

50 Years: Title IX and Athletics

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The 50th anniversary of Title IX provides elementary, secondary, and postsecondary institutions an opportunity to reflect on the impact of and future developments stemming from the law.

Since its enactment, Title IX of the Education Amendments of 1972 has been heralded as creating a more level playing field between female and male participation in athletics. Even during the height of the COVID-19 pandemic, Title IX played a central role as educational institutions struggled in the face of budgetary challenges to maintain their sports programs in an equitable way.

Institutions continue to face challenges providing staffing, locker rooms, and practice and competitive facilities in compliance with Title IX. Title IX will continue to play a pivotal role regarding transgender student participation in athletics.

History

Title IX was born out of efforts to prohibit discrimination against women, including issues that advocates contended limited the progress of women and girls in education, according to [*The History, Uses, and Abuses of Title IX*](#). After 1970 hearings held by the U.S. House of Representatives focusing on issues faced by women in education, an effort failed to add a prohibition against sex discrimination to a higher education bill. According to [*Synopsis of Purpose of Title IX, Legislative History, and Regulations*](#). Subsequently, legislators proposed amendments to Title VII and Title VI of the Civil Rights Act of 1964 and the Equal Pay Act to address this issue. Instead of amending existing law, Congress created a new law: Title IX of the Education Acts.

Signed into law in 1972, Title IX provides that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving Federal financial assistance.”

Over the course of years, implementing regulations and U.S. Department of Education guidance provided recipients and the public at large detailed information on how compliance with Title IX would be determined with respect to athletics. Today, Title IX addresses a multitude of issues, including protections against sexual harassment, including sexual assault, and discrimination based on gender, pregnancy, and parental status.

Impact

In the decade before Title IX’s enactment, the number of females playing sports at the high school and college level was estimated at 10% and 8%, respectively, of the participation rates for males, according to [*What 50 Years of Title IX Has – And Hasn’t – Accomplished*](#). In total numbers, just one year before Title IX became law, approximately 300,000 girls and women played school sports, according to [*Before and After Title IX: Women in Sports*](#).

Related Services

Education: K-12
Higher Education
Sports

Today, it is estimated that approximately 3,375,000 girls and women play high school and college sports.

On-Going Challenges

A review of pending complaints with the Department's Office for Civil Rights (OCR) shows that educational institutions continue to face challenges with Title IX athletics issues, including relating to staffing, locker rooms, practice and competitive facilities. For instance, at least six postsecondary and school district recipients entered into resolution agreements with OCR in 2022 to resolve complaints filed by or on behalf of students. In a case involving a postsecondary institution, OCR expressed concern that the college failed to hire a coach for a women's team for several years. In another case involving a postsecondary institution, OCR was concerned that the salary gap between head coaches for men's teams and women's teams was about \$30,000-\$40,000. In a case involving a school district, a high school provided its male varsity teams 12%-23% more practice time than to the corresponding female varsity teams. Likewise, the same high school provides another female varsity sport team 50% more practice time than the corresponding male team. OCR noted that it had concerns that the school district may be violating Title IX's requirement that recipients provide equivalent competitive opportunities.

With respect to Title IX and transgender athletes, OCR guidance and interpretation has fluctuated — the Obama and Biden Administrations indicated that transgender athletes should be able to participate on athletics teams based on gender identity and the Trump Administration concluding participation in teams should be based solely on "sex at birth." Additionally, Title IX has been challenged in several court cases involving transgender athletes. For example, in the petitioner's brief in *B.P.J. v. West Virginia Board of Education*, 550 F. Supp. 3d 347 (2021) (No. 2:21-cv-00316), the plaintiff, a middle school cheerleader who wanted to try out for girls' cross-country, argues that transgender girls should not be excluded from participating in single-sex sports restricted to girls. The plaintiff challenged a new West Virginia law that would prevent her from trying out because she is transgender. (For more on this case, see [*Court Cases: B.P.J. v. West Virginia State Board of Education*](#).) The U.S. District Court for the Southern District of West Virginia Circuit Court has issued a preliminary injunction permitting the plaintiff to compete on her school's cross-country team. (For more on this decision, see [*Judge Rules Transgender West Virginia Athlete Should Be Allowed to Run on the Girls Team*](#).) In addition to various court cases addressing Title IX and transgender athletes, at least 18 states have passed legislation prohibiting transgender athletes' participation in K-12 and, in some instances, collegiate sports based on their gender identity.

Regarding Title IX generally, the pendulum in some respects may have swung back against it. Since 2019, OCR has received hundreds of complaints alleging that educational institutions impermissibly exclude males from programs or scholarships in order to support girls and women to participate in STEM and other fields with historically low female rate of participation.

Future of Title IX

In April 2021 the Department launched a [comprehensive review](#) of Title IX. In March 2022, the [Department announced that it submitted its proposed amendments](#) to the Office of Information and Regulatory Affairs, which begins the federal regulation

revision process. Assistant Secretary for Civil Rights Catherine Lhamon noted, “[T]his submission is part of our comprehensive commitment to ensure that schools are providing students with educational environments free from sex discrimination, including sexual violence and discrimination based on sexual orientation and gender identity—it is one step of many taken and more to come.”

In conjunction with the 50th anniversary of Title IX, the Department released its [proposed Title IX regulations](#). According to the Department, “the proposed amendments aim to ensure full protection under Title IX for students, teachers, and employees from all forms of sex discrimination, including sex-based harassment and sexual violence, in federally funded elementary schools, secondary schools, and postsecondary institutions.” The Department also announced plans “to issue a separate notice of proposed rulemaking to address whether and how the Department should amend the Title IX regulations to address students’ eligibility to participate on a particular male or female athletics team.”

Jackson Lewis attorneys assist educational institutions with various Title IX issues, including working with institutions to provide athletic opportunities and support female participation in under-represented fields in manner that complies with Title IX. Please contact a Jackson Lewis attorney with any questions regarding questions related athletics or other Title IX issues.

(Law Intern Holly Fredericksen contributed to this article.)

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