports. The Commission was created to review Title IX in general and the proportionality prong in particular.⁶⁶ The fifteen member Commission was made up of prominent female athletes, male and female athletic administrators, and coaches.⁶⁷ They were charged with

59. CARPENTER & ACOSTA, *supra* note 3, at 16.

60. Letter from Norma Cantu, Assistant Sec’y for Civil Rights, to Colleague (Jan. 16, 1996) available at <http://www.ed.gov/about/offices/list/ocr/docs/clarific.html#two>.

61. *Id.*

62. *Id.*

63. CARPENTER & ACOSTA, *supra* note 3, at 17-18.

64. This clarification, like the 1996 Clarification came in the form of a “Dear Colleague” letter. In this case, Ms. Cantu addresses how Title IX applies to the distribution of financial aid and scholarships so as to comply with Title IX. To do this, she includes a letter her office wrote to Bowling Green University in response to questions they had regarding these matters. Letter from Norma Cantu, Assistant Sec’y for Civil Rights, to Colleague (July 23, 1998), available at <http://www.ed.gov/about/offices/list/ocr/docs/bowlgrn.html>.

65. CARPENTER & ACOSTA, *supra* note 3, at 188-89.

66. *Id.* at 189.

67. *Members—Secretary’s Commission on Opportunity in Athletics*, U.S. DEP’T OF EDUC., <http://www2.ed.gov/about/bdscmm/list/athletics/members.html#top> (last modified Mar. 6, 2007).

investigating several questions and to issue a report of their findings.⁶⁸

The Commission's final report was issued on February 26, 2003, entitled "*Open to All*" Title IX at Thirty.⁶⁹ The final report contained twenty-three recommendations, of which fifteen were unanimously approved by the Commission. Reaction to the report varied greatly.⁷⁰ In fact, two members of the Commission, Donna DeVarona and Julie Foudy, authored a minority report.⁷¹ Although most of the recommendations made by the Commission were considered benign, there were a few recommendations that Ms. DeVarona and Ms. Foudy felt would halt the progress made in women's athletics if followed through on. For example, they felt the Commission suggestion that "nontraditional" students not be included in the general student population was unfair because a disproportionate number of non-traditional students were female, thereby lowering the percentage of female students counted for compliance.⁷² Another controversial recommendation by the Commission would allow institutions to count unfilled roster spots as actual student athletes thereby allowing prong one to be satisfied by potential athletes rather than real athletes.⁷³

Approximately four months after the Commission's report was issued, another clarification was issued by the Department of Education entitled *Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance*.⁷⁴ In this clarification, the Department of Education reaffirmed the validity of the three-prong test for determining participation opportunities and reiterated that compliance with any of the prongs would be acceptable for Title IX compliance. The letter also stated that there was nothing in the legislative history or in any of the subsequent clarifications that requires or recommends cutting or limiting male participation as a means of

68. *Charter—Secretary's Commission on Opportunity in Athletics*, U.S. DEP'T OF EDUC., <http://www.ed.gov/about/bdscomm/list/athletics/charter.html> (last modified Mar. 6, 2007).

69. CARPENTER & ACOSTA, *supra* note 3, at 191; SEC'Y COMM'N ON OPPORTUNITY IN ATHLETICS, "OPEN TO ALL" TITLE IX AT THIRTY (2003), <http://www.ed.gov/about/bdscomm/list/athletics/title9report.pdf>.

70. CARPENTER & ACOSTA, *supra* note 3, at 191-92.

71. Donna de Varona and Julie Foudy, *Minority Views on the Report of the Commission on Opportunity in Athletics*, 14 MARQ. SPORTS L. REV. (2003), available at <http://scholarship.law.marquette.edu/sportslaw/vol14/iss1/32>.

72. Erin E. Buzuvis, *Survey Says . . . A Critical Analysis of the New Title IX Policy and a Proposal for Reform*, 91 IOWA L. REV. 821, 835 (2006).

73. *Id.* at 836.

74. *Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance* (July 11, 2003), available at <http://www2.ed.gov/about/offices/list/ocr/title9guidanceFinal.html>

complying with Title IX.⁷⁵

In March, 2005, OCR provided another clarification for prong three, one first suggested by the Commission, allowing institutions to rely on the results of a survey to determine whether the institution's athletic offerings have met the female students' athletic interests and abilities.⁷⁶ Included in this clarification is a model web-based survey, which if administered according to the instructions laid out by OCR creates a presumption of compliance with prong three when the survey results indicate a lack of interest sufficient to sustain the addition of female varsity teams.⁷⁷ A *User's Guide to Developing Student Interest Surveys Under Title IX* was created to help those wanting to use this method to determine student interests and abilities.⁷⁸ This clarification became the subject of much criticism because it allowed a non-response to the survey to be counted as lack of interest.⁷⁹

The controversy generated by the aforementioned clarifications led to another "Dear Colleague" letter in April 2010.⁸⁰ This letter withdraws 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 Developing Student Interest Surveys Under Title IX (User's Guide)* and related technical reports, that were issued by DOE.⁸¹ In addition, it reaffirms, and provides additional clarification on the methods used by OCR to determine an institution's compliance with Title IX.⁸²

CONCLUSION

It should not have taken the efforts of two determined coaches, over a year of city meetings and debates, and a federal law to finally provide my sister and me with the opportunity to play basketball at our school. But it did. Title IX was essential to the expansion of female athletic opportunities at all levels of play. It has led to increased participation

75. CARPENTER & ACOSTA, *supra* note 3, at 192-93.

76. Buzuvis, *supra* note 72, at 837.

77. *Id.*

78. NAT'L CTR. FOR EDUC. STATISTICS, USER'S GUIDE TO DEVELOPING STUDENT INTEREST SURVEYS UNDER TITLE IX (2005), <http://nces.ed.gov/pubs2005/2005173.PDF>.

79. Buzuvis, *supra* note 72, at 839-41.

80. Letter from Russlynn Ali, Assistant Sec'y for Civil Rights, to Colleague (Apr. 20, 2010) *available at* Letter from Russlynn Ali, Assistant Sec'y for Civil Rights, to Colleague (Apr. 4, 2011), *available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>.

81. *Id.*

82. *Id.*

amongst high school and intercollegiate athletes and to the growth of women's professional sports. Many female athletes today take their participation in athletics for granted. For them, sports have always been available. This, however, has not always been the case.

Today's female athletes owe a debt of gratitude to Title IX and to those women who fought for the opportunity to play; women like Billy Jean King, who defeated Bobby Riggs in the "Battle of the Sexes" and started a revolution;⁸³ women like Mia Hamm, Julie Foudy, and the rest of the 1991 U.S. Women's Soccer team that won the World Cup and captivated a nation of girls who wanted to be just like them; women like Val Ackerman who ran the WNBA so that Lisa Leslie and Cynthia Cooper and so many of the world's best female basketball players could stay in the United States and play in a professional league. Title IX has leveled the playing field but more is still needed. Every girl, when asked if she knows what Title IX is should be able to answer with a resounding "yes!"⁸⁴ To ensure that, the following is an annotated bibliography of books, articles, and other resources that discuss Title IX, its legislative history, judicial interpretation of the law, and its effect on intercollegiate athletics, sexual harassment, sexual violence, and gender equity.

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I. BOOKS

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VALARIE BONNETTE, *TITLE IX AND INTERCOLLEGIATE ATHLETICS: HOW IT ALL WORKS IN PLAIN ENGLISH* (2007).

KAREN BLUMENTHAL, *LET ME PLAY: THE STORY OF TITLE IX: THE LAW THAT CHANGED THE FUTURE OF GIRLS IN AMERICA* (2005).

83. See SELENA ROBERTS, *A NECESSARY SPECTACLE: BILLIE JEAN KING, BOBBY RIGGS AND THE TENNIS MATCH THAT LEVELED THE GAME* (2005) (detailing Billy Jean King's defeat of Bobby Riggs and her role in promoting gender equity in sports).

84. This was not the case with professional tennis player Jennifer Capriati, who when asked about to comment on Title IX at the 2002 U.S. Open, answered "I have no idea what Title IX is." Heather Mason Kiefer, *What do Americans See in Title IX's Future?*, GALLUP (Jan. 28, 2003), <http://www.gallup.com/poll/7663/what-americans-see-title-ixs-future.aspx>.

WOMEN, SPORT & CULTURE (Susan Birrell & Cheryl L. Cole, eds., 1994).

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SUSAN K. CAHN, COMING ON STRONG: GENDER AND SEXUALITY IN TWENTIETH-CENTURY WOMEN'S SPORT, (1994).

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MICHAEL J. COZZILLO & ROBERT L. HAYMAN JR., SPORTS AND INEQUALITY (2005).

Chapter 5: *Gender and American Sports*

MARGARET DUNKLE, COMPETITIVE ATHLETICS: IN SEARCH OF EQUAL OPPORTUNITY (1976).

JESSICA GAVORA, TILTING THE PLAYING FIELD: SCHOOLS, SPORTS, SEX AND TITLE IX (2002).

A review of this book was written by Adam Epstein and was published in the *Marquette Sports Law Review*.⁸⁵ A second review of this book was written by Nancy Hogshead-Makar entitled *A Critique of Tilting the Playing Field: Schools, Sports, Sex and Title IX* and was published in the *UCLA Women's Law Journal*.⁸⁶

KATHERINE HANSON, VIVIAN GUILFOY & SARITA PILLAI, MORE THAN TITLE IX: HOW EQUITY IN EDUCATION HAS SHAPED THE NATION (2009).

Chapter 5: *Play Like a Girl*

EQUAL PLAY: TITLE IX AND SOCIAL CHANGE (Nancy Hogshead-Makar & Andrew Zimbalist eds., 2007).

85. 14 MARQ. SPORTS L. REV. 293 (2003).

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EILEEN MCDONAGH & LAURA PAPPANO, *PLAYING WITH THE BOYS: WHY SEPARATE IS NOT EQUAL IN SPORTS* (2008).

MICHAEL A. MESSNER, *TAKING THE FIELD: WOMEN, MEN AND SPORTS* (2002).

NICOLE MITCHELL & LISA A. ENNIS, *ENCYCLOPEDIA OF TITLE IX AND SPORTS* (2007).

MARIAH BURTON NELSON, *EMBRACING VICTORY: LIFE LESSONS IN COMPETITION AND COMPASSION* (1998).

WOMEN AND SPORTS IN THE UNITED STATES (Jean O'Reilly & Susan K. Cahn eds., 2007).

CYNTHIA LEE A. PEMBERTON, *MORE THAN A GAME: ONE WOMAN'S FIGHT FOR GENDER EQUITY IN SPORT* (2002).

A review of this book, written by Rebecca J. Mowrey, was published in the *Marquette Sports Law Review*.⁸⁷

BRIAN PORTO, *A NEW SEASON: USING TITLE IX TO REFORM COLLEGE SPORTS* (2003).

SELENA ROBERTS, *A NECESSARY SPECTACLE: BILLIE JEAN KING, BOBBY RIGGS AND THE TENNIS MATCH THAT LEVELED THE GAME* (2005).

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II. AMERICAN LAW REPORTS (A.L.R.)

Jane C. Avery, *Validity, Under Federal Law, of Sex Discrimination in Athletics*, 23 A.L.R. FED. 664.

Jeffery Ghent, *Application of State Law to Sex Discrimination in Sports*, 66 A.L.R. 3D 1261.

Donald T. Kramer, *What Constitutes Reverse Sex or Gender Discrimination Against Males Violative of Federal Constitution or Statutes—Nonemployment Cases*, 166 A.L.R. FED. 1.

Brian L. Porto, *Suit by Female College Athletes Against Colleges and Universities Claiming That Decisions to Discontinue Particular Sports or to Deny Varsity Status to Particular Sports Deprive Plaintiffs of Equal Education Opportunities Required by Title IX (20 USCS §§ 1681-1688)*, 129 A.L.R. FED. 571.

Ann K. Wooster, *Sex Discrimination in Public Education Under Title IX—Supreme Court Cases*, 158 A.L.R. FED. 563.

III. ARTICLES BY SUBJECTS

A. *Generally*

Tameiko F. Allen, Note, *The Effects of Title IX on Gender Equity in Sports: The Federal Guidelines, the Student-Athlete Experience, and the Professional Reality*, 6 HOLY CROSS J.L. & PUB. POL'Y 99 (2001).

This in-depth note provides a detailed overview of Title IX and discusses the importance of gender equity in sports, the experience of the female athlete, the role of the NCAA, equal pay for coaches and combating the myths of women's athletics.

Deborah Brake & Elizabeth Catlin, *The Path of Most Resistance: The Long Road Toward Gender Equity in Intercollegiate Athletics*. 3 DUKE J. GENDER L. & POL'Y 51 (1996).

After laying out the requirements of Title IX, its legislative history and recent advances in enforcement, the authors discuss the backlash against Title IX and the myths underlying the arguments relied upon by those opposing further steps toward enforcement of Title IX.

Ashlee A. Cassman, Note, *Bring it On! Cheerleading v. Title IX: Could Cheerleading Ever be Considered an Athletic Opportunity Under Title IX, and if So, What Implications Would That Have on University Compliance?* 17 SPORTS LAW J. 245 (2010).

This note addresses whether cheerleading should be considered a sport when determining Title IX compliance. The author discusses the rise of competitive cheer and concludes "that while traditional sideline cheerleading does not amount to a sport, competitive cheerleading should be considered a sport for Title IX purposes." With this assertion, the note focuses on what this classification could mean for Title IX compliance purposes.

Renee Forseth, Jennifer Karam & Eric J. Sobocinski, Comment, *Progress in Gender Equity?: An Overview of the History and Future of Title IX of the Education Amendments Act of 1972*, 2 VILL. SPORTS & ENT. L. REV. 51 (1995).

As the title indicates, this comment provides an overview of Title

IX, including a discussion of the legislative history of the statute, its regulations, and an analysis of congressional action in response to recent Title IX litigation.

Christa M. Gaines, *Education Law Center: Athletics*, 6 GEO. J. GENDER & L. 505 (2005).

This article discusses the common issues seen in Title IX litigation. In addition, the author discusses the remedies and alternatives to litigation available in the Title IX context, and concludes with a brief look at current Title IX litigation concerns.

Clark C. Griffith, *Comments on Title IX*, 14 MARQ. SPORTS L. REV. 57 (2003).

This is a short article on Title IX and the effects it has had on women's athletics.

Jennifer L. Henderson, *Gender Equity In Intercollegiate Athletics: A Commitment to Fairness*, 5 SETON HALL J. SPORTS L. 133 (1995).

This article analyzes Title IX violations in intercollegiate athletics and the consequences that have resulted from the non-enforcement of the statute. The author makes several recommendations to help institutions and athletic conferences fully comply with Title IX and its principles of gender equity.

Gayle I. Horwitz, *Education Law Chapter: Athletics*, 5 GEO. J. GENDER & L. 311 (2004).

This article introduces the reader to the basic history and framework of Title IX as it pertains to athletics, highlighting common litigation claims, remedies, and alternatives to litigation.

Jodi Hudson, Comment, *Complying with Title IX of the Education Amendments of 1972: The Never-ending Race to the Finish Line*, 5 SETON HALL J. SPORTS L. 575 (1995).

The author explores the evolution of Title IX through an examination of the law's statutory and regulatory framework, the law's

policy interpretations, and the federal cases interpreting the law. The comment concludes with a discussion of the future of Title IX and ways of achieving gender equity in college athletics.

Andrew A. Ingrum, Comment, *Civil Rights: Title IX and College Athletics: Is There a Viable Compromise?*, 48 OKLA. L. REV. 755 (1995).

This comment provides an extensive examination of Title IX, including a discussion of the law's legislative history and interpretive case law. The author also discusses the Title IX policies of those bodies that govern intercollegiate athletics and provides a remedy for resolving gender equity disputes at that level.

Mike Jacob & Sharon Mathes, *College Women Athletes' Knowledge and Perceptions of Title IX*, 6 J. LEGAL ASPECTS SPORT 34 (1996).

This paper reports on a study conducted by the authors designed to assess women athletes' knowledge of Title IX and to assess their perceptions of their schools' compliance with the law.

Janet Judge, David O'Brien & Timothy O'Brien, *Gender Equity in the 1990's: An Athletic Administrator's Survival Guide to Title IX and Gender Equity Compliance*, 5 SETON HALL J. OF SPORTS L. 313 (1995).

This article provides the reader with some practical advice on how to meet the requirements of Title IX and offers tips to ensure compliance.

Kelly J. Pattison, Note, *Have You Come a Long Way, Baby?: A look at Gender Equity in Intercollegiate Athletics in the 1990's*, 4 DEPAUL-LCA J. ART & ENT. L. 263 (1993-1994).

This note examines the history and judicial enforcement of Title IX, the NCAA's Gender Equity Task Force, and the strategies employed by colleges and athletic conferences to comply with Title IX.

Christopher Raymond, *Title IX Litigation in the 1990's: The Courts Need a Game Plan*, 18 SEATTLE UNIV. L. REV. 665 (1995).

In this article, the author provides an overview of Title IX and then discusses the three primary issues with which the courts have been dealing.

Bernice Resnick Sandler, *Title IX: How We Got it and What a Difference it Made*, 55 CLEV. ST. L. REV. 473 (2007).

This article provides a detailed history of Title IX, authored by the “godmother of Title IX,” Bernice Sandler. In it, she discusses various Title IX issues, what the legislation has accomplished, and what still needs to be done to fulfill the mission of Title IX.

Brian A. Snow & William E. Thro, *Still on the Sidelines: Developing the Non-discrimination Paradigm Under Title IX*, 3 DUKE J. GENDER L. & POL’Y 1 (1996).

The authors of this article have two stated purposes. The first is to question the courts’ almost exclusive reliance on raw numbers to increase women’s participation in intercollegiate athletics. Second, the authors put forth a new legal theory, “gender depreciation,” which, they argue, permits greater development and enforcement of the ideals of Title IX. The authors hope that this will provide new legal remedies, such as monetary recovery or injunctive relief in cases where a person is explicitly and implicitly relegated to “second class” status simply because of their gender.

Iram Valentin, *Title IX: A Brief History*, 2 HOLY CROSS J.L. & PUB. POL’Y 123 (1997).

This article provides a discussion of the legislative history, regulatory scheme, related civil rights legislation, and the progress of gender equity since the enactment of Title IX.

Ellen J. Vargyas, *Gender Equity and Athletics: Governing Legal Standards and Practical Applications*, 2 J. LEGAL ASPECTS SPORT 74 (1992).

This concise article outlines the disparity in athletics at the time of the article’s writing and then reviews Title IX, specifically its impact on participation and scholarships. The author provides a few suggestions as to how to comply with Title IX.

Darryl C. Wilson, *Parity Bowl IX: Barrier Breakers v. Common Sense Makers: The Serpentine Struggle for Gender Diversity in Collegiate Athletics*, 27 CUMB. L. REV. 397 (1996-1997).

In this article, the author provides an examination of the origins of female participation in sports and then discusses the most recent legal decisions involving Title IX. He argues that these decisions have increased the breadth of Title IX beyond the intended scope of the legislation and follows this with the legislative responses to this increase in scope. Finally, the author argues that if these interpretations of Title IX persist, it would hamper the continuation of big-time college athletics and that by professionalizing big-time college athletics, Title IX can be administered in a more equitable manner.

B. *Alternatives to*

Marcia Federbush, *An "Olympics" Approach: A more Equitable Approach to Athletics than Title IX*, 34 U. MICH. J.L. REF. 265 (2001).

In this article, the author addresses the problems with the implementation of Title IX. Furthermore, she identifies and discusses an approach that she believes will better carry out the intent of Title IX, which she has named the "Olympic Approach." This idea calls for having men and women participate on the university team as one team, much like Olympic athletes do on their country's Olympic team, and then participate in events separately.

T. Jesse Wilde, *Gender Equity in College Athletics: Exploring Alternatives for Equitably Distributing Participation Opportunities Between the Sexes*, 4 J. LEGAL ASPECTS SPORT 47 (1994).

First, the author outlines Title IX as it pertains to college athletics and examines current cases in this area of law. Next, he "explores gender equity initiatives proposed or adopted by colleges, universities, and various athletic organizations." The author ends by outlining his "'Three-for-One' gender equity proposal, designed to provide an athletic administrator with a[] . . . plan for satisfying the athletic interests and abilities of both sexes."

Richard H. Yetter, III, Note, *Equal Rights Level Playing Field: What Title IX Money Cannot Buy*, 10 SPORTS LAW J. 135 (2003).

In this note, the author argues that a better approach to ensure equality in athletics is to enact a federal equal rights amendment rather than relying on Title IX. Furthermore, the author suggests that prong one of the Three-Part Test be eliminated as a means of determining Title IX compliance. Instead, the author argues compliance should be determined by using the remaining two prongs and the accompanying regulations, along with the heightened scrutiny analysis applied to equal protection claims.

C. *Anniversary Articles*

Birch Bayh, *Personal Insights and Experiences Regarding the Passage of Title IX*, 55 CLEV. ST. L. REV. 463 (2007).

This is the text of Mr. Bayh's keynote address at the symposium, *Girls and Women Rock: Celebrating 35 Years of Sport and Title IX*. Mr. Bayh was a member of the United States Senate and played a significant role in the passage of Title IX. In this speech, he discusses some of the legislative history of Title IX and his personal involvement in the passage of the law.

Trudy Saunders Bredthauer, *Twenty-Five Years Under Title IX: Have we Made Progress?*, 31 CREIGHTON L. REV. 1107 (1998).

"This article . . . review[s] the development and current status of Title IX" on its 25th anniversary. The author examines "the most recent court decisions and the practical implications for school districts."

Linda Jean Carpenter & R. Vivian Acosta, *Title IX Two for One: A Starter Kit of the Law and a Snapshot of Title IX's Impact*, 55 CLEV. ST. L. REV. 503 (2007).

This detailed article is based on a presentation the authors gave at the *Girls and Women Rock: Celebrating 35 Years of Sport and Title IX* Conference prior to the NCAA Women's Basketball Final Four in 2007. It begins with an in-depth description of the Title IX statute, and is followed by a discussion of Title IX's impact on women's athletics.

Suzanne Eckes, *The Thirtieth Anniversary of Title IX: Women have not Reached the Finish Line*, 13 S. CAL. REV. L. & WOMEN'S STUD. 3 (2003).

In this article, the author argues that gender equity in sports has not been achieved, and that stricter enforcement of Title IX by the Office of Civil Rights is needed to meet the goals of Title IX.

Robert P. Fleischman et al., *Gender and College Athletics: 25 Years after Title IX*, 10 J. LEGAL ASPECTS SPORT 24 (2000).

The authors write this article on the 25th anniversary of the passage of Title IX. They “examine[] the impact of Title IX on athletic opportunities for women at NCAA member institutions, and compares participation and enrollment rates since the law took effect.” In addition, the authors discuss interest levels of women in sports and “suggest[s] that various social or cultural factors might perpetuate gender imbalance.”

Marcia D. Greenberger & Neena K. Chaudhry, *Worth Fighting For: Thirty-Five Years of Title IX Advocacy in the Courts, Congress and the Federal Agencies*, 55 CLEV. ST. L. REV. 491 (2007).

Before discussing the current battles being fought with regard to Title IX, the authors discuss the importance of sports for women and girls, and the importance of Title IX advocacy in each branch of the United States government. The authors conclude that “Title IX is a powerful civil rights law that has led to major improvements in the opportunities” available to women and girls in education, but barriers to equality in education for women still exist.

Diane Heckman, *Women & Athletics: A Twenty Year Retrospective on Title IX*, 9 U. OF MIAMI ENT. & SPORTS L. REV. 391 (1992).

This is a comprehensive article that traces the evolution of Title IX, focusing on its legislative history and the implemented regulations. The author discusses the significant court decisions and the enforcement actions taken by the executive branch. In addition, this article discusses the athletic programs and activities that women cannot participate in because of the legislation’s contact sport exception. Finally, this article discusses the actions taken by athletic associations in response to Title IX and its requirements.

Diane Heckman, *The Explosion of Title IX Legal Activity in*

Intercollegiate Athletics During 1992-1993: Defining the Equal Opportunity Standard, 1994 DET. C.L. REV. 953 (1994).

As the title indicates, this article discusses the Title IX cases in its first twenty years of its existence, including the first Title IX case instituted by male athletes. The author also discusses the regulations used to implement the statute and identifies the many emerging legal theories addressing the equal opportunity requirement of Title IX.

Diane Heckman, *The Glass Sneaker: Thirty Years of Victories and Defeats Involving Title IX and Sex Discrimination in Athletics*, 13 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 551 (2003).

This article provides an overview of the seminal decisions of the past thirty years of Title IX litigation. These cases are divided into three topics, those discussing the governing regulations, those involving equal opportunity on behalf of student athletes, and those involving sex discrimination in educational employment.

Diane Heckman, *Scoreboard: A Concise Chronological Twenty-Five Year History of Title IX Involving Interscholastic and Intercollegiate Athletics*, 7 SETON HALL J. OF SPORTS L. 391 (1997).

This is an excellent article in which the author provides a timeline of the development of Title IX events as it pertains to interscholastic and intercollegiate athletics. This chronology begins with a timeline of cases and events outlining equality under the law, including a mention of *Brown v. Board of Education*,⁸⁸ *Craig v. Boren*,⁸⁹ and *U.S. v. Virginia*.⁹⁰ This is followed by a timeline for Title IX, including the legislative action and legal decisions from enactment to the federal government's activities commemorating the law's 25th anniversary.

Catherine Pieronek, *Title IX and Intercollegiate Athletics in the Federal Appellate Courts: Myth vs. Reality*, 27 J. C. & U. L. 447 (2000).

This article discusses Title IX enforcement against college and university athletic programs in the 1990s. The author examines the

88. 347 U.S. 483 (1954).

89. 429 U.S. 190 (1976).

90. 518 U.S. 515 (1996).

developments in college athletics during the thirty years since the law's passage and the substantive aspects of the appellate decisions in six cases since 1992. The author concludes with a discussion of the myths and realities of Title IX enforcement.

D. *Cases*

Cohen v. Brown University, See *infra Part H*

Armand B Alacbay, Note, *Are Intercollegiate Sports Programs a Buck Short? Examining the Latest Attack on Title IX*, 14 GEO. MASON U. C. R. L.J. 255 (2004).

The focus of this note is the case *National Wrestling Coaches Association v. United States Department of Education*.⁹¹ Specifically, the author "assesses the NWCA's claim that the three-part test is substantively and procedurally void." The author "concludes that the three-part test is inconsistent with the aims of the Title IX statute and the accompanying regulations."

George A. Davidson and Carla A. Kerr, *Title IX: What is Gender Equity?*, 2 VILL. SPORTS & ENT. L.F. 25 (1995).

In this article, the authors discuss three leading Title IX cases: *Favia v. Indiana University of Pennsylvania*,⁹² *Roberts v. Colorado State Board of Agriculture*,⁹³ and *Cohen v. Brown University*,⁹⁴ and the state of the law because of these decisions. Based on their analysis, the authors conclude that the proportionality test as set out in these cases is contrary to the intent of Title IX and its regulations as well as with other civil rights legislation.

Carolyn Davis, Note, *Leave It on the Field: Too Expansive an Approach to Evaluating Title IX Compliance in Biediger v. Quinnipiac University?*, 76 BROOK. L. REV. 265 (2010-2011).

This note examines "the reasoning and implications of the *Biediger* decision" and makes "an argument that, regardless of the outcome on the

91. 263 F. Supp. 2d 82 (D.D.C. 2003).

92. 7 F.3d 332 (3d Cir. 1993).

93. 998 F.2d 824 (10th Cir. 1993)

94. 991 F.2d 888 (1st Cir. 1993).

merits, the court's reasoning represents a potentially worrisome trend." First, the author argues that when "fashioning remedies, courts should carefully balance the public's interest in enforcing Title IX with the interest of providing educational institutions autonomy to make their own spending decisions." Second, the author argues "that the court . . . erred in taking an unprecedented subjective approach to evaluating Quinnipiac's compliance under the 'substantial proportionality' standard Specifically, the court should not have expanded its analysis to include a determination of whether the participation of female athletes was sufficiently 'meaningful.'" Finally, the author argues "that the use of roster floors by universities should be a permissible means of complying with Title IX."

Jamal Greene, Note, *Hands Off Policy: Equal Protection and the Contact Sports Exemption of Title IX*, 11 MICH. J. GENDER & L. 133 (2005).

Through his examination of *Mercer v. Duke University*,⁹⁵ the author explores "[t]he disparity between what the Constitution permits of public schools and what Title IX permits of private" schools when discrimination based on gender is at issue.

Melody Harris, *Hitting 'Em Where It Hurts: Using Title IX Litigation to Bring Gender Equity to Athletics*, 72 DENV. U.L. REV. 57 (1994).

"[T]his article explores the substantive and procedural issues presented by Title IX litigation in athletics" and "the prima facie elements of Title IX discrimination claims." Furthermore, by "using statutory, regulatory, and practical guidelines," the author "presents a method of analysis for evaluating whether Title IX has indeed been violated" by an institution. Finally, the author discusses available remedies for cases in which a violation of Title IX has been shown.

Nancy Hogshead-Makar, *Hurricane Warning Flag for Olympic Sports: Compliance Practices in Biediger v. Quinnipiac University Signal a Risk to Women's and Men's Olympic Sports*, 52 B.C. L. REV. 465 (2011).

This article was presented by the author at a symposium celebrating the 100th anniversary of the NCAA. Ms. Hogshead-Makar begins by

95. 190 F.3d 643 (4th Cir. 1999).

discussing the NCAA's transformation from an opponent of Title IX into a supporter of gender equity in athletics. Next, she discusses how current budgetary practices undertaken by most intercollegiate athletic departments are a threat to men's Olympic sports in the same manner as they threatened and led to the cutting of other men's non-revenue producing sports teams. Finally, she argues Title IX supporters and men's Olympic sports advocates should join forces to prevent the use of fraudulent compliance practices and the creation of "varsity-lite" sports for women, like those in *Biediger v. Quinnipiac University*.⁹⁶

Wes R. McCart, Note, *Simpson v. University of Colorado: Title IX Crashes the Party in College Athletic Recruiting*, 58 DEPAUL L. REV. 153 (2008).

In this note, the author argues that the court's decision in *Simpson v. University of Colorado*⁹⁷ "is consistent with Supreme Court precedent and the legislative intent of Title IX." In addition, he predicts the impact *Simpson* will have on educational institutions and how the Supreme Court might resolve the case if it were to hear it.

Barbara Osborne, *Title IX in the 21st Century*, 14 MARQ. SPORTS L. REV. 141 (2003).

This article discusses the most recent developments in the Title IX arena, including the court's decision in *National Wrestling Coaches Ass'n. v. Department of Education*,⁹⁸ and the Commission on Opportunity in Athletics. The author argues that each of these developments could have "tremendous impact on how Title IX will be implemented and enforced in the Twenty-First Century."

Andrew Santillo, Comment, *National Wrestling Coaches Association v. United States Department of Education: The Potential Takedown of the Current Application of Title IX to Intercollegiate Athletics*, 13 TEMP. POL. & C. R. L. REV. 187 (2003).

This comment discusses the National Wrestling Coaches Association's suit brought against the U.S. Department of Education.

96. 728 F. Supp. 2d 62 (D. Conn. 2010).

97. 500 F.3d 1170 (10th Cir. 2007).

98. 263 F. Supp. 2d 82 (D.D.C. 2003).

The NWCA challenges the elimination of intercollegiate wrestling teams as a means of satisfying the requirements of Title IX. The author

argue[s] that once the procedural requirements have been met, the NWCA's unique legal challenge should prevail since they can demonstrate that, while many of the changes in intercollegiate athletics that have resulted since the enactment of Title IX were necessary and long overdue, the regulations created and implemented by the Department of Education and its precursor deviate from the original intent of the legislation.

Jeffrey H. Smith, Note, *Wrestling with the Effects of Title IX: Is it Time to Adopt New Measures of Compliance for University Athletic Programs?*, 68 MO. L. REV. 719 (2003).

This note discusses the case *Chalenor v. University of North Dakota*,⁹⁹ in which the University of North Dakota was sued by male athletes after the wrestling team was eliminated.

T. Jesse Wilde, *Title IX: Gathering Momentum*, 3 J. LEGAL ASPECTS SPORT 71 (1993).

This article discusses *Grove City College v. Bell*¹⁰⁰ and other recent court decisions and their impact on gender equity in athletics. In addition, the author discusses several initiatives undertaken to preserve and promote female athletic opportunities and concludes by outlining a proposal designed to address the status of football in the gender equity equation.

E. *Civil Rights Legislation, Comparison to*

David S. Cohen, *Title IX: Beyond Equal Protection*, 28 HARVARD J. L. & GENDER 217 (2005).

This article examines the relationship between Title IX and the Equal Protection Clause of the U. S. Constitution, arguing that Title IX does not offer as broad a remedy as the Equal Protection Clause.

Earl C. Dudley, Jr. & George Rutherglen, *Ironies, Inconsistencies, and*

99. 291 F.3d 1042 (8th Cir. 2002).

100. 465 U.S. 555 (1984).

Intercollegiate Athletics: Title IX, Title VII, and Statistical Evidence of Discrimination, 1 VA. J. SPORTS & L. 177 (1999).

In this article, the authors explore the question of why enforcement of Title IX is so radically different from the enforcement of Title VII. In conclusion, the authors recommend changes to Title IX enforcement that encourages—but does not require—“affirmative action in favor of women,” thereby putting Title IX enforcement on the same footing as Title VII enforcement.

F. *Civil Rights Restoration Act of 1987/“Program” Defined*

Jeffrey P. Ferrier, Comment, *Title IX Leaves Some Athletes Asking, “Can We Play Too?”*, 44 CATH. U.L. REV. 841 (1995).

After reviewing Title IX’s legislative history, the legislative history of the Civil Rights Restoration Act of 1987—which adopted the institution-wide approach to Title IX—and the relevant case law, the author provides the reader with the framework used by the courts to decide whether a university is in compliance with Title IX. He concludes that this framework forces athletic administrators to make difficult decisions about cutting sports, with the female athletes faring better than the male athletes. In conclusion, the author provides alternatives to the courts’ present analysis to make it easier for athletic administrators to make more equitable decisions for all.

G. *Coaching/Athletic Administration*

Erin E. Buzuvis, *Sidelined: Title IX Retaliation Cases and Women’s Leadership in College Athletics*, 17 DUKE J. GENDER L. & POL’Y 1 (2010).

This article begins with a description of “Title IX’s role as an employment discrimination statute and examines the” Court’s opinion in *Jackson v. Birmingham Board of Education*¹⁰¹ and how this case has acted “as a catalyst for coaches’ retaliation claims.” Next is an examination of the cases since *Jackson*, focusing on the connection these cases have “with existing empirical and theoretical scholarship about women in college coaching and athletic administration.” In conclusion, the author is cautiously optimistic about Title IX’s potential “to help expose, remedy, and deter discriminatory practices within the leadership

101. 554 U.S. 167 (2005).

of college sports.”

Reid Coploff, *Exploring Gender Discrimination in Coaching*, 17 SPORTS LAW. J. 195 (2010).

In this article, the author explores the question of whether gender discrimination exists in coaching. In so doing, the author examines Title VII and Title IX, explains how a prima facie case can be established under each statute, and applies the statutes and their “regulatory framework to a hypothetical” situation where a female applicant “is passed over in favor of a male applicant.”

Deborah L. Rhode & Christopher J. Walker, *Gender Equity in College Athletics: Women Coaches as a Case Study*, 4 STAN. J. C.R. & C.L. 1 (2008).

This article explores one of Title IX’s unintended consequences—that despite the positive effect Title IX has had on women’s sports, opportunities for females seeking coaching positions or careers in athletic administration have declined since the passage of the legislation. The authors conclude with strategies for reforming Title IX so as to continue leveling the playing field for female athletes while at the same time breaking down the barriers that lessen female participation as coaches or athletic administrators.

Bethany Swaton, *Girls Can Play, Too: Has the Lack of Female Leadership in NCAA Athletics Become an Afterthought?*, 20 SETON HALL J. SPORTS & ENT. L. 1 (2010).

This article argues that Title IX has failed in that “women lack sufficient opportunities to hold leadership positions in collegiate athletics.” In support of this proposition, the author “cite[s] the dismal numbers among female athletic administrators” and compares the benefits of having women in these positions to “the detrimental effects of [their] absence.” In conclusion, the author “examines . . . possible solutions for achieving gender” equity in this area.

H. *Cohen v. Brown University*

David Aronberg, *Crumbling Foundations: Why Recent Judicial and Legislative Challenges to Title IX May Signal its Demise*, 47 FLA. L. REV. 741 (1995).

After exploring several of the early judicial decisions and the implementing regulations for Title IX, the author argues that the viability of Title IX is on shaky ground. He bolsters this argument with his in-depth discussion of *Pederson v. Louisiana State University*,¹⁰² wherein the judge wrote a strong opinion discrediting the way the *Cohen* court applied the proportionality test.

Eugene G. Bernardo, II, Note, *Unsportsmanlike Conduct: Title IX and Cohen v. Brown University*, 2 ROGER WILLIAMS U. L. REV. 305 (1997).

In this note, the author provides an in-depth discussion of the Supreme Court's decision in *Cohen* and argues the Court's application of Title IX violates the legislative intent of the statute and the Equal Protection Clause. The author concludes by suggesting an approach that considers both the accommodated and unaccommodated members of each gender, which ensures that the participation rates are proportional to the interests and abilities of each gender.

Jill H. Blumberg, Case Comment, *Brown University Violated Title IX in not Providing Women Equal Opportunity in Intercollegiate Athletics—Cohen v. Brown University*, 101 F.3d 155 (1st Cir. 1996), 31 SUFFOLK U. L. REV. 987 (1998).

The case *Cohen v. Brown University*¹⁰³ is discussed in detail in this article.

Jennifer Lynn Botello, Comment, *The Cohen Court's Reading of Title IX: Does it Really Promote a de Facto Quota Scheme?*, 33 NEW ENG. L. REV. 743 (1999).

In this Comment, the author provides an in-depth analysis of the *Cohen* decision and Chief Justice Torruella's dissent. From this analysis, the author argues the *Cohen* court required Brown University to allocate its athletic department's resources in a "quota-based scheme." In so doing, the author concludes the *Cohen* court misinterpreted Title IX through its use of the Effective Accommodation test and explains why the measuring of interest levels would have led to a different result.

102. 912 F. Supp. 892 (M.D. La. 1996).

103. 101 F.3d 155 (1st Cir. 1996).

Jennifer R. Capasso, Note, *Structure Versus Effect: Revealing the Unconstitutional Operation of Title IX's Athletics Provisions*, 46 B.C. L. REV. 825 (2005).

In the first part of this Note, the author discusses the legislative and regulatory framework of Title IX and the deference given to the First Circuit's decision in *Cohen*, which has led to male athletes challenging Title IX. Next, the author points out the correlation between male Title IX claims and affirmative action claims and provides an overview of the Supreme Court's recent decisions in *Grutter v. Bollinger*¹⁰⁴ and *Gratz v. Bollinger*.¹⁰⁵ The author concludes by arguing that the *Cohen* court created an inflexible framework for deciding Title IX cases.

Ted Riley Cheesebrough, Note, *Cohen v. Brown: I Am Woman, Hear Me Score*, 5 VILL. SPORTS & ENT. L. J. 295 (1998).

This is a detailed case note on *Cohen v. Brown University*.

Robert R. Hunt, *Implementation and Modification of Title IX Standards: The Evolution of Athletics Policy*, 1999 BYU EDUC. & L. J. 51 (1999).

The purpose of this article is to examine *Cohen v. Brown University* as an evolution of Title IX policy so as to better understand how the implementation of Title IX impacts the development of law and policy.

R. Lindsay Marshall, Comment, *Cohen v. Brown University: The First Circuit Breaks New Ground Regarding Title IX's Application to Intercollegiate Athletics*, 28 GA. L. REV. 837 (1994).

This comment provides an in depth discussion of *Cohen v. Brown University*, and argues that “[t]he First Circuit erred in its analysis of the crucial interests and abilities test, both by dismissing the district court’s misallocation of the burden of proof on this issue as harmless and further by failing adequately to define a method for measuring these interests and abilities.”

Andrew Richardson, Note, *Sports Law: Cohen v. Brown University: A*

104. 539 U.S. 306 (2003).

105. 539 U.S. 244 (2003).

Title IX Lesson for Colleges and Universities on Gender Equity, 47 OKLA. L. REV. 161 (1994).

In this note, the author discusses “the application of Title IX and its regulatory program to intercollegiate athletics, the effect of the *Cohen* decision, and the mechanisms colleges and universities may employ to comply with Title IX obligations.”

Michael Straubel, *Gender Equity, College Sports, Title IX and Group Rights: A Coach’s View*, 62 BROOK. L. REV. 1039 (1996).

In this article, the author analyzes the current legal framework of Title IX and the court’s ruling regarding the proportionality test in *Cohen*. In the end, the author concludes that using the proportionality test to enforce Title IX is harmful to college athletics because it rests on the improper assumption that the interest level of women is the same as that of men. Furthermore, the author argues that the proportionality test cannot be used in college until proportionality is a reality in high school athletics. In light of these conclusions, the author suggests a new test is needed to measure Title IX compliance, one that uses high school participation statistics as its baseline.

I. *Commission on Opportunities in Athletics*

William C. Duncan, *Title IX at Thirty: Unanswered Questions*, 3 MARGINS 211 (2003).

This article discusses the work of the Secretary of Education’s Commission on Opportunity in Athletics and argues the Commission left many important questions unanswered, the most important being the actual effect of Title IX enforcement on men and women’s athletic opportunities and the appropriate aim of the statute.

Danielle M. Ganzi, Note, *After the Commission: The Government’s Inadequate Responses to Title IX’s Negative Effect on Men’s Intercollegiate Athletics*, 84 B.U. L. REV. 543 (2004).

This note takes an in-depth look at the developments of Title IX and argues further work is needed “to ensure that compliance is achieved without discrimination against male athletes.” In addition, the author examines the recommendations made by the United States Department of Education Commission on Opportunity in Athletics.

Meghan M. Gavin, *Leveling the Playing Field: Sex Equality in Athletics*, 35 MCGEORGE L. REV. 445 (2004).

This article provides a general overview of Title IX and the effect it has had on women's participation in intercollegiate athletics. The author provides a detailed discussion of the Act's legislative and judicial history, a detailed discussion of the work of the Commission on Opportunity in Athletics, and a discussion of AB 833, California state legislation drafted to retain the original protections of Title IX in the State of California.

Elizabeth A. Hueben, Comment, *Revolution, Numbers, IX: The Thirtieth Anniversary of Title IX and the Proportionality Challenge*, 71 UMKC L. REV. 659 (2002-2003).

In this comment, the author provides a broad overview of Title IX and recent challenges to the proportionality requirement of the law. She begins by reviewing the history of women's sports opportunities both before and after the passage of Title IX. This is followed by an overview of the current cases and problems athletic departments face in attempting to comply with Title IX, including a discussion of a lawsuit brought by the National Wrestling Coaches Association against the U.S. Department of Education and the establishment of the Commission on Opportunity in Athletics. In conclusion, the author compares the school desegregation cases with Title IX enforcement and argues that the mechanisms in place for Title IX compliance need to be left in place until complete compliance with these mechanisms is more widespread.

Andrew Murr, Note, *Title IX: Is it time for a Change?*, 32 J.L. & EDUC. 557 (2003).

This note provides a general overview of Title IX, the leading cases in this area of the law, and the Commission on Opportunity in Athletics.

Catherine Pieronek, *Title IX Beyond Thirty: A Review of Recent Developments*, 30 J.C. & U. L. 75 (2003).

This extensive article summarizes the developments of Title IX

case law and public policy since the author's previous article, *Title IX and Intercollegiate Athletics: Myth vs. Reality*.¹⁰⁶ In addition, the author discusses discrimination claims brought by employees in athletic departments, evaluates cases involving Title IX procedural issues, and reviews the report of the Commission on Opportunity in Athletics and the July 2003 Further Clarifications document written by the U.S. Department of Education as a response to the Commission's report.

Robin M. Preussel, Note, *Successful Challenge, Ruling Reversed: Why the Office of Civil Rights' Survey Proposal May Be Well-Intentioned but Misguided*, 13 SPORTS LAW. J. 79 (2006).

In this note, the author examines the history and development of Title IX and its implementing regulations as applied to intercollegiate athletics, including a discussion of the inequities that have resulted from relying on the proportionality test to measure compliance. The author proposes using a measure of "genuine interest" to determine compliance with Title IX and outlines some anticipated criticisms of this approach. Finally, this note examines OCR's proposal of using electronic surveys to measure interest in athletic participation of undergraduate students. The author highlights the faults of this approach, and offers suggestions to correct these faults so the survey method could be effective for determining the interests of athletes for Title IX purposes.

Joeelyn Samuels, *Reviewing the Play: How Faulty Premises Affected the Work of the Commission on Opportunity in Athletics and Why Title IX Protections are Still Needed to Ensure Equal Opportunity in Athletics*, 3 MARGINS 233 (2003).

In this article, the author argues the recommendations provided by the Commission on Opportunity in Athletics sprang from false premises. Next, the author rebuts these false premises and explains why acceptance of them and the modification of Title IX based on them would have been very damaging to women's athletics. Next, the author proposes steps that the DOE should take to enhance its enforcement of Title IX, and concludes by arguing that improved enforcement of Title IX is critical to ensure women equal opportunity in sports.

Jocelyn Samuels & Kristen Galles, *In Defense of Title IX: Why Current*

106. 27 J.C. & U.L. 447 (2000).

Policies are Required to Ensure Equality of Opportunity. 14 MARQ. SPORTS L. REV. 11 (2003).

The authors provide an outline of the long history of repeated attacks on Title IX, including the Title IX Commission report, and argue that the Department's reaffirmation of existing Title IX athletic policies was the only legally appropriate conclusion to the Commission's process. In addition, the authors "outline the flexibility of the Title IX athletic policies, to demonstrate how opponents of Title IX continue to recycle old arguments in new ways, and to provide defenders of Title IX with the information and arguments necessary to rebut future attacks."

Suzanne Sangree, *The Secretary's Commission on Opportunity in Athletics Squandered its Opportunity to Understand Commercial Collegiate Sports: Why They Eliminate Minor Men's Sports and Prevent Title IX from Achieving Full Gender Equity*, 3 MARGINS 257 (2003).

In this article, the author analyzes the Commission's findings, and argues it is wrong to blame Title IX for the elimination of men's sports, as so many do. The author contends the "Arm's Race" of men's commercial football and basketball is the real culprit. The author concludes with reforms to expand athletic opportunities for men and women, albeit reforms that she argues will not be supported.

Nicole Stern, Note, *Preserving and Protecting Title IX: An Analysis and History of Advocacy and Backlash*, 10 SPORTS LAW. J. 155 (2003).

In this note, the author discusses issues and arguments that arise from the cases in which male athletes and their coaches have sued the university alleging violations of Title IX and the Equal Protection Clause of the Fourteenth Amendment because their sports have been eliminated. The author also focuses on the attempts at Title IX revision by the Bush Administration.

Lisa Yonka Stevens, Note, *The Sport of Numbers: Manipulating Title IX to Rationalize Discrimination Against Women*, 2004 BYU EDUC. & L.J. 155 (2004).

In analyzing the recommendations made by the Commission on Opportunities in Athletics, the author argues they are contrary to current Title IX case law. She also argues that the suggested changes in the way

the student body is counted for Title IX purposes perpetuates sexual discrimination against female athletes. In her conclusion, she argues current Title IX policies effectively promote both men's and women's athletics and recommends they remain unchanged.

J. *Contact Sport Exception*

Kimberly Capadona, Comment, *The Scope of Title IX Protection Gains Yardage as Courts Continue to Tackle the Contact Sports Exception*, 10 SETON HALL J. SPORTS L. 415 (2000).

In this comment, the author argues that Title IX should protect female athletes who have tried out for or compete on men's teams, even if it is a contact sport, because to deny female athletes the protection of the law merely because the sport involves bodily contact is not logical.

Jessica Constance Caggiano, Note, *Girls Don't Just Wanna Have Fun: Moving Past Title IX's Contact Sports Exception*, 72 U. PITT. L. REV. 119 (2010).

In this note, the author argues that the Contact Sport Exception (CSE) needs to be eliminated. In so doing, the author discusses the consequences of removing the CSE and suggests alternatives can be instituted in its place.

Mariella Elisabet Dirx, *Calling an Audible: The Equal Protection Clause, Cross-Over Cases, and the Need to Change Title IX Regulations*, 80 MISS. L.J. 411 (2010).

This article examines "cross-over cases," their treatment under the Equal Protection Clause, the holdings in Title IX cases, and the constitutionality of the CSE.

Blake J. Furman, Note, *Gender Equality in High School Sports: Why There is a Contact Sports Exemption to Title IX, Eliminating it, and a Proposal for the Future*, 17 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 1169 (2007).

In this note, the author argues the CSE is a significant barrier to gender equality in sports and needs to be eliminated. To do this, the author proposes "the complete elimination of gender segregation in high

school sports and a requirement that all teams be half male and half female.”

K. *Feminism*

Note, *Cheering on Women and Girls in Sports: Using Title IX to Fight Gender Role Oppression*, 110 HARV. L. REV. 1627 (1997).

In outlining the various stereotypes women and girls face when they participate in sports, the author argues that change can only be accomplished by “a comprehensive feminist theory of sport.” The author then explores “one direction such a theory might take and positions it within existing feminist legal theory.” The author then applies this theory “to alleviate one of the growing criticisms of Title IX—that women are gaining sports opportunities only at the expense of men.” This application, the author argues, “will be able to take advantage of sports’ potential to transform gender relations only if they transcend existing feminist paradigms.”

Deborah Brake, *Revisiting Title IX’s Feminist Legacy: Moving Beyond the Three-Part Test*, 12 AM. U. J. GENDER SOC. POL’Y & L. 453 (2004).

The author focuses on three ways in which “the law’s existing conception of discrimination fails to reach far enough to ensure girls and women equality in sports.” They are: “the continuing decline of women in coaching jobs and its impact on female athleticism; the . . . acceptance of cuts in men’s opportunities as a remedy to discrimination against women; and the role of cost-based justifications in preserving the status quo” and justifying sex discrimination in sports. The author concludes that Title IX’s legacy of increasing the number of girls and women that participate in athletics is laudable but that there are shortcomings that exist and must be addressed.

Deborah Brake, *Title IX as Pragmatic Feminism*, 55 CLEV. ST. L. REV. 513 (2007).

In this article, the author “examines Title IX as an example of a pragmatic approach to theory, and argues that pragmatic feminism is an approach that holds promise for feminists grappling with the complexity of gender oppression.” The author argues that this approach will allow enough flexibility to combat “the many forms and iterations of gender

subordination in sports.”

Deborah Brake, *The Struggle of Sex Equality in Sport and the Theory Behind Title IX*, 34 U. MICH. J.L. REFORM 13 (2000-2001).

In this article, the author “explores the theory behind Title IX’s standard for measuring equality in athletic participation and examines its implication for further Title IX analysis.” In the process, the author hopes “to better integrate Title IX into feminist legal theory and provide a more complete account of women’s inequality in sport and how the law can address it.”

Erin E. Buzuvis, *The Feminist Case for the NCAA’s Recognition of Competitive Cheer as an Emerging Sport for Women*, 52 B.C. L. REV. 439 (2011).

This article examines the court’s decision in *Biediger v. Quinnipiac*,¹⁰⁷ and whether competitive cheer has the potential to improve Title IX compliance in a way that would benefit women’s sports, concluding “the NCAA should promote the growth of competitive cheer by endorsing it as an emerging sport for women.”

B. Glenn George, *Forfeit: Opportunity, Choice, and Discrimination Theory Under Title IX*, 22 YALE J.L. & FEMINISM 1 (2010).

In this article, the author hopes to provide a broader discussion of the relationship among gender, sports, and discrimination. She begins with a discussion of the proportionality standards, and follows this by discussing the accommodation of interest test. Her discussion of this topic focuses on whether this is a legitimate test for measuring Title IX compliance or if it perpetuates already well-established discriminatory stereotypes. Finally, the author examines the goals of Title IX and suggests both short-term and long-term strategies for achieving gender equity in intercollegiate athletics.

Jessica E. Jay, *Women’s Participation in Sports: Four Feminist Perspectives*, 7 TEX. J. WOMEN & L. 1 (1997).

107. 728 F. Supp. 2d 62 (D. Conn. 2010).

This article begins with a historical examination of women's participation in sport and the change in participation after Title IX was enacted. Next, the author examines, "from four feminist perspectives, the forms of participation available to girls, with particular attention to the message such participation sends to girls."

Dionne L. Koller, *Not Just One of the Boys: A Post-Feminist Critique of Title IX's Vision for Gender Equity in Sports*, 43 CONN. L. REV. 401 (2010).

In this article, the author argues that Title IX cannot lead to equality in sports because "the conception of equality underlying Title IX assumes that women will be interested in assimilating into the model for sport created by and for men"—a model of sport that "emphasizes elite ability, commercial appeal, and a win-at-all-costs mentality." The author argues that this results in the "'interest paradox' whereby Title IX's participation opportunities at the interscholastic and intercollegiate levels serve to extinguish interest in sports participation for the very group of women that the statute and regulations are intended to reach."

Suzanne Sangree, *Title IX and the Contact Sports Exemption: Gender Stereotypes in a Civil Rights Statute*, 32 CONN. L. REV. 381 (2000).

In this article, the author argues that the continued underrepresentation of female athletes in intercollegiate athletics is due in large part to the law's contact sport exemption. The authors stated purpose for this article "is not . . . to invalidate the Title IX regulations . . . [r]ather it seeks to expose the contact sports exemption" as an improper stereotype that "has no place in a modern civil rights statute." To this end, the author provides a personal narrative of how the contact sport exemption affected her participation in high school hockey. In two other sections, she analyzes the exemption and shows how it would fail equal protection scrutiny. Her conclusion explores the ramifications of the contact sport exemption and how it defeats the "statutory mandate of gender equality."

L. *Fiscal Policy, Effect of*

Anne Bloom, *Financial Disparity as Evidence of Discrimination Under Title IX*, 2 VILL. SPORTS & ENT. L.J. 5 (1995).

In this article, the author addresses the Title IX issues that arise

when a university decides to fund a sport and whether Title IX requires universities to maintain financial parity in its men and women's athletic programs. The author suggests that true compliance with Title IX requires both equal athletic opportunities as well as equal funding.

Matthew L. Daniel, *Title IX and Gender Equity in College Athletics: How Honesty Might Avert a Crisis*, 1995 ANN. SURV. AM. L. 255 (1995).

In this article, the author argues that the decisions being made regarding Title IX are being done based on the misguided notion that all college athletics are available for the purpose of providing educational benefits to the participants, forgetting that some college athletics simply exist as a means of generating revenue for the university. The author argues that making decisions based on this misconception threatens the existence of some men's sports as well as women's sports. Changing this characterization of intercollegiate athletics will alleviate these tensions without compromising gender equity or intercollegiate athletics.

Thomas S. Evans, *Issues Facing College Athletics: Title IX and Intercollegiate Athletics: A Primer on Current Legal Issues*, 5 KAN. J. L. & PUB. POL'Y 55 (1996).

The author provides an overview of Title IX, including a discussion of the 1996 Clarification by OCR, and including a discussion of *Pederson*. In so doing, the author focuses on the "major legal and economic issues which seem to underlie most of the Title IX litigation."

Joseph Filippone, Note, *Title IX in the Nineties*, 15 N.Y.L. SCH. J. HUM. RTS. 561 (1999).

This note "addresses the dilemmas facing many institutions concerning Title IX in the nineties." More specifically, the author addresses the need to distribute athletic opportunities equally among male and female athletes in a time of decreasing athletic budgets.

B. Glenn George, *Sports Law in the 21st Century: Title IX and the Scholarship Dilemma*, 9 MARQ. SPORTS L.J. 273 (1999).

This article focuses on the issues inherent in the distribution of scholarship monies to student athletes and the conflict between the

requirements of gender equity imposed by Title IX on the one hand and the “strict scholarship quotas imposed by the National Collegiate Athletic Association” on the other.

Mark Hammond, Note, *Substantial Proportionality Not Required: Achieving Title IX Compliance Without Reducing Participation in Collegiate Athletics*, 87 KY. L.J. 793 (1998-1999).

In this note, the author examines “the evolution of Title IX” and how the courts’ interpretation of the statute is contrary to its legislative intent. In conclusion, the author argues that a different interpretation of the statute and better fiscal management by college athletic departments will lead to “increased participation” by women in college athletics “without the loss of men’s sports.”

Mark Kelman, *(Why) Does Gender Equity In College Athletics Entail Gender Equality?*, 7 S. CAL. REV. L. & WOMEN’S STUD. 63 (1997).

In this article, the author argues “gender equity” in the Title IX arena requires schools to “spend roughly as much per capita on varsity athletic programs for . . . women enrolled in the school as they do for men” enrolled in the school.

Alfred Dennis Mathewson & Robert D. Rogers, *Measuring Gender Equity*, 1 VA. J. SPORTS & L. 130 (1999).

The authors of this article were interested in the use of demand as a measurement of equality because of their belief that university resources should only be used to meet the students’ demands. However, the authors noticed that in Title IX litigation, demand has not been used to measure participation opportunities but only “to determine the relative allocation” of resources between males and females. As such, the authors set out to see whether demand could be empirically measured. Part I of this article discusses the difficulties in measuring demand and the use of this measure in litigated cases. Part II “describe[s] the measurement instrument . . . used” in the study, with the study’s findings being discussed in Part III. Part IV “discuss[es] the use of similar measurement instruments by universities to allocate participation opportunities between male and female athletic programs,” concluding the allocations are in compliance with Title IX. “That is, that demand potential is relevant to institutions in determining the level of resources

to devote to athletics programs and their relative allocation among males and females.”

Brian Porto, *Completing the Revolution: Title IX as Catalyst for an Alternative Model of College Sports*, 8 SETON HALL J. SPORTS L. 351 (1998).

In this article, the author “explain[s] how the commercial model of college sports compromises gender equity, fiscal sanity, and educational integrity.” The author follows this with an explanation of the “Participation Model,” a new model for college athletics, one that will foster gender equity, fiscal responsibility, and educational integrity.

Ronnie Wade Robertson, Comment, *Tilting at Windmills: The Relationship Between Men’s Non-revenue Sports and Women’s Sports*, 76 MISS. L.J. 297 (2006).

In this comment, the author examines “how the current application of Title IX pits proponents of men’s non-revenue sports and women’s sports against each other” and argues that they “are not natural enemies.” In fact, the author argues, they should “work together . . . to bring about reform in the application of Title IX.” The author’s suggested reforms include “a spending cap on individual revenue sports . . . an exemption of revenue-producing sports from the application of the proportionality prong and an exemption for the NCAA from antitrust laws.” All these measures, the author argues, will reduce “the negative impact of Title IX on men’s non-revenue sports while also ensuring the number of intercollegiate-athletic opportunities for women continue to grow.”

M. *Football, Effect of*

Erin E. Buzuvis, *Reading the Pink Locker Room: On Football Culture and Title IX*, 14 WM. & MARY J. WOMEN & L. 1 (2007).

The author examines the public controversy following her comments about the University of Iowa’s decision to paint the visitor’s locker room pink in its newly renovated football facilities. The author argues the statements made about her comments “prove[] how deeply the hegemonic patriarchal ideology is entrenched in football culture.” Furthermore, she argues that because compromises involving football are often necessary to resolve gender disparities in college athletics, the cultural values surrounding football must change before the guarantees

of Title IX can be fully realized.

Deidre G. Duncan, Comment, *Gender Equity in Women's Athletics*, 64 U. CIN. L. REV. 1027 (1996).

In addition to summarizing the history and recent judicial developments of Title IX, the author addresses the unique issues confronting universities with large football programs as they attempt to comply with Title IX.

Robert C. Farrell, *Title IX or College Football?*, 32 HOUS. L. REV. 993 (1995).

In this article, the author argues "big-time" college football programs and Title IX cannot coexist under the current structure of college athletics and makes suggestions for reform, including the elimination of college football as we know it and making it its own professional league. The author also discusses the more moderate approach of downsizing football, reducing wasteful spending and creating tiers for college athletics so schools could operate some sports on a national level while offering other sports on a more regional level.

Rich Haglund, *Staring Down the Elephant: College Football and Title IX Compliance*, 34 J. L. & EDUC. 439 (2005).

This article is a response to Eric Bentley's note *Title IX: The Technical Knockout for Men's Non-Revenue Sports*.¹⁰⁸ Here, Mr. Haglund argues Mr. Bentley relies on an incorrect interpretation of Title IX, and explains why Mr. Bentley's proposed solution is legally unworkable. In addition, Mr. Haglund proposes changes to football he argues will comply with Title IX's proportionality test and decrease the chances of men's sports teams being cut.

Jill K. Johnson, Note, *Title IX and Intercollegiate Athletics: Current Judicial Interpretation of the Standards for Compliance*, 74 B.U. L. REV. 553 (1994).

This note examines the three leading Title IX cases, *Cohen*,

108. 33 J.L. & EDUC. 139 (2004).

Roberts, and *Favia*, and uses these decisions to suggest ways in which universities can improve intercollegiate athletic participation opportunities for women while remaining within their financial limitations. The author does this by suggesting universities redistribute funds from their football programs and argues the above three cases together establish a model for judicial enforcement of Title IX that can guide both athletes and universities in creating and maintaining nondiscriminatory athletic programs.

Jay Larson, Note, *All Sports are Not Created Equal: College Football and a Proposal to Amend the Title IX Proportionality Prong*, 88 MINN L. REV. 1598 (2004).

In this note, the author argues that, despite its success in raising the number of girls and women participating in sports, Title IX has led to the unintended consequence of a decline in the number of men participating in sports, the cutting of men's athletic programs, and the institution of women's programs based on the size of the roster rather than the interest level of the athletes. To alleviate this, the author argues that there should be a partial exemption of football from the proportionality prong due to the uniquely large number of participants in that sport.

Rodney K. Smith, *Solving the Title IX Conundrum with Women's Football*, 38 S. TEX. L. REV. 1057 (1997).

In this article, the author calls for the addition of women's football as a means of meeting Title IX compliance. To support this proposal, the author provides legal, practical, and theoretical justifications for this addition as well as suggestions as to how this can be accomplished.

N. *Men's Sports, Elimination of*

Ben Adams, Comment, *Title IX: The Story of a Provision in Need of Reform*, 7 U. DENV. SPORTS & ENT. L.J. 4 (2009).

In this comment, the author argues "Title IX has had a negative effect on male student[]" athletes. To support this argument, the author provides statistics on the graduation rates of male and female students and male and female student athletes. The statistics show "that male . . . athletes are . . . lowering the graduation success rate of both males and athletes in general." This is particularly true in the case of the revenue producing sports, where male graduation rates are the lowest.

Furthermore, the author argues Title IX is in need of reform, including the exemption of revenue producing sports from the Title IX compliance, further refining of prongs two and three of the three prong test and surveying the student population, as recommended by The Commission on Opportunity in Athletics.

Eric Bentley, Note, *Title IX: The Technical Knockout for Men's Non-Revenue Sports*, 33 J. L. & EDUC. 139 (2004).

The author explores three issues in this note. First, why schools are “dropping men’s non-revenue sports . . . in order to comply with the participation requirement of Title IX,” contending this goes against “the purpose and plain language of Title IX.” Second, the author attempts “to explain why institutions should not be allowed to” cut men’s sports in order to comply with Title IX. Finally, the author argues Title IX should be interpreted in the same way courts have interpreted the Equal Pay Act and Title VII, suggesting this will “ensure that no person is denied” the opportunity to “participat[e] in intercollegiate athletics on the basis of their sex.”

Charles P. Beveridge, Note, *Title IX and Intercollegiate Athletics: When Schools Cut Men's Athletic Teams*, 1996 U. ILL. L. REV. 809 (1996).

In this note, the author argues that the elimination of men’s teams in order to comply with Title IX violates the Supreme Court’s interpretation of the Equal Protection Clause. The author suggests a better approach to gender equity and one that comports with the Supreme Court’s Equal Protection jurisprudence, is to ensure each gender is able to participate at a rate proportional to its interests and abilities, rather than basing proportionality on student body ratios.

Marthe Burke & Natasha Plumly, *Who Owns Sports?: The Politics of Title IX*, 14 MARQ. SPORTS L. REV. 49 (2003).

The authors propose that the arguments against Title IX are based on the following assumptions. First, “men and boys are the rightful ‘owners’ of sports, and” second, “males are superior to females in athletic ability.” As such, opponents argue male athletes are being discriminated against as a result of Title IX. The authors argue to the contrary; Title IX is not the reason for the elimination of male sports teams and they suggest other reasons for their elimination.

Sarah E. Gohl, Note, *A Lesson in English and Gender: Title IX and The Male Student-Athlete*, 50 DUKE L. J. 1123 (2001).

In this article, the author distinguishes the female student-athlete's college experience and the college experience of the male student-athlete. The female student-athlete has a more well-rounded experience that ends with her obtaining a degree while the male student-athlete's experience focuses on his athletics and not on his education, usually ending in his not obtaining a degree or a professional contract in his sport. In light of these discrepancies, the author argues the male student-athlete may have a cause of action based on the legal theory of educational negligence or on an "extrapolated sexual harassment theory" in addition to a Title IX claim.

David Klinker, Comment, *Why Conforming with Title IX Hurts Men's Collegiate Sports*, 13 SETON HALL J. SPORT L. 73 (2003).

In this comment, the author argues the substantial proportionality test is not the most just way of implementing gender equity in college athletics. In addition, the author argues the remaining prongs of the three prong test are also impracticable due to the financial burden of expanding women's athletic programs as required in the second prong and the difficulty of assessing the interests and abilities of the students as required by the third prong. In light of these arguments, the author proposes several solutions including requiring all admitted female students to complete a questionnaire at the time of enrollment to assess athletic abilities and interests.

Victoria Langton, Note, *Stop the Bleeding: Title IX and the Disappearance of Men's Collegiate Athletic Teams*, 12 VAND. J. ENT. & TECH. L. 183 (2009).

In this note, the author discusses challenges made by male athletes after their teams have been eliminated in order to comply with Title IX. The author focuses on the issues involved in *Equity in Athletics, Inc. v. United States Department of Education*¹⁰⁹ and argues the Court should "hold[] that it is impermissible under Title IX for universities to comply with [Title IX regulations] by capping or eliminating teams unless such

109. 291 F. App'x 517 (4th Cir. 2008).

action would be financially necessary.”

Daniel R. Marburger & Nancy Hogshead-Makar, *Is Title IX Really to Blame for the Decline in Intercollegiate Men’s Nonrevenue Sports?*, 14 MARQ. SPORTS L. REV. 65 (2003).

In this article, the authors argue Title IX is not to blame for the decline of intercollegiate men’s non-revenue sports. Instead, they argue these cuts are driven by profit motivated athletic departments that believe by cutting the non-revenue sports, athletic departments are able to put more money into the programs that can generate money for the universities. The authors argue that the weakening of the proportionality test will only perpetuate the trend, and enable the continued funding of the revenue generating sports, in particular football and basketball.

David Hancock Moon, *Gender [In]Equity? An Analysis of Title IX Lawsuits in Intercollegiate Athletics*, 6 DEPAUL-LCA J. ART & ENT. L. 87 (1995).

*Kelley v. Board of Trustees, University of Illinois*¹¹⁰ and *Gonyo v. Drake University*¹¹¹ are discussed in this article. These cases involve male athletes who sue their respective schools for violation of Title IX because their sport has been eliminated.

Christopher Paul Reuscher, Comment, *Giving the Bat Back to Casey: Suggestions to Reform Title IX’s Inequitable Application to Intercollegiate Athletics*, 35 AKRON L. REV. 117 (2001).

In this comment, the author argues Title IX deprives men and minority women of the equality it aspires to achieve as a result of “the courts’ . . . focus on ‘strict proportionality’ and the undergraduate population of the institution.” He also asserts OCR compounds the problem because it does not take into account the budget constraints an athletic department operates under, which leads to the elimination of male athletic teams as the only way to comply with Title IX.

Kristin Rozum, Note, *Staying Inbounds: Reforming Title IX in Collegiate Athletics*, 18 WIS. WOMEN’S L.J. 155, 158 (2003).

110. 35 F.3d 265 (7th Cir. 1994).

111. 837 F. Supp. 989 (S.D. Iowa 1993).

The author argues Title IX has been incorrectly interpreted by OCR and misapplied by the courts, resulting in “a quota system that harms men’s sports and ignores the true interests of women athletes.” The author offers revisions to the Title IX interpretations in order “to preserve male sports while still providing women the opportunity to participate in athletics.”

Donald E. Shelton, *Equally Bad Is Not Good: Allowing Title IX “Compliance” by the Elimination of Men’s Collegiate Sports*, 34 U. MICH. J.L. REFORM 253 (2001).

In this article, the author provides a summary of “the social and legal context that has shaped the controversy surrounding the” substantial proportionality test and examines the purposes of Title IX. He concludes by putting forth recommendations to reform the regulatory scheme governing Title IX.

Susan M. Shook, Note, *The Title IX Tug-of-War and Intercollegiate Athletics in the 1990’s: Nonrevenue Men’s Teams Join Women Athletes in the Scramble for Survival*, 71 IND. L.J. 773 (1996).

The author argues the roster size of collegiate football teams should be reduced. This will allow universities to keep non-revenue generating men’s teams without incurring revenue losses for the athletic department, while maintaining Title IX compliance.

Ryan T. Smith, Note, *“Bull’s Eye”: How Public Universities in West Virginia can Creatively Comply with Title IX without the Targeted Elimination of Men’s Sports Teams*, 110 W. VA. L. REV. 1373 (2008).

The author argues Title IX has led to the elimination of men’s sports teams at Marshall and West Virginia University and discusses the actions the schools should have taken to prevent the elimination of the men’s teams and strategies to employ in the future.

Charles Spitz, Note, *Gender Equity in Intercollegiate Athletics as Mandated by Title IX of the Education Amendments of 1972: Fair or Foul?*, 21 SETON HALL LEGIS. J. 621 (1997).

This note looks at three cases, *Cohen v. Brown University*, *Roberts v. Colorado State Board of Agriculture*, and *Favia v. Indiana University of Pennsylvania* and the effects of the courts' decisions and concludes "that although the remedial purpose of Title IX is laudable, it has seemingly created inequitable results for male athletes who participate in small, non-revenue sports."

Megan K. Starace, Comment, *Reverse Discrimination Under Title IX: Do Men Have a Sporting Chance?*, 8 VILL. SPORTS & ENT. L.J. 189 (2001).

"This [c]omment provides an overview of Title IX and its effects on the survival of" men's non-revenue sports. To that end, the author provides an overview of the statutory and regulatory schemes of Title IX, and discusses the judicial interpretations of the statute, including an analysis of the more recent reverse discrimination lawsuits brought by men whose sports were discontinued.

Ellen J. Staurowsky, *Title IX and College Sport: The Long Painful Path to Compliance and Reform*, 14 MARQ. SPORTS L. REV. 95 (2003).

According to this author, "men's minor sport advocates" are wrongly directing their anger toward Title IX when men's teams are cut. Instead, the author argues, they should be directing their complaints "to higher education decision makers, who have been unsuccessful in controlling the college sport corporation." The author argues Title IX is the best vehicle for college sport reform and offers suggestions on how the law provides a "bridge back to the amateur, educational ideal of college sport increasingly disappearing from the American higher education landscape."

Denise K. Stellmach, Note, *Title IX: The Mandate for Equality in Collegiate Athletics*, 41 WAYNE L. REV. 203 (1994).

This note reviews the expanding strength of Title IX and outlines a procedure schools can follow to satisfy the law. The author addresses the arguments opposing Title IX and argues "that the underlying ideals of college athletics are . . . being advanced by Title IX[.]"

Ryan Witt, *Title IX: Achieving Gender Equity or Just the Opposite*, 7 HOLY CROSS J.L. & PUB. POL'Y. 241 (2003).

This article analyzes the question of whether the elimination of male athletic teams is being done strictly to comply with Title IX, or whether these cuts actually reflect the “interests and abilities of athletes” as required by the law. The author contends “that Title IX is not achieving gender equity and actually is condoning and promoting discrimination against male athletes.”

Perry A. Zirkel, *Title IX and Intercollegiate Athletics: Wrestling with Elephants?*, 34 J. L. & EDUC. 437 (2005).

This article is a response to Eric Bentley’s note, *Title IX: The Technical Knockout for Men’s Non-Revenue Sports*.¹¹²

O. *Miscellaneous*

Rocio de Lourdes Cordoba, *In Search of a Level Playing Field: Baca v. City of Los Angeles as a Step Toward Gender Equity in Girls’ Sports Beyond Title IX*, 24 HARV. WOMEN’S L.J. 139 (2001).

The author discusses the case of *Baca v. City of Los Angeles*, in which the application of Title IX to the city of Los Angeles’ youth athletic programs is questioned. The author hopes to have this case note serve as a model for achieving equality in girls’ athletics at the municipal level.

B. Glenn George, *Miles to go and Promises to Keep: A case study in Title IX*. 64 U. COLO. L. REV. 555 (1993).

The author compares the men’s and women’s basketball programs at the University of Colorado in an effort to demonstrate what has and has not been accomplished by Title IX at the university. The author argues that “[i]f the privileges and benefits of two athletes playing the same game, at the same school in the same conference, differ significantly based on the sex of those individuals,” then the goals “of Title IX [have] yet to be realized.”

Lexie Kuznick & Megan Ryan, Comment, *Changing Social Norms? Title IX and Legal Activism*, 31 HARV. J. L. & GENDER 367 (2008).

112. 33 J.L. & EDUC. 139 (2004).

“In the spring of 2007, the *Harvard Journal of Law and Gender* hosted a conference titled ‘*Changing Social Norms? Title IX and Legal Activism,*’ which explored Title IX successes, current challenges, and potential to institute fundamental change in the future.” This comment is a summary of those proceedings.

Ted Leland & Karen Peters, *Title IX: Unresolved Public Policy Issues*, 14 MARQ. SPORTS L. REV. 1 (2003).

This article discusses what the authors deem to be the four major public policy issues that remain unresolved by Title IX, whether solutions exist for these policy concerns, and how Stanford University has managed these issues.

Donald C. Mahoney, Comment, *Taking a Shot at the Title: A Critical Review of Judicial and Administrative Interpretations of Title IX as Applied to Intercollegiate Athletic Programs*, 27 CONN. L. REV. 943 (1995).

In this comment, the author “examine[s] the . . . judicial and executive interpretations of Title IX . . . to determine” whether “they are consistent with the original intent of the” legislation. Based on his examination, the author argues that Title IX has been transformed into affirmative action legislation, which is contrary to the legislative intent of Title IX.

Jeffery H. Orleans, *An end to the Odyssey: Equal Athletic Opportunities For Women*, 3 DUKE J. GENDER L. & POL’Y 131 (1996).

This article is the text of a symposium panel and provides an overview of the origins and enforcement of Title IX, as well as the legal requirements of the statute. “[B]y applying the statute . . . to a hypothetical intercollegiate athletic program,” the audience is able to see how athletic administrators make decisions in these situations.

Catherine Pieronek, *Book Review*, 32 J.C. & U.L. 217 (2005) (reviewing WELCH SUGG, *A PLACE ON THE TEAM: THE TRIUMPH AND TRAGEDY OF TITLE IX* (2005)).

As the title indicates, this is a book review of Mr. Sugg's book *A Place On The Team: The Triumph and Tragedy of Title IX*.¹¹³ In her review, Ms. Pieronek feels the Sugg's book is strong in retelling the development of college and university sports and the social environment that created the need for Title IX. However, she argues that when Mr. Suggs moves "into the realm of public policy, [he] fails to achieve any sense of balance in his discussion of the strengths and weakness of the current scheme of Title IX enforcement in athletic programs."

Gary R. Roberts, *Evaluating Gender Equity Within the Framework of Intercollegiate Athletics' Conflicting Value Systems*, 77 TUL. L. REV. 997 (2003).

This article "is taken substantially from a position paper submitted . . . to the Department of Education's Special Task Force on Title IX Enforcement" in 2002. In it the author makes several suggestions that he feels will lead to gender equity in college athletics, including but not limited to, substantial gender proportionality, "encourage[ing] the Justice Department and Congress to adopt provisions . . . for antitrust enforcement[,] . . . reduc[ing] the maximum number of football scholarships," limiting football expenditures, setting maximum salaries for coaches, sharing of postseason revenues equally among all schools, and eliminating any tests based on the accommodation of interests and abilities of one gender.

Lynne Tatum, Comment, *Girls in Sports: Love of the Game Must Begin at an Early Age to Achieve Equality*, 12 SETON HALL J. SPORTS L. 281 (2002).

In this comment the author argues Title IX needs to be applied to high school, middle school, and recreational athletic programs and their athletic associations in order to continue the progress the law has made with regard to gender equity in sports. In so doing, the author reviews recent "Title IX litigation attempting to reach high school athletic associations" and proposes a path to ensure successful challenges in the future.

113. WELCH SUGG, *A PLACE ON THE TEAM: THE TRIUMPH AND TRAGEDY OF TITLE IX* (2005).

P. *National Collegiate Athletic Association (NCAA)*

B. Glenn George, *Who Plays and Who Pays: Defining Equality in Intercollegiate Athletics*, 1995 WIS. L. REV. 647 (1995).

The author argues the difficulties universities face with Title IX compliance are partly due to the fact that the NCAA has historically left the job of defining equitable treatment under Title IX to the federal government and the judiciary. She argues the NCAA and like organizations are better suited to develop these definitions and resolve these issues in a manner fair to all student-athletes.

Q. *Olympic Sports*

Susannah Carr, *Title IX: An Opportunity to Level the Olympic Playing Field*, 19 SETON HALL J. SPORTS & ENT. L. 149 (2009).

In this article, the author “proposes that a Title IX-like regulatory scheme should be adopted by the [International Olympic Committee] to better provide adequate and equal opportunities for women to compete on the worldwide level.”

Megan Ryther, Comment, *Swimming Upstream: Men’s Olympic Swimming Sinks While Title IX Swims*, 17 MARQ. SPORTS L. REV. 679 (2007).

In this comment, the author argues the current application of Title IX, that led to cutting men’s swimming programs at the Division I level, hurt the performance of the United States men’s swim team at the 2000 and the 2004 Olympic Games.

R. *Policy Interpretations and/or Clarifications*

Robert D’Augustine, *A Loosely Laced Buskin?: The Department of Education’s Policy Interpretation for Applying Title IX to Intercollegiate Athletics*, 6 SETON HALL J. SPORTS L. 469 (1996).

In this article, the author addresses “the problem of enforcing [Title IX] when read with the Policy Interpretation and accompanying regulations.” The author calls for the standards to be responsive to the actual interest levels of the athletes, recommends the football rule for measuring team size be adopted, and asks that a reasonable approach to Title IX litigation be developed.

Erin E. Buzuvis, *Survey Says . . . A Critical Analysis of the New Title IX Policy and a Proposal for Reform*, 91 IOWA L. REV. 821 (2006).

Starting with a discussion of the history and regulatory scheme of Title IX, the author moves into a strong critique of the 2005 Clarifications of Title IX, especially the Model Survey as a method of measuring female students' interest in athletics and satisfying prong three of the three prong test. The author argues that adding proportional funding as a fourth prong to OCR's proportionality test will alleviate the inherent tensions between the use of the three prong test and OCR's desire to provide universities with a flexible test to measure Title IX compliance.

Ross A. Jurewitz, Comment, *Playing at Even Strength: Reforming Title IX Enforcement in Intercollegiate Athletics*, 8 AM. U. J. GENDER SOC. POL'Y & L. 283 (2000).

In this comment, the author lays out the regulatory framework for Title IX and the federal courts' adoption and application "of the Policy Interpretation as the legal standard of proof in Title IX athletic cases." Next, he argues the courts' application of the three-part test is improper, and suggests Congress revise Title IX to protect against the elimination of opportunities for male student-athletes, an unintended consequences of Title IX, "while continuing to provide female student-athletes with a fair opportunity to participate in athletics."

Julia Lamber, *Gender and Intercollegiate Athletics: Data and Myths*, 34 U. MICH J.L. REF. 151 (2000-2001).

In this article, the author provides a critical examination of "the analytical framework used in Title IX athletic cases and concludes that the commonly made analogies to Title VII of the 1964 Civil Rights Act are" inadequate.

Donald C. Mahoney, Comment, *Taking a Shot at the Title: A Critical Review of Judicial and Administrative Interpretations of Title IX as Applied to Intercollegiate Athletic Programs*, 27 CONN. L. REV. 943 (1994-1995).

In this comment, the author "examine[s] the . . . judicial and

executive interpretations of Title IX . . . to determine” whether “they are consistent with the original intent of the” legislation. Based on his examination, the author argues that Title IX has been transformed into affirmative action legislation, which is contrary to the legislative intent of Title IX.

R. Parkinson, *Grappling With Gender Equity*, 5 WM. & MARY BILL RTS. J. 75 (1996).

This article “begins with a brief overview of the regulatory” scheme “governing Title IX’s application to athletics” and “then examines the legal standards” used “by OCR and the courts” to “review athletic programs for Title IX compliance.”

Catherine Pieronek, *An Analysis of the New Clarifications of Intercollegiate Athletics Policy Regarding Part Three of the Three-Part Test for Compliance with the Effective Accommodation Guidelines of Title IX*, 32 J.C. & U.L. 105 (2005).

“This article examines the 2005 Further Clarification and what the Model Survey means for educational institutions attempting to comply with the effective accommodation requirements of Title IX by satisfying the athletic interests and abilities of students of the underrepresented gender.”

J. Brad Reich, *All the [Athletes] Are Equal, but Some Are More Equal Than Others: An Objective Evaluation of Title IX’s Past, Present, and Recommendations for its Future*, 108 PENN ST. L. REV. 525 (2003).

The author “examine[s] the stated intent, actual application, and the real world effect[] of Title IX on Division I intercollegiate athletics.” In addition, the author examines the future of Title IX and proposes changes for Title IX’s application and interpretation.

S. *Pregnancy*

Deborah L. Brake, *The Invisible Pregnant Athlete and the Promise of Title IX*, 31 HARV. J.L. & GENDER 323 (2008).

This article explores the issues faced by female athletes who become pregnant and how Title IX applies in these situations. This

article also includes an analysis of ESPN's *Outside the Lines* program entitled *Pregnant Pause*, exposing the hardships confronting pregnant college athletes.¹¹⁴ In conclusion, the author argues "the extension of strong Title IX rights to pregnant athletes suggests cause for optimism about the ability of sports to accommodate women and the ability of Title IX to influence and respond to cultural shifts that support sex equality in sports more broadly." Despite her optimism, the author also "identifies and explores several limitations in Title IX's ability to promote progressive social change on this and related issues of sex equality in sports."

Kendra Fershee, *An Act for all Contexts: Incorporating the Pregnancy Discrimination Act into Title IX to Help Pregnant Students Gain and Retain Access to Education*, 39 HOFSTRA L. REV. 281 (2010).

In this article, the author argues that Title IX does not protect female students from pregnancy discrimination and the cases in this area have created a gap that makes it extremely difficult to bring suit in these cases, leaving them with inadequate remedies to redress the harms they suffer. To address this, the author proposes Congress amend Title IX to include its own Pregnancy Discrimination Act akin to the one found in Title VII.

Michelle Gough, *Parenting and Pregnant Students: An Evaluation of the Implementation of the "Other" Title IX*, 17 MICH. J. GENDER & L. 211 (2011).

This article examines why Title IX regulations do not adequately address the pregnant or parenting athlete, and why they have not been more strongly implemented in schools and litigated in courts.

T. *Race*

Deborah L. Brake & Verna L. Williams, *The Heart of the Game: Putting Race and Educational Equity at the Center of Title IX*, 7 VA. SPORTS & ENT. L. J. 199 (2008).

The authors of this article look at race and sport by focusing on the narrative of Darnellia Russell and her teammates on the Roosevelt High School girls' basketball team, as documented in the film *The Heart of*

114. *Outside the Lines: Pregnant Pause* (ESPN television broadcast May 13, 2007).

the Game.¹¹⁵ The authors feel Darnellia's story provides a springboard for addressing Title IX, gender, and racial justice in a way that has not been addressed before.

Patricia A. Cain, *Women, Race, and Sports: Life Before Title IX*, 4 J. GENDER RACE & JUST. 337 (2001).

As part of a symposium,¹¹⁶ the author of this article focuses "on the years before Title IX was enacted and the early years of its existence before it was fully enforceable" and highlights some specific issues that affect women of color. In so doing, the author hopes to explain why there is still resistance to the "full implementation of gender equity in sports" through Title IX.

A. Jerome Dees, *Access or Interest: Why Brown Has Benefited African-American Women More Than Title IX*, 76 UMKC L. REV. 625 (2008).

The author wrote this article on Title IX's thirty-fifth anniversary to explore the impact it had on African-American athletes and to compare it with the effect the Court's decision in *Brown v. The Board of Education*¹¹⁷ had on African-American athletes. The author concludes by arguing that the Court's decision in *Brown* had a greater effect on African-American athletes than Title IX did.

A. Jerome Dees, *Do the Right Thing: A Search for an Equitable Application of Title IX in Historically Black Colleges and University Athletics*, 33 CAP. U. L. REV. 219 (2004).

The author examines the "background of the [Historically Black College and University] and its policy of equal opportunity." The author then provides an overview of Title IX and its effect on the athletic

115. THE HEART OF THE GAME (Woody Creek Productions & Miramax Films 2005). More information about the film can be found online at <http://www.heartofthegame.org/home.htm>.

116. This symposium also included two other presentations. Christine Grant, Speech at The Journal of Gender, Race & Justice Symposium: Title IX: The Story of a Revolution (Oct. 15-16, 1999) (videotape on file with The Journal of Gender, Race & Justice); Frank Rudy Cooper, Speech at The Journal of Gender, Race & Justice Symposium: "Affirmative Intersectionality" and the Future of Title IX: Moving Women's Sports from the Cultural Realm to the Political Realm (Oct. 15-16, 1999) (videotape on file with The Journal of Gender, Race & Justice).

117. 347 U.S. 483 (1954).

programs at these schools.

U. *Regulations*

Joshua Ryan Heller, Note, *Stepping Back to Punt: Favoring Internal Agency Interpretations Over Title IX and Its Regulations*, 12 U. FLA. J.L. & PUB. POL'Y 179 (2000).

The author of this note examines “the propriety of the [Department of Education’s] various regulatory and policy implementations of Title IX” and argues the three-prong test deviates from Title IX’s legislative and regulatory intent. In addition, the author argues alternative interpretations or enactments of the law’s regulatory scheme and policy interpretations will provide an application of the law that is more consistent with the legislative intent.

Sudha Setty, Note, *Leveling The Playing Field: Reforming the Office for Civil Rights to Achieve Better Title IX Enforcement*, 32 COLUM. J.L. & SOC. PROBS. 331 (1999).

This note discusses Title IX’s legislative and regulatory scheme and suggests reforms to OCR that will improve Title IX compliance.

V. *Remedies*

Mary Beth Petriella, Note, *An Interim Preliminary Injunction Reinstating Varsity Status to Demoted Collegiate Athletic Teams is Available When That Team Alleges a Title IX Violation and Litigation is Pending—Cohen v. Brown University*, 991 F. 2d 888 (1st Cir. 1993), 4 SETON HALL J. SPORTS L. 595 (1994).

This note is an in-depth discussion of the First Circuit’s opinion in *Cohen v. Brown University* and the availability of preliminary injunctions in Title IX cases.

Katrina A. Pohlman, Note, *Have We Forgotten K-12? The Need for Punitive Damages to Improve Title IX Enforcement*, 71 U. PITT. L. REV. 167 (2009).

The author argues punitive damages need to be allowed in Title IX case so as to improve compliance with the law and suggests Congress expressly provide for the availability of punitive damages through

legislative action.

Charles L. Rombeau, Note, *Barnes v. Gorman and Mercer v. Duke University: The Availability of Punitive Damages in Title IX Litigation*, 6 U. PA. J. CONST. L. 1192 (2004).

This note discusses both *Barnes v. Gorman*¹¹⁸ and *Mercer v. Duke University*,¹¹⁹ where the courts held that punitive damages were not available for wrongful conduct under the Americans with Disabilities Act and Title IX, respectively. The author argues the unavailability of punitive damages in Title IX cases significantly weakens the statute by removing a significant threat against non-compliance.

Dawn N. Zubrick, Note, *Striking Out With Title IX: Horner v. Kentucky High School Athletic Ass'n and the Sixth Circuit's Interpretation of Unintentional Discrimination Under Title IX and the Possibility of Recovering Monetary Damages*, 8 VILL. SPORTS & ENT. L. FORUM 421 (2002).

This note discusses the Sixth Circuit's handling of *Horner v. Kentucky High School Athletic Association*¹²⁰ and "whether compensatory damages are available when a facially neutral policy is challenged under Title IX without a showing of an intentional violation." Furthermore, the author discusses the court's dissent, which argued "the standard of deliberate indifference should govern in Title IX cases." In conclusion, the author argues that the Sixth Circuit "was correct in its interpretation of the law and holding in this area."

W. *Sexual Harassment*¹²¹

Robin K. Carlson, Comment, *If You've Been Kissed, Who Do You Tell? Notice of Sexual Harassment Under a Title IX Claim [Baynard v. Malone, 268 F.3d 228 (4th Cir. 2001)]*, 42 WASHBURN L.J. 185 (2002).

118. 536 U.S. 181 (2002).

119. 50 F. App'x 643 (4th Cir. 2002).

120. 206 F.3d 685 (6th Cir. 2000).

121. OCR issued its most recent "Dear Colleague" letter in April, 2011, which supplements OCR's Revised Sexual Harassment Guidance issued in 2001. Letter from Russlynn Ali, Assistant Sec'y for Civil Rights, to Colleague (Apr. 4, 2011), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>. More OCR resources regarding sexual harassment can be found online at <http://www2.ed.gov/about/offices/list/ocr/sexharassresources.html>.

This comment analyzes the court's decision in *Baynard*, and argues the Fourth Circuit erred in its decision when it held "a school principal could not be an appropriate official with the authority to institute corrective measures," ignoring the Court's decision in *Davis v. Monroe County Board of Education*.¹²² The author further argues that "the court failed to use the broader *Gebser* standard in determining school district liability." In conclusion, the author "will explore the standards that qualify an individual as an appropriate official with the authority to institute corrective measures," and whether the principal is that appropriate official.

Daniel P. Colling, *Statutory Modification Needed for Title IX in Light of Gebser v. Lago Vista Independent School District*, 45 WAYNE L. REV. 1565 (1999).

In this article, the author argues the *Gebser*¹²³ decision is inconsistent with the Court's contemporaneous Title VII jurisprudence and recommends Congress modify Title IX accordingly.

Caitlin Cullitan, "I'm His Coach, Not His Father." *A Title IX Analysis of Sexual Harassment in College Sports*, 12 TEXAS REV. OF ENT. & SPORTS L. 53 (2010).

This article looks at Title IX sexual harassment jurisprudence and suggests the law is "moving in a direction whereby the prior misconduct of a harasser gives an institution actual knowledge that an environment detrimental to students' education could exist." Next, the author proposes the NCAA require institutions to perform background checks on admitted student-athletes as a means of meeting the actual knowledge requirement of the law, arguing that "background checks should give substantial evidence that an institution had 'actual knowledge' of sexual harassment and that an institution's reaction...speaks to the reasonableness of the university's response as a basis for imposing institutional liability."

Amy K. Graham, Note, *Gebser v. Lago Vista Independent School District: The Supreme Court's Determination that Children Deserve*

122. 526 U.S. 629 (1999).

123. 524 U.S. 274 (1998).

Less Protection than Adults from Sexual Harassment, 30 LOY. U. CHI. L.J. 551 (1999).

After outlining the Court's dissenting opinions in *Gebser*,¹²⁴ the author argues the majority's holding "is inconsistent with sexual harassment precedent" and "explores the possibility of changing the standard of school district liability for teacher-student sexual harassment under Title IX."

Anne-Marie Harris and Kenneth B. Grooms, *A New Lesson Plan for Educational Institutions: Expanded Rules Governing Liability Under Title IX of the Education Amendments of 1972 for Student and Faculty Sexual Harassment*, 8 AM. U. J. GENDER SOCIAL POL'Y & L. 575 (2000).

This is an in-depth article analyzing Title IX's application in cases of sexual harassment. The authors conclude with some guidance on some of the key questions the Supreme Court left unresolved in *Gebser*¹²⁵ and *Davis*.¹²⁶

Diane Heckman, *Is Notice Required in a Title IX Athletics Action Not Involving Sexual Harassment?*, 14 MARQ. SPORTS L. REV. 175 (2003).

In this article, the author explores whether "the presence of the regulations . . . insulate potential plaintiffs from having to affirmatively . . . place the educational institution on notice that a Title IX violation has occurred."

William A. Kaplin, *A Typology and Critique of Title IX Sexual Harassment Law After Gebser and Davis*, 26 J.C. & U.L. 615 (2000).

This article discusses "the history and current status of the sexual harassment problem in colleges and universities," focusing on "how students may hold colleges . . . liable for money damages for failure to protect" against the harassment.

Wendy Murphy, *Sexual Harassment and Title IX: What's Bullying Got*

124. 524 U.S. 274 (1998).

125. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998).

126. *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629 (1999).

To Do With It, 37 N. ENG. J. ON CRIM. & CIV. CONFINEMENT 305 (2011).

This article examines Massachusetts' new anti-bullying statute and compares it with Title IX. In so doing, the author examines the language of the state statute and argues it conflicts with the language of Title IX. She also argues that the federal statute may offer the preferable form of redress in cases where sexual harassment is accompanied by bullying. Finally, the author offers simple legislative remedies, amending the state statute so that all forms of bullying are addressed.

Jan Alan Neiger, *Actual Knowledge Under Gebser v. Lago Vista: Evidence of the Court's Deliberate Indifference or an Appropriate Response for Finding Institutional Liability?*, 26 J.C. & U.L. 1 (1999).

This is an in-depth article that analyses the Court's decision in *Gebser*.¹²⁷ The author provides a history of sexual harassment law in schools, and an analysis of Title VI and Title VII sexual harassment policy. "The latter half of the article" discusses whether the Court's decision in *Gebser* "was legally sound, and explores the issues . . . the Court left unresolved."

Barbara Osborne & Clare Duffy, *Title IX, Sexual Harassment, and Policies at NCAA Division IA Athletics Departments*, 15 J. LEGAL ASPECTS SPORT 59 (2005).

The purpose of this article "is to examine the sexual harassment policies and procedures currently in place at Division IA institutions" and to determine whether they are adhering to the policies, educating their employees and students about the policies, and "employing means of harassment prevention."

Christopher M. Parent, *Personal Fouls: How Sexual Assault by Football Players Is Exposing Universities to Title IX Liability*, 13 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 617 (2003).

This article takes an in-depth look at sexual assault by football players and university exposure to Title IX liability as a result. In so doing, the author examines the case of *Davis v. Monroe County Board of*

127. 524 U.S. 274 (1998).

*Education*¹²⁸ and the effect it may have on pending cases. The author concludes by “recommend[ing] a coordinated . . . response to allegations of sexual assault that is consistently applied to all students . . . as well as preemptive measures like in-depth background checks of football recruits.”

Janet Philibosia, Comment, *Homework Assignment: The Proper Interpretation of the Standard for Institutional Liability if We Are to Protect Students in Cases of Sexual Harassment by Teachers*, 33 SW. U. L. REV. 95 (2003).

This author explores the psychological trauma caused by sexual harassment and argues the lower courts need to broadly interpret the actual notice and deliberate indifference standard established in *Gebser*. If this is done such an interpretation will protect educational institutions from liability and provide recovery to the victims of sexual harassment.

Krista M. Rutherford, Note, *Gebser v. Lago Vista Independent School District: Title IX Requires Actual Notice for Victims of Teacher-Student Sexual Harassment to Recover Damages*, 34 WAKE FOREST L. REV. 171 (1999).

In this case note, the author examines the Supreme Court’s decision in *Gebser*¹²⁹ and concludes the actual notice standard is incorrect. Rather, the author argues agency principles should determine liability under Title IX.

J. Chadwick Schnee, *Wrestling with Retaliation: Pinning Down the Burlington “Dissuading” Standard Under Title IX*, 17 SPORTS LAW. J. 223 (2010).

In this article, the author discusses the Court’s decision in *Burlington N. & Santa Fe Ry. Co. v. White*,¹³⁰ where the Court establishes the standard for creating a prima facie case for retaliation in Title VII actions and how this standard should be applied in Title IX sexual assault cases involving coaches and student-athletes where retaliation is claimed by the plaintiffs.

128. 526 U.S. 629 (1999).

129. 524 U.S. 274 (1998).

130. 548 U.S. 53 (2006).

Brianna J. Schroeder, Note, *Power Imbalances in College Athletics and an Exploited Standard: Is Title IX Dead?*, 43 VAL. U. L. REV. 1483 (2009).

In this note, the author hopes “to show . . . the judicially created standard for determining school liability for sexual harassment under Title IX” is contrary to the legislative intent of the statute. In addition, the author provides several “proposed changes to the standard and suggests additions to the existing” Title IX regulations that will prevent sexual harassment in college athletics.

Erika Tripp, Comment, *Sexual Harassment in Sports: How “Adequate” Is Title IX?*, 14 MARQ. SPORTS L. REV. 233 (2003).

In this comment, the author discusses “the applicability of Title IX” in “the context of the coach-athlete relationship[s]” and proposes a broader conceptualization of sexual harassment be adopted, and a better framework be created for determining what constitutes sexual harassment under Title IX.

X. *Sexual Orientation, Transgender*

Erin E. Buzuvis, *Transgender Student-Athletes and Sex-Segregated Sport: Developing Policies of Inclusion for Intercollegiate and Interscholastic Athletics*, 21 SETON HALL J. SPORTS & ENT. L. 1 (2011).

This article discusses the issues that arise from the participation of transgender athletes in sports. First, Ms. Buzuvis provides background on the history and tradition of sex-segregated sports, background on transgenderism and transsexuality, and examples of transsexual individuals in sports. This is followed by a discussion of “the existing policies and positions that organizing bodies of sport have developed to address participation by transgender athletes in sex-segregated sports” and “the role of law and science” to develop those policies. After examining the educational values inherent in sports participation, the author concludes by arguing for the development of a “rule that allows athletes to participate in sports in a manner that is consistent with their genuine gender identity, even when that gender identity is inconsistent with their natal sex.” Exceptions to this rule need to balance considerations from education, law, and science.

Laura A. Zaccone, Note, *Policing the Policing of Intersex Bodies: Softening the Lines in Title IX Athletic Programs*, 76 BROOK. L. REV. 385 (2010).

This note explores whether an intersex student athlete should be allowed to compete as a male or a female and challenges the legitimacy and fairness of binary characterization used in sport. The author “argues . . . Title IX should be interpreted to cover discrimination based on binary-sex nonconformity” and advocates for a self-identification policy when deciding whether to compete as a male or female athlete.

Y. *Three Prong Test/Substantial Proportionality*

Sara A. Elliott & Daniel S. Mason, *Gender Equity in Intercollegiate Athletics: An Alternative Model to Achieving Title IX Compliance*, 11 J. LEGAL ASPECTS SPORT 1 (2001).

In this article, the authors argue Title IX has addressed some of the inequalities in college athletics, but the budgetary problems of the 1990s caused the elimination of both men and women’s athletic teams, decreasing the opportunities to participate in athletics. As a result, the authors argue the current application of substantial proportionality must be changed and the NCAA must re-evaluate the rules regulating athletic departments. The authors conclude by proposing an alternate model of measuring the interest and abilities of student athletes to achieve Title IX compliance.

C. Peter Goplerud III, *Title IX: Part Three Could Be the Key*, 14 MARQ. SPORTS L. REV. 123 (2003).

In this article, the author argues the more appropriate measure of Title IX compliance is part three of the three part test, which requires “the interests and abilities of [the underrepresented] sex be fully and effectively accommodated” by the university’s present programs.

Mary W. Gray, *The Concept of Substantial Proportionality in Title IX Athletics Cases*, 3 DUKE J. GENDER L. & POL’Y 165 (1996).

In this article, the author argues that the courts are relying on the substantial proportionality test to determine whether schools are violating Title IX without providing any guidelines as to the precise meaning of the phrase “substantial proportionality.” This article

provides “a statistical framework for such guidance.”

Elisa Hatlevig, *Title IX Compliance: Looking Past the Proportionality Prong*, 12 SPORTS LAW. J. 87 (2005).

This article provides an in-depth look at Title IX compliance through the application of the proportionality prong of the law’s three part test and describes what she calls “the ‘Proportionality Problem.’” The author explores the elimination of men’s sports and argues this is due to the overuse of the proportionality prong. She concludes by discussing the findings of the Commission on Opportunity in Athletics and suggests ways in which athletic departments can comply with Title IX without eliminating men’s teams.

Julia Lamber, *Intercollegiate Athletics: The Program Expansion Standard Under Title IX’s Policy Interpretation*, 12 S. CAL. REV. L. & WOMEN’S STUD. 31 (2002).

In this article the author compares institutions that have complied with the substantial proportionality prong to those institutions found not to have complied with this prong. In addition, the author discusses what actions are needed to satisfy the continuing program expansion standard of Title IX and argues “that a focus on process and progress are independently important in implementing Title IX.”

Kevin Lanke and Thomas H. Sawyer, *The Impacts of Title IX on Athletic Programs Across the Country*, 7 J. LEGAL ASPECTS SPORT 145 (1997).

The author provides a general overview of Title IX, including a discussion of the proportionality test and the cases that interpret this aspect of the law. The author uses the findings of a small survey of compliance levels in the state of Indiana to predict the effect Title IX will have on athletic programs.

Tshaka C. Randall, *A (Not So) Safe Harbor: Substantial proportionality as a Measure of Effective Accommodation*, 5 TEX REV. ENT. & SPORTS L. 79 (2003).

This article examines the “safe harbor” aspect of the substantial proportionality test, concluding that this idea is non-existent when it comes to Title IX compliance.

Kimberly A. Yuracko, *One For You and One For Me: Is Title IX's Sex-Based Proportionality Requirement for College Varsity Athletic Positions Defensible?*, 97 NW. U. L. REV. 731 (2003).

In this article, the author hopes to explain how the proportionality test came into existence and to present the strongest justification for the requirement.

IV. RESOURCES ON THE INTERNET

A. Websites

THE AMERICAN SPORTS COUNCIL, <http://www.Americansports council.org/>.

This is a national coalition of coaches, athletes, parents, and fans who work with college programs threatened with termination and are devoted to the preservation of collegiate athletic teams. "The ASC is the leading organization working for reform of Title IX regulations."

FOUNDATION IX, <http://www.annbancroftfoundation.org/>.

Foundation IX was created to increase girls' participation in sport and organized fitness activity by eliminating cost as a barrier. They hope to encourage participation by providing funds for fees and equipment costs to those in need as well as reward girls who demonstrate the benefits of participation with post-secondary academic scholarships.

NATIONAL CENTER FOR EDUCATION STATISTICS, <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2005173>.

This website provides access to the *User's Guide to Developing Student Interest Surveys Under Title IX*. This guide provides information on "conducting a survey of student interest in order to satisfy Part 3 of the Three-Part Test established in the 1979 Policy Interpretation of the intercollegiate athletic provisions of Title IX of the Higher Education Act of 1972."

NATIONAL COALITION FOR WOMEN & GIRLS IN EDUCATION,

<http://www.ncwge.org/>.

“The NCWGE is a nonprofit organization of more than 50 groups dedicated to improving educational opportunities for girls and women.” They hope “to provide leadership in and advocate for the development of national education policies that benefit all women and girls.” The organization’s Athletics Task Force, chaired by the National Women’s Law Center, hopes to ensure that women and girls receive equal opportunities in athletics at both the secondary school and college levels.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (NCAA),
<http://www.ncaa.org/wps/portal>.

According to its website, the NCCA’s core purpose is to govern competition in intercollegiate athletics in a fair, safe, equitable and sportsmanlike manner, and to integrate intercollegiate athletics into higher education so that the educational experience of the student-athlete is paramount.

NATIONAL WOMEN’S LAW CENTER, <http://www.nwlc.org/display.cfm?section=athletics>.

The NWLC works to ensure that women and girls get their fair share of athletic opportunities. At this site, a researcher will find several publications on Title IX, including *Breaking Down Barriers: A Legal Guide To Title IX and Athletic Opportunities* and *Check It Out: Is the Playing Field Level for Women and Girls at Your School?*.

TITLE IX INFO, <http://www.titleix.info/Default.aspx>.

This website explains Title IX and the accompanying “regulations in easy-to-understand language and uses real case studies as examples.” This site appears to have morphed from the Save Title IX website, a national education campaign dedicated to informing the public about the importance of keeping Title IX athletics policies unchanged.

THE TUCKER CENTER FOR RESEARCH ON GIRLS & WOMEN IN SPORT,
<http://education.umn.edu/tuckercenter/>.

The Tucker Center, housed at the University of Minnesota, “is an

interdisciplinary research center” that “examine[s] how sport and physical activity affect the lives of girls and women, their families, and communities.”

UNITED STATES DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS, <http://www.ed.gov/oct/>.

The mission of the Office for Civil Rights is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights. Here you will find a wealth of information on Title IX.

Federal Coordination and Compliance Section, UNITED STATES DEPARTMENT OF JUSTICE, <http://www.usdoj.gov/crt/cor/index.htm>.

“The Civil Rights Division’s Federal Coordination and Compliance Section operates a comprehensive, government wide program of technical and legal assistance, training, interagency coordination, and regulatory, policy, and program review, to assure that federal agencies consistently and effectively enforce various landmark civil rights statutes and related Executive Orders that prohibit discrimination.” This site provides links to the *Title IX Legal Manual* and Title IX information generally.

WOMEN’S SPORTS FOUNDATION, <http://www.womenssportsfoundation.org>.

The Women’s Sports Foundation was founded in 1974 by Billie Jean King, and is a charitable educational organization dedicated to advancing the lives of girls and women through sports and physical activity.

B. *Blogs*

PAT Griffin, *Pat Griffin’s LGBT Sport Blog*, IT TAKES A TEAM, <http://ittakesateam.blogspot.com/index.html>.

This blog was created by Professor Pat Griffin, the Director of the “It Takes A Team” education campaign by the Women’s Sport Foundation to educate the public on lesbian, gay, bisexual, and

transgender, issues in sports.

SPORTS LAW BLOG, <http://sports-law.blogspot.com/>.

As their tagline states, this blog is “[a]ll things legal relating to the sports world.” The main contributors to this blog are Rick Karcher, Michael McCann, Geoffrey Rapp, Greg Skidmore, and Howard Wasserman.

SPORTS MEDIA & SOCIETY, <http://sportsmediasociety.blogspot.com/>.

This blog was created by Professor Marie Hardin and explores the interaction of sports coverage and U.S. culture.

Erin Buzuvis & Kristine Newhall, TITLE IX BLOG, <http://title-ix.blogspot.com/>.

This is an interdisciplinary resource for news, legal developments, commentary, and scholarship about Title IX, authored by Professor Erin Buzuvis and Kristine Newhall.

WOMENSTAKE, <http://nwlc.blogs.com/womenstake/>.

This is the blog for the National Women’s Law Foundation. The topics discussed include athletics, education, employment, judges and courts.