COURT CASES INVOLVING

TITLE IX IN INTERCOLLEGIATE ATHLETICS

by

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Introduction/Statement of the Problem

Gender equity is an issue that has pushed to the forefront of the National Collegiate Athletic Association's (NCAA) agenda in recent years. The term gender equity in intercollegiate athletics, describes an environment in which fair and equitable distribution of overall athletics opportunities, benefits and resources, be available to women and men in which student-athletes, coaches and athletics administrators are not subject to gender-based discrimination (Howlet & Whalen, Preliminary report of the gender equity task force, 1993, p. 1).

On May 27, 1975, President Gerald R. Ford signed into law the regulations that pertained to Title IX of The Education Amendments Act of 1972 (Phillips, 1978). Under the laws enforced by the Office for the Civil Rights (OCR), programs and activities funded by the Department of Education (ED) must be operated in a manner that ensures that people who meet the programs' qualifications and
eligibility requirements are given an equal opportunity to participate, regardless of race, color, national origin, sex, handicap, or age. These requirements protect the rights of students and many employees in education programs or activities that receive financial assistance from ED (Office for Civil Rights U.S. Department of Education, 1988). The laws enforced by OCR are Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments Act of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975 (Office for Civil Rights U.S. Department of Education, 1988).

In Grove City College v. Bell, the Supreme Court decision ruled February 28, 1984, that Title IX applied only to programs that directly benefited from federal funds and, thereby, significantly limited OCR's jurisdiction over intercollegiate programs. The impact of this landmark decision declared 23 investigations involving Title IX and compliance with college athletic departments unsanctioned by the Department of Education (Berry & Wong, 1986).
In March 1988, The Civil Rights Restoration Act was passed. This Act effectively overturned The Grove City College v Bell ruling, applying Title IX to all operations of a recipient of federal funds and thereby restored OCR's jurisdiction over NCAA intercollegiate athletic programs (Oberlander, 1989). With the passing of the Civil Rights Restoration Act, all aspects of an institution receiving federal financial assistance must be in compliance with the thirteen program components under investigation by OCR (Wolff, 1992).

OCR has the authority to enforce the laws in all programs and activities within the institution that receive funds from ED. These include programs and activities operated by institutions and agencies, such as state education agencies, elementary and secondary schools, colleges and universities, vocational schools, vocational rehabilitation agencies, libraries, and museums (Office for Civil Rights U.S. Department of Education, 1988).

Of all programs within colleges and universities, the area of athletics has been more male dominated and probably
less scrutinized than any other current program or activity (Wong & Barr, 1990). The problem that NCAA member institutions are facing is reaching equity in athletics in regards to the male/female undergraduate student enrollment ratio. Athletic teams for men far outnumbered those for women and female athletes constituted only 15 percent of all intercollegiate athletes prior to Title IX (Greendorfer, 1989).

Although females have long participated in athletics, only since the passing of Title IX has it been brought into public awareness that athletic programs have not provided adequately for the female athlete or administrator. Because most intercollegiate athletic programs throughout the nation not being in compliance with Title IX, cases which have been filed against specific universities have been brought to court.

Purpose

The purpose of the project was to research Title IX of the Education Amendments Act of 1972 by reviewing past and recent court cases which had been filed by athletes against
NCAA member institutions. The project focused on the court cases of Title IX involving the 13 program areas of investigation in intercollegiate athletics. Within the project cases are presented as they were ruled on in the court of law.

Design/Procedure

The design of the project was descriptive research on court cases involving Title IX. The procedure was accomplished by using court cases filed against specific NCAA institutions which were not in compliance with Title IX legislation. The cases were acquired from The Westlaw databank computer system. Additional research was obtained through writings and publications regarding Title IX and gender equity.

History of Title IX

Title IX is a federal civil rights statute enacted as part of the Education Amendments of 1972. The statute prohibits discrimination on the basis of sex in any education program or activity receiving federal financial assistance (Kramer, 1988). If a school receives no federal
funding, not even federal funds in the form of financial aid to its students, it is not bound by Title IX. The jurisdiction of Title IX is limited to educational institutions. However, it is very rare to find a public school or even a private college which does not receive sufficient federal funding to trigger Title IX jurisdiction. Federal funding is used to activate jurisdiction but it is also used to put strength into the enforcement of Title IX. An educational institution, which is found to be discriminating on the grounds of sex, risks the loss of all federal funding (Acosta & Carpenter, 1991). Title IX legislation was modeled after Title VI of the Civil Rights Act of 1964. Specifically, Section 901(a) of Title IX of the Education Amendments of 1972 provides:

No person in the United States shall, on the basis of sex, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial
assistance (Title IX Policy Interpretation, 44 Fed. Reg. 71413)....
as compared to Section 901, Title VI of the Civil Rights Act of 1964, which read:

No person in the United States shall, on the ground of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

In accordance with Title IX, that which follows was stated in the regulations (Department of Health, Education and Welfare. 40 Federal Register 24128, 1975) that athletics must:

(A) provide separate teams where selection is based on competitive skill or a contact sport is involved.

(B) provide equal opportunity of which selection of sports and level of competition accommodate the interests and abilities of both sexes, provision of equipment and supplies, scheduling of games
and practice times, travel and per diem expense, coaching and academic tutoring opportunities and the assignment and pay of the coaches and tutors, locker rooms, practice and competitive facilities, medical and training services, housing and dining facilities and services, and publicity constitute the criteria to determine if such opportunity exists.

(C) provide equal opportunity for financial aid (Department of Health Education and Welfare, 40 Fed. Reg. at 24128, 1975).

Title IX was passed by Congress in 1972 but the regulations of Title IX were originally issued by the Department of Health, Education, and Welfare (HEW) in June 1975. As part of these regulations, all school districts, colleges, and universities were required to complete a self study during 1975-1976 to identify areas of noncompliance, and to develop tactics and timelines for compliance (Durrant, 1992). By 1978 all educational institutions, whether public or private and whether primary
or secondary, which received federal fundings were supposed to no longer discriminate on the basis of sex anywhere on campus (Kramer, 1988). There was a three year transition period allowed for physical education departments and athletic programs to comply with its equal athletic opportunity requirements (Durrant, 1992). Due to a serious misunderstanding of the presumption of compliance of Title IX among representatives of institutions, HEW issued a Title IX "Policy Interpretation" on intercollegiate athletics in December 1979. The information in this document further spelled out the way in which the federal government would enforce Title IX (Reith, 1992).

The purpose of the HEW Policy Interpretation was due to HEW receiving nearly 100 complaints alleging discrimination in athletics against more than 50 institutions of higher education. In attempting to investigate these complaints, and to answer questions from the university community, HEW determined that it would provide further guidance to institutions of higher education on what constitutes compliance with Title IX
regulations (Title IX Policy Interpretation, 44 Federal Register, 71413, 1979).

A summary of the final Policy Interpretation provided a clearer meaning of equal opportunity in intercollegiate athletics. The Policy Interpretation explains the law and regulation with which HEW will consider in determining whether an institutions athletic program is in compliance with Title IX. The interpretation also provides guidance to assist institutions in determining whether any dissimilarities which may exist between men's and women's programs are justifiable and nondiscriminatory (Title IX Policy Interpretation, 44, Federal Register, 71414, 1979). In accordance with the Title IX Policy Interpretation, it was divided into three sections (Title IX Policy Interpretation, 44, Federal Register, 71414, 1979):

1) Compliance in Financial Assistance (Scholarships) Based on Athletic Ability. 34 C.F.R. § 106.37(c)): Pursuant to the regulation, the governing principle in this area is that all
such assistance should be available on a substantially proportional basis to the number of male and female participants in the institution's athletic program.

2) Compliance in Other Program areas

(Equipment and supplies; games and practice times; travel and per diem; coaching and academic tutoring; assignment and compensation of coaches and tutors; locker rooms, and practice and competitive facilities; medical and training facilities; housing and dining facilities; publicity; recruitment; and support services):

34 C.F.R. § 106.41(c)(2)-(10)): Pursuant to the regulation, the governing principle is that male and female athletes should receive equivalent treatment, benefits and opportunities.

3) Compliance in Meeting the Interests and Abilities of Male and Female Students: 34 C.F.R. § 106.41(c)(10). Pursuant to the regulation, the governing principle in this area is that the
athletic interests and abilities of male and female students must be equally effectively accommodated (Title IX Policy Interpretation, 44 Fed Reg. 71414, 1979).

In 1984, the Supreme Court ruling on the Grove City College v. Bell case had a deterrent effect on Title IX. The ruling by the Supreme Court implied that only programs that received direct federal assistance fell under the jurisdiction of Title IX (Berry & Wong, 1986).

The impact of the Grove City College v. Bell decision was crushing. Hendrickson, Lee, Loomis, & Olswang (1990) reported that the Department of Education (ED), Successor to HEW, immediately dropped or restricted 674 complaint investigations and 88 compliance reviews. Due to few, if any, athletic programs receiving financial aid, the Grove City case deleted intercollegiate athletic programs from the equation of Title IX. The net effect was that there was no jurisdiction or power to enforce the prohibitions against sex discrimination (Durrant, 1992).
From 1984 to 1987, The OCR and ED had to stand clear of noncompliance by NCAA member institutions, and any other institutional athletic programs or activities due to the Grove City College ruling. In March, 1988, the passage of the Civil Rights Restoration Act of 1987 restored to full strength the laws governing sex equality in education (Oberlander, 1989).

In accordance to Section 2, P.L. 100-259 (1988), 102 Stat. 28, the Civil Rights Restoration Act of 1987 stated:

1) Certain aspects of recent decisions and opinions of the Supreme Court have unduly narrowed or cast doubt upon the broad application of Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title VI of the Civil Rights Act of 1964; and

2) Legislative action is necessary to restore the prior consistent and long standing Executive Branch interpretation and broad, institution-wide application of those laws as previously administered.
The Civil Rights Restoration Act effectively overturned the Grove City College ruling, and applied Title IX to all operations of a recipient of federal funds and thereby restored OCR's jurisdiction over intercollegiate athletic programs (Acosta & Carpenter, 1991).

**Title IX Athletics - Areas of Investigation**

There are thirteen major factors listed in the Title IX regulation and a 1979 Policy Interpretation that may be investigated by the OCR. The legal authority for investigations of athletics programs is provided by Title IX of the Education Amendments Act of 1972. The OCR has termed these major factors, "program components." Within these thirteen program components, the Policy Interpretation lists specific factors to be investigated (Bonnette & Daniel, 1990). The thirteen program components are:

1) Athletics Scholarships - Institutions must provide reasonable opportunities for individuals of both sexes to receive athletic scholarships. These scholarships must be awarded in proportion to the number of students of each sex
participating in the intercollegiate athletic program (Reith, 1992).

2) Accommodation of Students Interests and Abilities - The Title IX regulation requires institutions that offer athletics programs to accommodate effectively the interests and abilities of their students. The university must also furnish equal opportunity for males and females when it comes to the selection of sports and the levels of competition available to its members (Bonnette & Daniel, 1990).

3) Equipment and Supplies - Equipment and supplies, in accordance to the Policy Interpretation, include, but are not limited to, uniforms and apparel, sport-specific equipment and supplies, instructional devices, and conditioning and weight-training equipment. (Reith, 1992). Specifically, Title IX applies to practice and game uniforms, shoes, warm-up suits and rain gear. Equipment includes bats, sticks, rackets and equipment set up and taken down for practice. Stationary equipment such as soccer nets and basketball goals are considered part
of the facility. General equipment includes water bottles, knee braces, ankle and wrist weights. Major equipment such as nautilus weights and whirlpools are addressed under medical and training facilities (Kramer, 1988).

4) Scheduling of games and practice time - There are five factors to be examined in evaluating compliance. These are the number of events per sport. The number and length of practice opportunities. The time of day events are scheduled. The time of day practice opportunities are scheduled. The opportunity to compete in pre-season and post-season events (Bonnette & Daniel, 1990).

5) Travel and per diem allowance - Five factors determine compliance. The types of transportation the student-athletes take on road trips. The housing furnished during traveling. The length of stay before and after competitive events. The per diem allowances and dining arrangements (Bruce, 1991).

6) Tutors - The investigation of the tutoring program is divided into three parts. The first part examines the opportunity to obtain academic tutoring. The Policy
Interpretation includes information regarding the availability of tutoring and the procedures and criteria for receiving assistance. The second part includes information about the assignment of specific tutors. The third part of the program concentrates on the tutors' rate of pay, pupil loads, qualifications, experience, and other terms and conditions of employment (Reith, 1992).

7) Coaches - OCR has determined that the investigation of coaching concentrates on the availability of coaches. These positions can be full time, part time, assistant, and graduate assistant coaching positions. Other Title IX investigative areas are the rate of compensation, duration of contracts, conditions relating to contract renewal, experience, nature of coaching duties, working conditions, and other terms and conditions of employment (Bonnette & Daniel, 1990). There are three questions that need to be asked when evaluating coaching under the regulations of Title IX.

1) How many full-time coaches are hired for each team?
2) Is the ratio of coaches to participants for the men's program equal to the ratio of coaches to participants for the women's program?

3) Are the number of assistant coaches available to each team comparable in the men's and women's programs (Reith, 1992, p. 19)?

8) Locker rooms, practice and competitive facilities - Compliance begins with quality, availability, and exclusivity of practice and competitive facilities. The quality and availability of locker rooms. The maintenance and preparation of practice and competitive facilities. (Bonnette & Daniel, 1990). The following factors are among those that OCR investigators look at for compliance:

A) age and condition of facilities;

B) whether facilities are regulation size;

C) convenience and proximity of locker rooms to practice and practice facilities;

D) convenience and proximity of athletic facilities to other activities conducted on campus;
E) laundry service and locker room attendants offered at athletic facilities;
F) having exclusive priority use of facilities for practice and competition;
G) having accommodations for visiting teams, and spectator capacity;
H) having access to public address systems, electronic scoreboards, concession facilities, and special lighting for television coverage (Kramer, 1988, pp. 28-29).

9) Medical and training facilities and services - Title IX compliance begins with availability of medical personnel. The availability and quality of weight training, and conditioning facilities is reviewed. Considerations deal with health, accident, and injury insurance coverages being of the same quality and availability to both men's and women's teams. Trainers and medical personnel must be assigned equally and fairly amongst men's and women's teams (Reith, 1992).
10) Housing and dining facilities and services - The Policy Interpretation lists two facades to be examined in establishing compliance for the provision of housing and dining facilities and services. The housing provided to members of the teams and the special services provided as part of housing arrangements, such as laundry facilities and parking spaces is reviewed. If there are no special housing arrangements, then special dining services can be provided. Considerations when looking for differences in men's and women's teams includes evaluating whether the housing, meals, or dining arrangements are different in quality from one another (Bonnette & Daniel, 1990).

11) Publicity - When evaluating compliance, OCR investigates the availability and quality of sports information personnel. The men and women must have access to other publicity resources and quantity and quality of publications and other promotional devices. OCR determines whether or not there are any differences between the publicity services provided to the men's program and to the women's program (Kramer, 1988).
12) Support services - The Policy Interpretation mentions that

...the administrative and clerical support provided to an athletic program can enable the overall provision of opportunity to male and female athletes, particularly to the extent that the provided services enable coaches to perform better their coaching functions (pp. 91-93).

Support services such as administrative, secretarial, office space, and clerical assistance in the men's and women's athletic programs need to be in close correlation as regulated by OCR (Bonnette & Daniel, 1990).

13) Recruitment of student athletes - There must be equal opportunities for professional personnel to recruit. The Policy Interpretation determines whether the financial and other resources made available for recruitment in male and female programs are equally capable of meeting the needs of each program. There must be equivalent benefits, opportunities, and treatment of prospective athletes amongst male and female programs (Reith, 1992).
The American Legal System

To better understand the laws which govern higher educational institutions, it is necessary to obtain some knowledge of the American legal system. Laws may best be described as a form of social control, a character determined by the structure of society, a relationship between human beings or a rule of conduct (Black, 1979).

The main areas of interest are the sources of law and the structure of courts. The three sources of law are constitutions, statutes, and court or case law. State and federal constitutions are the primary law, giving structure and resources to the legal system, under which people choose to govern themselves. Within this structure the branches of government possess certain roles which predetermine the nature of the law. The legislative branch enacts, the judicial branch interprets and the executive branch implements and administers the law (Alexander & Alexander, 1992).

The first sources of law are constitutions. A constitution is a body of precepts which provides a framework of law within which orderly governmental
processes may operate. The state and federal constitutions of this country are characterized by their provisions for securing fundamental personal, property and political rights (Alexander & Alexander, 1992). A constitution must be flexible and allow for systematic changes in order to be effective. Through the ratification of amendments, these precepts are modified to incorporate any necessary changes.

The Constitution of the United States is the basic law of the land. The Constitution covers a wide area of powers, duties, and limitations. All statutes passed by Congress or the state legislatures, ordinances of local government units, and rules and regulations of boards of education are subject to the Constitution of the United States (Reutter & Hamilton, 1976). The Constitution, however, does not refer directly to education. Therefore, education becomes a state function under the Tenth Amendment, which states:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States
respectively, or to the people (Reutter & Hamilton, 1976, p. 2).

When problems arise in the operation of educational institutions, there are relatively few sections of the U.S. Constitution that can be applied. It is the job of Congress and the States to infringe upon the rights of individuals that most frequently come before the court of law. The few sections of the U.S. Constitution that affect educational institutions are Article 1, Section 10, and the First, Fifth, and Fourteenth Amendments.

The second source of law is a statute. Statutes are formed by state Constitutions, which are direct products of the people themselves. These constitutions will generally prescribe the powers and the jurisdiction of the primary or main state courts (Reutter & Hamilton, 1976).

The word statute, which means, "it is decided," comes from the Latin term statutum (Alexander & Alexander 1992). A statute, is an act of the legislative department of government exemplifying it's will and constituting a law of
the state (Alexander & Alexander, 1992). Statutes, in the American form of government, are the most visible and effective means of making new law or changing old law. Statutes enacted at the state and federal level may either react to custom or forge ahead and establish law which shapes the future of citizenry (Alexander & Alexander, 1992, p. 3).

The third source of the law is known as Common law, or for better terms, court or case law. Common law is based upon judicial decisions originating in the courts. Common law decisions are usually supported by judicial precedent; a judicial decision serving as a rule for future determinations in similar cases (LaMorte, 1982).

The American court system is established at two levels, state and federal. Generally, the state courts may be classified into four categories: 1) general jurisdiction, which cover all cases except those reversed for special courts, 2) special jurisdiction, which are probate courts, domestic relation courts and juvenile courts, and litigate
cases involving special subject areas, 3) small claims courts, such as justice of the peace courts, concentrate in lawsuits in which small amounts of money are involved, and, 4) appeals, which handle those cases which are appealed from the courts of general jurisdiction (LaMorte, 1982).

The federal court system, where Title IX cases are generally tried, are classified into three categories: 1) Federal District Courts, 2) Circuit Courts of Appeals, and, 3) The Supreme Court. In order for a case to reach the federal court system, the case must be between people from different states, raise a federal statute issue, or raise a constitutional issue (LaMorte, 1982).

There are two types of cases which can be tried in the courts. These cases are either criminal or civil in nature. A criminal case concerns the violation of a criminal statute in which the state prosecutes with the intent to fine and/or jail the accused party. Civil cases, of which there are two types, involve one individual bringing suit against another individual for any wrongs done to the injured party. One
civil case may be In Law, in which the injured party asks for compensation from damages received. The compensation is usually in the form of money. The cases that deal specifically with Title IX and gender equity, are Equity civil cases. In an Equity civil case, the plaintiff attempts to force another individual, service, or institution to either perform or refrain from doing something which may be unfavorable to one's interest (Alexander & Alexander, 1992).

Definition of Terms

*Blacks Law Dictionary, 1979* was used to define the following terms relative to the study.

**Appellant** - "One who appeals a court decision to the next court of jurisdiction" (p. 89).

**Appellate Court** - "A court having jurisdiction of appeal and review" (p. 90).

**Civil Action** - "All types of actions other than criminal proceedings" (p. 222).

**Declaratory Judgment** - "Statutory remedy for the determination of a justiciable controversy where the plaintiff is in doubt as to his legal rights."
A binding judgment of the rights and status of litigants even though no consequential relief is awarded" (p. 368).

**Defendant** - "The party against who the relief or recovery is sought in action or suit" (p. 377).

**Expedited** - "A sending or setting forth for the execution of some object of consequence by the use of promptness in performance" (p. 518).

**Injunctive Relief** - "A prohibitive, equitable remedy issued or granted by a court at the suit of a party complainant, directed to a party defendant in the action, or to a party made a defendant for that purpose, forbidding the latter to do some act, or to permit his/her servants or agents to do some act, which he/she is threatening or attempting to commit, or restraining him in the continuance thereof, such act being unjust and inequitable, injurious to the plaintiff, and not such as can be adequately by an action at law" (p. 705).
Material Allegations (pleading and practice) — "One which is essential to the case, defense, application, etc., and without which it could not be supported. One which tends to establish any of the issues raised" (p. 881).

Ordered Accordingly — "A mandate; precept; command or direction authoritatively given; rule or regulation. Direction of a court or judge made or entered in writing, and not included in a judgement" (p. 988).

Plaintiff — "A person who brings an action. The party who complains or sues in a civil action and is so named on the record" (p. 1035).

Preliminary Injunction — "An interlocutory injunction issued after notice and hearing. A procedural device in nature and which is designed to preserve the existing status of the litigants until a determination can be made on merits of the controversy" (p. 1062).

Prima Facie Case — "Such as will prevail until contradicted and overcome by other evidence" (p. 1071).
Stayed Execution - "A stopping; the act of arresting a judicial proceeding by the order of a court. Also that which holds, restrains, or supports" (p. 1267).

Summary Judgement - "Rule of Civil Procedure 56 permits any party to a civil action to move for a summary judgement on a claim, counterclaim, or cross-claim when he/she believes that there is no genuine issue of material fact and that he/she is entitled to prevail as a matter of law" (p. 1287).

Court Cases Involving Title IX in Intercollegiate Athletics

Since the passing of the Education Amendments Act of 1972, there have been many cases tried in the court of law over compliance to the rules and regulations which pertain to Title IX in higher education institutions. Female athletes are fighting for a larger share of the money and playing opportunities in intercollegiate athletics. Increasingly, they are turning to the courts for assistance (Lederman, 1993b).

The problems of noncompliance that have faced institutions have changed since the Act was first signed
into law twenty-one years ago. As of February, 1993, more than a half-dozen institutions were defending themselves against lawsuits by their female athletes. Five of the cases, at the University of Texas, Brown University, Colorado State University, Indiana University of Pennsylvania, and Colgate University are in the federal courts, and two of them, at Colgate and Brown Universities, have reached the appeals courts (Lederman, 1993a).

At some colleges and universities, for example, the University of Oklahoma and the College of William and Mary, the threat of a lawsuit is enough to correct the problem of not complying with Title IX regulations. At Oklahoma, the University attempted to eliminate its women's basketball program, but when the team members sued, the University reversed its decision, and the lawsuit was dropped (Fox, 1992). At William and Mary, the College decided to drop two women's and two men's sports programs. Upon this action, the player's sought legal counsel in accordance to filing a Title IX lawsuit, and the College reinstated all program's (Lederman, 1991).
At the University of Texas, one of the largest Title IX lawsuits was in the discovery process and was being investigated closely. Members of four women's club teams at Texas had brought action against the University. The club teams were fighting for their teams to be elevated to varsity status. The women's club team members complaint was that the University of Texas needed to promote the club teams to varsity due to the men having more opportunities than the women to compete on varsity teams. With the promotion of the women's teams to varsity status, it would balance the University's participation opportunities equitably between men and women student-athletes at Texas (Lopianio, 1992). This case, however, was in the earliest of stages compared to all the other suits that were awaiting a court ruling, and was not available on the Westlaw databank for the conclusion of this project.

The cases in this section were categorized in chronological order due to the history of Title IX and the different changes the Act has gone through since it was enacted in 1972. Also, the chronological order of the court cases should help assist college and university athletic
departments in retrieving data concerning Title IX and the specific date in which it was ruled on in the court of law.

Court Case #1 - Aiken v. Lieualien. 1979. An action was brought against the University of Oregon for violation of the women's basketball teams civil rights. The Evidence presented four areas of the University of Oregon's intercollegiate athletic program that were in violation of Title IX.

The plaintiffs complaint identified the four specific areas in which an unreasonable disparity existed in the women's and men's varsity basketball teams. The charges were directed at the transportation to and from events, officiating, coaching, and the University's lack of commitment to a strong, competitive athletic program for women as indicated by the personnel hired to carry out the program.

The plaintiffs claimed, as Oregon taxpayers, and because, at the time the complaint was filed, two of their daughters were participants in the University's women's varsity basketball program. A contested case was held on October 17, 1977, from which the hearings officer
determined the University was in violation of Title IX of the Education Amendments Act of 1972. The findings and recommendations were issued in March, 1978, and submitted to the Oregon Chancellor of Higher Education for review and entry of an order.

The Chancellor reversed the hearings and found that the University was not in violation of Title IX. The Court of Appeals ruled in favor of the defendant due to the regulations implementing Title IX and Oregon state law 659.150, which are nine guidelines similar to the guidelines issued in Title IX. During the time of the case, there was a three year time schedule (1975-1978) for compliance, but by the deadline of July 21, 1978, the University of Oregon had to be in compliance of Title IX. Aiken v. Lieuallen, 39 Or. App. 779, 593 P. 2d 1243 (1979).

Court Case #2 - Pavey v The University of Alaska v.
The National Collegiate Athletic Association and the Association for Intercollegiate Athletics for Women, Third Party Defendants, 1980. An action was filed against the University of Alaska charging it with sex discrimination against female student-athletes in its athletic program in
violation of Title IX and the Fourteenth Amendment's due process and equal protection clauses. In turn, the University,

filed a third-party complaint under the Civil Rights Act of 1871, seeking a judgment declaring that the combined effect of inconsistent rules of the third-party defendants, The National Collegiate Athletic Association (NCAA) and the Association for Intercollegiate Athletics for Women (AIAW), is to require discrimination by the University in contravention of its duty to comply with the requirements of federal law. The University of Alaska was reasonably seeking to avoid confrontation with the Associations' rules and resulting disruption in it's students participation in intercollegiate athletics, notwithstanding the Associations' claim that any sanctions they might apply to the University at a future date were purely speculative (Pavey v. The University of Alaska v. the NCAA & AIAW, 1980 p. 1012).
The University's third-party complaint alleged that if the relief sought by the plaintiffs' complaint of sex discrimination is awarded, the effect would be to require The University to break the rules of the intercollegiate athletic associations of which it is a member. In order for the University to comply with the rules and regulations of the NCAA and AIAW, it would be forced to reduce several spending budgets and opportunities for it's male athletes. In effect, it would be breaking the rules of the NCAA in order to comply with the rules of the AIAW.

The University's primary claim was that it did not possess any relevant protected right which could be deprived, and the University must establish that:

1) the conduct complained of was engaged in under color of state law, and
2) the conduct subjected the plaintiff to the deprivation of rights, privileges, and immunities secured by the Constitution of the United States (Pavey v. the University of Alaska v. the NCAA & AIAW, 1980, p. 1014).
The situation in the case was that the NCAA and the AIAW had two separate sets of rules, each of whose actions constituted state action, and together had the same discriminatory affect. This left the University of Alaska in the situation of either breaking the rules of the AIAW or lowering the quality of its opportunities for its male athletes.

Such a "choice" is obviously no choice at all; rather it demonstrates the transparency of the association's arguments (Pavey v. the University of Alaska v. the NCAA & AIAW, 1980, p. 1015).

The outcome of this case was that the motion of the third-party defendant NCAA to dismiss the third-party complaint was denied. And, that the motion of the third-party defendant AIAW to strike or dismiss with prejudice the third-party complaint was denied. Pavey v. the University of Alaska v. the National Collegiate Athletic Association & Association for Intercollegiate Athletics for Women, 490 F. Supp. 1011 (D. Alaska), June 09, 1980.
Court Case #3 - Bennett v West Texas State University, 1981. An action was brought against West Texas State University for various practices and policies which discriminate against women on the basis of sex and denied women equal opportunity in the University's athletic program. The plaintiffs were six female students at West Texas State University who participated in the University's athletic program.

The plaintiffs contended that such policies and practices had the effect of,

excluding plaintiffs from full participation in, denying plaintiffs benefits of, and subjecting plaintiffs to discrimination in an athletic program or activity receiving federal financial assistance, and thus that such policies and practices are in violation of Title IX of the Education Amendments Act of 1972 (Bennett v. West Texas State University, 1981, p.78).

The defendants argued that the intercollegiate athletic program did not receive federal financial assistance, and
therefore, the athletic program was outside the realm of Title IX regulations.

The District Court ruled for a summary judgment for the defendants in that Title IX only governs a program if that specific program receives federal funds, and to the extent that federal regulations attempted to apply strictures of Title IX on an institutional basis, the regulations were unsubstantiated. Also, the type of indirect aid that West Texas State University athletic program received did not bring them within the guidelines of Title IX. Bennett v. West Texas State, 525 F. Supp. 77 (1981).

Court Case #4 - Haffer v Temple University, 1981, 82, 87. An action was brought against Temple University by women students enrolled at the University alleging that the University was violating Title IX by discriminating against women in operation of its intercollegiate athletic program. The plaintiffs sought to represent the class of all current women students enrolled at the University who had been diverted from participating in the athletic program because of sex discrimination.
Title IX states that no person shall be denied the chance to participate or be subjected to discrimination under any education program that receives federal financial assistance. The defendant, Temple University, sought summary judgment arguing that its intercollegiate athletic program did not fall under the requirements of Title IX because it received no federal funds directly for the use of that program. The defendant also argued that Title IX regulations involve programs or activities that benefit directly from federal financial assistance and that such coverage is beyond the scope of Congress's intent in legislating Title IX. The parties agreed that the intercollegiate athletic program did not receive direct federal financial assistance. But, according to the plaintiff's affidavits:

Temple receives over nineteen million dollars in federal financial assistance grants and contracts. In addition, it receives aid in the form of long term loans and interest subsidies for construction and renovation of university buildings. The aid

The District Court ruled that the University, within meaning of statute, received federal financial assistance and the athletic program was subject to compliance of Title IX regulation on grounds that at least some of federal funding going to Temple University was in close connection with the intercollegiate athletic program. The plaintiffs argued that Temple's athletic department received direct federal assistance in three forms:

1) as federal grants and loans to its student athletes;
2) as assistance in the renovation of facilities used by the athletic department, and;
3) as salaries paid to athletic department employees under federally financed work-study programs (Haffer v. Temple University, 1981, p. 534).
The United States District for the Eastern District of Pennsylvania, 524 F. Supp. 531, denied the University’s motion for summary judgment and the University appealed. Temple, at the Court of Appeals, questioned the district court’s interpretation of the phrase "education program or activity receiving federal financial assistance (Haffer v. Temple University, 1982, p.7)," and denied that it discriminated against women in its intercollegiate athletics and moved for summary judgment, arguing that:

Title IX applies only to an education program or activity directly in receipt of federal funds and that the University’s athletic programs receives no such earmarked federal funds (Haffer v. Temple University, 1982, p.15).

Temple appealed the court’s denial of it’s motion to the Third Circuit Court Of Appeals, where a three judge panel affirmed the lower court’s decision, ruling that it was bound, according to another Third Circuit panel’s decision in a prior Title IX case. The decision in this prior case, Grove City College v. Bell, 1982, had come down
after the Court had heard arguments on Temple's appeal. The issue in Grove City, was whether a private college that does not receive direct federal funds from the government, but whose students receive federal grants under the Basic Educational Opportunity Grants program, falls under the jurisdiction of Title IX regulations. And, whether Title IX jurisdiction was program specific to the Grove City College Athletic Department. Program specific would limit the authority of the Department of Education's Title IX jurisdiction only in those situations in which direct federal funds to a specific athletic program can be pinpointed. In 1982, according to the United States Court of Appeals, The Grove City panel concluded that,

Title IX's prohibition on gender discrimination in education is indeed triggered when student's make use of Basic Educational Opportunity Grants assistance (Haffer v. Temple University, 1982, p. 16).

The court also found that when Title IX applies to an institution by virtue of money received through its
students, then the programs funded for purposes of the statute is the entire university, thus encompassing Title IX jurisdiction to "all forms of federal aid to education, direct or indirect (Haffer v. Temple University, 1982, p.16)." The Grove City College case was elevated to the Supreme Court in 1984.

The Haffer appellate court, relying on the Grove City appellate decision, ruled that the district court in Haffer had found that Temple's athletic department had received federal funds within the meaning of Title IX, because money received as general funds by the University freed nonfederal funds which could then be allocated to the Temple athletic department. However, the appellate court expressed no opinion concerning the lower court's alternative holding that athletic department was covered by Title IX because some of the federal funding was closely connected to the athletic department - is consonant with the subsequent decision of this Court in Grove City (Haffer v. Temple University, 1982, p.17).
The United States Courts of Appeals judgment of the district court was affirmed and the matter of Title IX jurisdiction returned to that court for further proceedings.

Due to the 1984 Supreme Court ruling in the *Grove City College v. Bell* case, the *Haffer v. Temple University* case was put on the back burner. The 1984 *Grove City* case forced Title IX regulations to apply only to individual programs receiving federal financial funding at institutions of higher education and not the entire institution, which left intercollegiate athletic departments exempt from Title IX because they did not receive direct federal assistance. *Haffer v. Temple University*, 524 F. Supp. 531 (E.D. Pa. 1981). aff’d, 688 F. 2d 14 (3rd Cir. 1982)

**Court Case #5 - Grove City College v. Bell, 1982**, 84. Grove City College, a private coeducational institution of higher education which did not receive federal or state financial assistance other than aid to its students, and four students, filed suit seeking an order which would declare void the Department of Education's termination of student's federally financed grants and loans. The decision
in this case had come down after oral arguments had been heard in the Haffer v. Temple University appeal. The issue in the Grove City case was whether a private college, which received no federal funds, but whose students received federal grants, was bound by Title IX jurisdiction.

Of the 2,200 students who attended Grove City College, approximately 480 of them received either Basic Educational Opportunity Grants (BEOGs) or Guaranteed Student Loans (GSLs) which are merited by Congress, and distributed by the Department of Education. Other than through the BEOG or GSL programs, Grove City College did not receive any federal or state financial assistance.

Due to Grove City College's refusal to sign an assurance of compliance as required by the Department of Education pursuant to Title IX of the Education Amendments Act of 1972, the Department concluded that the distribution of BEOG's and GSL's could be terminated to student's attending the College. With this, the plaintiffs sought to prevent the Department of Education from requiring Grove City College to sign an Assurance of Compliance as a
condition of keeping it's eligibility in the BEOG and GSL programs. Also, the plaintiffs sought action that the scope of Title IX was unconstitutional as applied to Grove City College because the case focused on the scope of Title IX jurisdiction, whereas the term "educational institution" did not appear in the wording of Title IX.

The United States Courts of Appeals reversed an earlier decision by the United States District Court for Western Pennsylvania, which granted Grove City College's motion for summary judgment stating that Title IX enforcement regulations were invalid. This judgment refused to allow the termination of BEOG'S at the College.

The Court of Appeals reversal for the plaintiff held that,

1) the private coeducational institution was a recipient of federal financial assistance within the meaning of Title IX, even though the assistance was received indirectly through it's students:
2) the assurance of compliance form required by the Department of Education was authorized and valid; and

3) the Department was within its authority in terminating federal financial assistance to the students and institution for the institution's failure to execute and file, in accordance with the regulations, an assurance of compliance (Grove City College v. Bell, 1982, pp. 684-685).

In a landmark case, The Grove City College v. Bell appeal was taken to the United States Supreme Court in 1984. The important challenge of this case focused on whether Title IX jurisdiction could extend to any program in an institution which received federal financial assistance, or only to the specific programs which directly received the federal financial assistance. The Supreme Court ruled for the defendant, Grove City College, stating that the Department of Education could not terminate federal assistance to Grove City students because of Grove's refusal to sign an Assurance of Compliance. And, for Title IX
enforcement purposes, the education program or activity at the college receiving federal funds was the colleges financial aid program, and not the entire college, which in turn, limited Title IX's jurisdiction over intercollegiate athletic departments. *Grove City College v. Bell*, 687 F. 2d 684 (3rd Cir., 1982). 465 U.S. 555, 104 S. Ct. 1211, 79 L. Ed. 2d 516 (1984).

**Court Case #6 - University of Richmond v. Bell.**

1982. An action was brought against the Department of Education by the University of Richmond seeking injunctive and declaratory relief to prevent investigation by the Department. Cross judgments for summary judgment were filed. The issue at hand, is whether the Department of Education is authorized to investigate and regulate the athletic program of a private university where the athletic program itself receives no direct financial assistance.

The University of Richmond is a private institution consisting of two separate colleges for men and women. The athletic department, though, has intercollegiate sports programs for men and women. The Office for Civil Rights
(OCR) was notified by the Department of Education when it received a complaint of sex discrimination in the University's athletic program. With this complaint, the OCR had the authority to investigate due to a University Receipt stating a Library Resource Grant of $1,900. OCR submitted a letter stating the University of Richmond had been selected for a "Title IX compliance review addressing it's intercollegiate athletic program (University of Richmond v. Bell, 1982, p. 323)."

The University responded by questioning OCR's jurisdiction because the athletic program at Richmond did not receive federal funds. The defendant responded by asserting that the University's receipt of any federal funds, whether directly or indirectly, required it's compliance to the regulations of Title IX in all it's educational programs and activities, including athletics. The defendant also added that,

...although most of the federal financed assistance is paid directly to the students, receipt of federal funds is conditioned upon
enrollment of the student at an approved institution of higher education. In this sense, the beneficiary of the federal funds which enable students to attend the institution in the first place (University of Richmond v. Bell, 1982, p.324).

The plaintiff argued that Title IX is program specific and should only apply to education programs or activities receiving direct federal assistance. The plaintiff argued that the Department of Education was unlawful in attempting to regulate programs which do not receive direct funding. The District Court ordered accordingly and found that the Department of Education had no authority under regulations pursuant to Title IX to investigate the University of Richmond athletic program because it did not receive specific federal financial assistance to its athletic program. University of Richmond v. Bell, 543 F. Supp. 321 (E.D. Va. 1982).

Court Case #7 - Blair v. Washington State University, 1987. Female student-athletes and coaches brought action
under State Equal Rights Amendment against Washington State University. The plaintiffs cited sex discrimination in receiving inferior treatment as compared to their male counterparts in funding, fund raising efforts, publicity, promotions, scholarships, facilities, equipment, coaching staffs, coaching salaries, uniforms, administrative staff and support, recruitment allotment, and participation ratios.

The plaintiffs appealed the exclusion of football for sports participation and scholarships, and allowing each sport to benefit from the revenue it generates. The Trial Court observed that:

The non-emphasis on the women's athletic program was demonstrated in many ways at Washington State University. Some were subtle, and some were not so subtle.... The message came through loud and clear, women's athletic teams were low priority. (Blair v. Washington State University, 1987, p. 1381).

The Supreme Court for the state of Washington ruled that the funding for athletic scholarships that women
received should be 37.5 percent of all money spent for scholarships. The percentage of scholarship money should increase yearly until it equaled the percentage of women undergraduates at Washington State University. Further, the Supreme Court of Washington addressed revenue sports by reversing the Trial Courts exemption for football. The Supreme Court of Washington stated that,

...to exclude football at Washington State University, an all male program, from the scope of the Equal Rights Amendment would only serve to perpetuate the discriminatory policies and diminished opportunities for women athletic programs (Blair v. Washington State University, 1987, p. 1383).


In December of 1988, the Haffer v. Temple University case was finally settled at the United States District Court due to Congress passing the Civil Rights Restoration Act of
1988. This Act reversed the 1984 Grove City ruling and applied Title IX regulations to all the programs of an institution of higher learning, including athletic departments. The plaintiffs, once again brought action against Temple University alleging unlawful gender discrimination within its athletic department, the equal protection clause of the Fourteenth Amendment, and the Pennsylvania equal rights amendment. The defendants, Temple University, motioned for summary judgment.

This case was the first to challenge intercollegiate athletic programs operations procedures on grounds of the federal equal protection clause of the fourteenth amendment. Relying partly on the Blair v. Washington State University case for evidence in behalf of the defendants, the District Court ordered accordingly that:

1) material issue of fact as to whether evidence that only one third of participants in university’s athletic program were women indicated gender discrimination precluded summary judgment;
2) athletic scholarships were part of university's financial aid program, and were thus within ambit of Title IX; and

3) fact that current university president merged men's and women's athletic programs into common administrative unit for purposes of determining appropriation of athletic scholarships did not preclude court from considering allegedly discriminatory practices of predecessor administration (*Haffer v. Temple University*, 1987, p. 517).


Former members of the women's ice hockey team at Colgate University brought action against Colgate University for alleged Title IX violations. The plaintiffs are all female and former students at the defendant, Colgate University.
The Title IX complaint that the plaintiffs filed, alleged that,

Colgate's decision to maintain women's ice hockey as a club sport was in violation of Title IX as amended by the Civil Rights Restoration Act of 1987, the regulations of the Department of Education, 34 C.F.R. Chapter 1, subpart D, s 106.1 and s 106.41, and the Fifth and Fourteenth Amendments of the United States Constitution (Cook v. Colgate University, 1992, p. 739).

The defendant, Colgate University, denied the material allegations in the plaintiffs complaint.

Colgate, until 1970, was an all male institution. But, from 1970 to 1990, the enrollment of women had steadily increased to where the overall enrollment in 1990 was 53% men (1,450) and 47% women (1,240). Although Colgate's women's ice hockey team had applied for varsity status four times, 1979, 1983, 1986, and 1988, the University had never granted them that status. On November 7, 1988, after the
fourth denial, plaintiff Cook, with two other women's hockey players, made an oral presentation to both the Athletic Director and the Dean of the Facility once again fighting for a promotion to varsity status. On November 14, 1988, the Athletic Director and the Dean of the Facility both voted to reject the plaintiff's proposal for varsity status by maintaining the women's ice hockey team as a club sport. The plaintiffs were notified in writing of four reasons for the rejection.

1) Women's ice hockey is rarely played on the secondary level;

2) Championships are not sponsored by the NCAA, which Colgate is a member, at any intercollegiate level.

3) The game is only played at approximately fifteen colleges in the east; and

4) Hockey is expensive to fund, and would heavily impact a total intercollegiate program by requiring: increased locker room space, larger budget, a full-time coach, a trainer, increased
trainer room load, increased equipment room size, heavy laundry room demand, and coach supported financial aid (Cook v. Colgate University, 1992, p. 740).

Colgate officials also added two more reasons for maintaining the women's ice hockey team as a club sport. Those reasons were, a lack of ability by the members of the team, and a lack of overall interest in women's ice hockey.

Colgate, which together emphasizes men's ice hockey, as well as men's football and basketball as sports that receive top priority along the lines of financial and departmental support, has had a strong men's ice hockey team for many years. The men's varsity ice hockey team has challenged for the Division I NCAA championship as a member of the Eastern Collegiate Athletic Conference. The only women's team that is emphasized at Colgate is women's basketball. The women's ice hockey program at Colgate, although a club team, has been competitive in the league in which they belong. But, the women's ice hockey team has not had the success or tradition that the men's team has enjoyed.
Club teams, of which there are eighteen to twenty sponsored by Colgate, are generally run by students, coached by part-time coaches, and are informal in their schedules practices, and competition. Colgate's women's club ice hockey team seeks varsity status which would provide them with equipment, practice facilities, and travel accommodations.

The defendants, Colgate University, argued that...
...there had been no evidence introduced that the overall athletic program discriminates against women, and that therefore no finding can be made that they have violated Title IX (Cook v. Colgate University, 1992, p. 742).

However, there are discrepancies in the Colgate athletic programs. Of the twenty-three varsity sports offered at Colgate in the year 1990-91, there were twelve men's teams and eleven women's teams. The overall budget comparison was $654,909.00 for the men's varsity programs as compared to $218,970.00 for the women's varsity programs.
The defendants also argued that comparing a club team to a varsity team is like comparing apples and oranges. In turn, the plaintiffs supported their claim that the University was promoting gender discrimination against women student-athletes, by forming a Prima Facie case. This case showed evidence that the men’s ice hockey teams budget in 1990-91 was $238,561.00, and the women’s ice hockey teams budget was $4,600.00. In addition, the women, had to pay $25.00 a year to be on the team, while the men did not have to make any such payment.

The United States General Court for of New York held that,

1) women established a Prima Facie case of unequal treatment because of gender;
2) university’s reasons for refusing to grant varsity status to women’s team legitimate but pretextual; and
3) university’s nonpretextual financial concerns excuse it from liability (Cook v. Colgate University, 1992, pp. 737-738).
The Court directed Colgate to grant varsity status to the women's ice hockey program starting with the 1993-94 academic year and provide equivalent athletic opportunities for women's ice hockey players in concurrence with the law. *Cook v. Colgate University*, 802 F. Supp. 737 (N.D.N.Y. 1992).

The defendants appealed the magistrate judge's decision to promote the women's ice hockey team from club to varsity status. Colgate, at the United States Courts of Appeals argued that the judge misinterpreted Title IX of the Education Amendments Act in two ways:

1) by comparing Colgate's treatment of male and female athletes sport by sport, rather than program wide; and

2) by requiring the University to add women's ice hockey, instead of giving it discretion over how to improve the status of women (Lederman, 1993b, p. A27).

The plaintiffs, along with their lawyer Faith A. Seidenberg, argued that the law under Title IX requires
colleges that offer a contact sport for men to sponsor the same sport for women, if participation opportunities for the women have been lacking and if women have satisfactory interest and ability to maintain a team and adequate competition for the team to play. Also, the plaintiffs contend that Colgate’s athletic department fails to give women equitable opportunities to participate in athletics, because they receive a small amount of the money allocated to the University’s overall athletic program (Lederman, 1993b).

The United States Court of Appeals, on April 27, 1993, threw out the Cook v. Colgate University case saying,

...it was moot because the last of the five plaintiffs suing to have their ice hockey team upgraded to varsity status will graduate this year (Herwig, 1993, p. 9C).

Although the plaintiffs failed to achieve their goal of making their ice hockey team varsity status, they did force the University to take a look at gender equity in their athletic program. Athletic Director, Mark Murphy, has
already planned to make changes in the athletic program by dropping a male sport to equal the number of athletic teams, and to free up funds and facilities for the women's programs (Lederman, 1993b).

Court Case #8 - Favia v. Indiana University of Pennsylvania, 1992. An action was brought against Indiana University of Pennsylvania (IUP) by four female student-athletes alleging discrimination on the basis of gender in IUP's intercollegiate athletic program. The plaintiffs had been members of the women's gymnastics and field hockey teams and sought a preliminary injunction to have the two teams reinstated and to prohibit the defendants from eliminating any more women's teams.

The defendants, IUP's President, Dr. Lawrence Pettit, and the Director of Athletics, Frank Cignetti were faced with a budget crisis and that the crisis was going to cause substantial reductions in both state and federal aid to the school. As a result, the University administration advised the athletic department to reduce its budget by $350,000 dollars. IUP is an NCAA Division II institution that is
federally funded and thus subject to the mandates of Title IX jurisdiction.

Before the athletic departmental cuts, which were women's gymnastics and field hockey, and the men's soccer and tennis teams, there were nine varsity sports teams for both male and females. After the cuts, there were seven varsity teams per gender. The plaintiffs cited that prior to the 1991 cutback, IUP had a total of 503 athletes on its intercollegiate athletic teams, 313 being male and 190 female. The percentage of female athletes was 37.77, as compared to the female student population of 55.61. After the cutbacks, the female participation percentage ratio dropped to 34.91. And of the $300,171 given in athletic scholarships, only 20 percent or $61,009 went to the female student-athletes. The plaintiffs also cited inequities at IUP in scholarships, practice facilities, locker rooms, and promotions of women's athletics, as well as inequities in the treatment of male and female coaches in the areas of offices and complimentary cars.
The District Court of Western Pennsylvania ruled for the plaintiffs on the grounds that the Indiana University of Pennsylvania was in violation of Title IX by using a three-part test regulated by the Office for Civil Rights U.S. Department of Education. On October 23, 1992, the District Court ordered the defendants to reinstate its varsity women's field hockey and gymnastics programs because the ratio of female to male athletes was not substantially the same as the ratio of women to men in the student body. The ruling noted that the elimination of the four teams had decreased the proportion of slots on sports teams for women and the court:

understands the fiscal constraints placed on IUP's athletic department, but new monies or reallocation of funds to reinstate these is the least the IUP athletics department can do in light of its violation of Title IX (Favia v. Indiana University of Pennsylvania, 1992, p. 823).


An action was brought against Brown University for down grading two of its women's teams from varsity status. In the spring of 1991, Brown announced that it was planning to drop four varsity sports from its intercollegiate athletic roster. This plan was seen as a budget tightening measure due to the financial crisis with which Brown University was facing. The four sports that were going to be dropped were women's volleyball and track, men's water polo and golf. The University permitted these teams to compete against varsity teams from other colleges, but cut off financial help and support services that were offered to teams with varsity status.

The plaintiffs, members of the two women's teams, filed suit in December of 1991 on the grounds that Brown had failed to accommodate the interests and abilities of its female students. They proceeded on an implied cause of action under Title IX. The plaintiffs also charged that Brown's athletic arrangements violated Title IX's ban on sex discrimination. This violation was shown by Brown's
decision to downgrade the two women's programs without making adequate cuts in men's activities, or, in the alternative, adding other women's teams to compensate for the loss. On plaintiffs motion, The district court granted a "preliminary injunction requiring Brown to reinstate the two women's teams pending the outcome of a full trial on the merits. We stayed execution of the order and expedited Brown's appeal." Cohen v. Brown University, 1993 WL 111514, 2 (1st Cir. (R.I.)).

At the U.S. Court of Appeals for the First Circuit, the key issue on appeal was how to measure whether Brown was effectively accommodating the interests and abilities of its student athletes. The court relied on the Department of Education's Title IX regulation and intercollegiate athletics Policy Interpretation manual.

Under the Policy Interpretation, which is referred to earlier in the text, Brown did not meet the first standard because participation opportunities for male and female students were not substantially proportionate to the student enrollment at Brown University. Also, the court found that
Brown did not comply with the second or third element of the Title IX Policy Interpretation. The second element refers to making an ongoing effort to meet the needs of the underrepresented sex in specific athletics as interest and ability levels rise. And the third element, which states that the institution must fully and effectively accommodate women, even if men's interest's are not accommodated, unless it can satisfy both men and women. The court also stated that an institution must work at improving competitive opportunities for women as abilities require.

On April 16, 1993, the U.S. Court of Appeals ruled for the plaintiffs in that Brown University's action in downgrading two of its women's teams from varsity status was in violation of Title IX because it was inconsistent with its obligation to accommodate fully the interests and abilities of its female students. The court ruled that Brown, in accordance with its lower court order, had to reinstate the two teams to varsity status. Cohen v. Brown University, 809 F. Supp. 978 (D.R.I., Dec. 22, 1992).
Court Case #10 - Roberts v. Colorado State University, 1993. An action was brought against Colorado State University (CSU) by former members of the CSU women's varsity softball team. The varsity softball team was eliminated by the CSU Athletic Department on June 1, 1992.

The plaintiffs were suing CSU on the grounds of sex discrimination as interpreted by Title IX of the Education Amendments Act of 1972. In particular, the plaintiffs' allegations fall under the third section, 34 C.F.R. § 106.41(c)(1), of the OCR of the Department of Education Title IX Policy Interpretation, which deals with CSU's ineffectiveness to accommodate the student-athletes' interests and abilities at the University.

At CSU, beginning with the 1980-81 academic year and ending with the Spring semester of 1992, the average difference between women's athletic participation and their undergraduate enrollment was 14.1%. During that period, the participation to enrollment percentage ranged anywhere from 7.5% to 16.7%. Prior to the termination of the women's softball team, the differentiation percentage of enrollment
to women participating in athletics at CSU was 12.7%. In the 1992-93 academic year, women athletes made up approximately 37.7% of total athletes participating in CSU's intercollegiate athletic programs, which is not in direct correlation with the current undergraduate student population of 48.2%. Therefore, the enrollment versus participation disparity for women at CSU after the dismissal of the women's softball team was 10.5%.

The defendants, CSU, dropped the women's varsity softball squad due to a reduction in their overall athletic department budget and argued that the framework of Title IX did not provide guidance in determining ample proportionality of women's participation opportunities to the overall female student enrollment. Also, the defendants argued that,

....the language contained in the Policy Interpretation, 34 C.F.R. § 106.41(c)(1), of the Title IX Investigators Manual to which defendants are apparently referring reads that there is no set ratio that constitutes substantial
proportionality, or that, when not met, results in a disparity or violation \textit{(Roberts v. Colorado State University, 1993, p. 7)}.  

The Title IX Investigator's Manual, which assists OCR investigation's in non-compliance of Title IX by NCAA member institutions, directs OCR personnel investigating the substantially proportionate section under 34 C.F.R. 106.41(c)(1), to first compare the number of male and female participants with the number of full-time undergraduate students. If the results of the participation versus enrollment are substantially proportionate, then that particular institution is accommodating the interests and abilities of both sexes. The District Court found this interpretation of Title IX in this case to be helpful in the determination of the term, substantially proportionate. The following language in the Title IX Investigator's Manual also assisted the Court in a decision on whether CSU's women's varsity softball team should be reinstated:

\textit{OCR investigative experience indicates that where budget restrictions have led a recipient to}
eliminate sports previously offered, there is frequently a compliance problem with this program component. The tendency is for institutions to eliminate a sport previously offered to women who are already underrepresented in the institution's athletics programs. The result has been that women are now more disadvantaged by the elimination of a women's team despite sufficient interest and ability to sustain a team. In this situation, the institution may well be in violation of this program component (Roberts v. Colorado State University, 1993. pp. 7-8).

In 1983, the OCR conducted a Title IX compliance review at CSU. The OCR found the intercollegiate level participation opportunities for males and females at CSU were not substantially proportionate to their respective enrollments. In addition, CSU's commitment to women's varsity athletic teams was lacking due to the defendants failure to demonstrate a history of program expansion for
women as well as their lack of effective accommodation of female student-athletes interests and abilities. With this, and the findings in the Cohen v. Brown University case, the District Court concluded that the defendants decision to eliminate the women's softball team constituted a violation of Title IX, and that CSU could not continue to operate an intercollegiate athletic program that did not provide opportunities for females to effectively accommodate their interests and abilities. The District ruled in favor of the plaintiff's by issuing a permanent injunction and ordered the defendant's to reinstate the women's intercollegiate softball program and to provide the women's softball squad with all of the benefits granted to varsity athletic teams at CSU. Roberts v. Colorado State University, Civ. Act. 92-Z-1310, Feb. 19, 1993. pp. 1-21.

Court Case #11 - Tyler v. Howard University - During the writing of this project, a Title IX case, which was not available on Westlaw, was settled in a Washington D.C. Superior Court. Howard University, which is located in Washington D.C., was sued by it's women's basketball coach
Sanya Tyler for sexual discrimination. According to her lawyer, Robert Bell, Tyler received about half the salary of the men's coach, had inadequate office space and locker room facilities and also had no full-time assistant coach and no secretary (Brennan & Asher, 1993).

On June 24, 1993, a six-person jury found that the University violated the D.C. Human Rights Act by discriminating and retaliating against Tyler and violated federal Title IX statutes by discriminating against Tyler. The D.C. Superior Court awarded Tyler $2.4 million and required Howard University to begin meeting Title IX requirements within its athletic department (Brennan & Asher, 1993).

This case had national significance due to Howard University ignoring Tyler's requests for bettering the women's basketball program as well as the overall women's athletic programs at Howard University. If the University would have met Tyler's requests, it would not have lost $2.4 million dollars. This large sum of money awarded to Tyler opened the eyes of all NCAA member institutions that were
not in compliance with Title IX and proved that these institutions can no longer ignore Title IX (Brennan & Asher, 1993).

Summary

The purpose of this study was to research Title IX of the Education Amendments Act of 1972, providing an overview of the law by reviewing the changes it has gone through in the last twenty-one years, and by reporting the court cases which had been filed in regards to intercollegiate athletics and Title IX. After researching Title IX and the various court cases which were filed after the Civil Rights Restoration Act of 1988, NCAA member institutions must work towards achieving equity in their athletic programs in the thirteen program component areas that are investigated by the Office for Civil Rights, or risk the penalty of being exempt from receiving federal financial assistance.

With the passing of the Civil Rights Restoration Act of 1988, recent pressure, through the use of lawsuits by women coaches and athletes, have left many universities
with no other choice but to reach compliance with Title IX. Institutions have a responsibility to the female student-athlete in the areas of academics as well as athletics. Equality, not inequality in the academic arena and the athletic field, are what the NCAA member institutions must try to achieve. Advocates of women’s sports have argued that failure to comply with Title IX will bring on an inevitable lawsuit and the courts will eventually decide the outcome.

Conclusions

Throughout the project, all thirteen program components that are investigated by the OCR were brought against universities in the court of law. Since the passing of the Restoration Act, the main areas of equity within intercollegiate athletics that were heard in the court of law were in the participation opportunities and scholarships being in correlation with the overall female student undergraduate enrollment.

Recommendations for Further Study

The following are recommendations for further studies involving Title IX and gender equity in intercollegiate
athletics: 1) the never ending battle of revenue sports versus non-revenue sports must be addressed by university athletic directors and presidents, 2) the advantage of the major revenue possibilities that could come from playing more football games, or going to a playoff system like the men's and women's NCAA basketball tournament to produce more money needs to be investigated.
References


*Cohen v. Brown University*, 1993 WL 111514, 2 (1st Cir. (R.I.)).


Herwig, C. (1993, April 30). Gender equity panel sees signs of hope. USA Today, p. 9C.


