

Gender Equity In College Athletics: Exploring Alternatives for Equitably Distributing Participation Opportunities Between the Sexes

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The harsh economic realities of college athletics in the 1990's are driving athletic administrators in two seemingly irreconcilable directions (Roberts, 1992). On one hand, as part of campus-wide cost cutting measures, athletic budgets at many institutions are rapidly shrinking, leaving athletic administrators with little recourse but to streamline their programs, and ultimately eliminate some sport offerings. This trend is juxtaposed against a growing momentum in favor of enhancing women's athletic programs and eliminating sex discrimination in college sports. The conflict between fiscal restraint and the pursuit of gender equity is stretching many athletic budgets to the breaking point (Byrne, 1992).

Even though the current gender equity movement in college athletics encompasses a broad spectrum of issues, including equal opportunities for female athletic administrators and equal pay for coaches, this article will focus on the issue of equitably distributing opportunities to participate in intercollegiate athletics between male and female students. By way of introduction, Part I briefly outlines the legal requirements mandated by Title IX, relevant to gender equity in athletics. Part II then examines a trilogy of recent U.S. Court of Appeals cases considering the application of Title IX in distributing athletics opportunities between the sexes in intercollegiate athletics. Thereafter, Part III explores gender equity initiatives proposed or adopted by colleges and universities, and various governing athletic organizations, and concludes by outlining the author's "Three-for-One" gender equity proposal, designed to provide an athletic administrator with an achievable and realistic plan for satisfying the athletic interests and abilities of both sexes on campus.

■ LEGAL PRINCIPLES

More than twenty years ago, Congress enacted Title IX of the Education Amendments of 1972, which provides in part 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 subjected to discrimination under any education program or activity

receiving federal financial assistance..." (Education Amendments of 1972). Even though athletics programs were not specifically mentioned in Title IX when it first became law, the Act has become the cornerstone of federal statutory protection for female athletes in the United States, prohibiting discrimination on the basis of sex in interscholastic and intercollegiate athletic programs (Heckman, 1992; Wong & Ensor, 1985/86).

To assist athletic administrators in clarifying the somewhat vague and imprecise requirements of Title IX and its regulations, and to aid in assessing Title IX compliance, the Department of Education, through the Office of Civil Rights (OCR), issued a Title IX Policy Interpretation in December 1979 (Title IX Policy Interpretation (1979)). In accordance with the Policy Interpretation, the OCR examines three areas in assessing an athletic department's compliance with Title IX: (1) athletic financial assistance; (2) other nonfinancial program areas; and, (3) the accommodation of athletic interests and abilities of students (Title IX Regulations (1975); Title IX Policy Interpretation (1979)).

First, Title IX regulations and the Policy Interpretation require an institution to allocate athletic financial assistance in proportion to the number of male and female participants in its athletic program. If the proportion of total scholarship aid given to male and female athletes is substantially equal to the ratio of male and female athletes, or if a disparity is explained by certain nondiscriminatory factors, the institution may be considered in compliance with this requirement. The Policy Interpretation lists two examples of nondiscriminatory factors which would permit disproportionality in favor of one sex or another: the higher cost of tuition for students from out-of-state, and the discretion of an institution to make reasonable professional decisions concerning the scholarship awards most appropriate for team or program development.

Second, for nonfinancial athletics program components, Title IX regulations require an institution to provide its athletes with equitable treatment, benefits and opportunities in eleven enumerated areas. Equal athletic expenditures are not required, but an athletics program must exhibit equitable treatment and distribution of benefits and opportunities in terms of equipment and supplies, games and practice schedules, travel and per diem allowances, coaches and tutors, medical and training services, housing and dining facilities and services, locker rooms, practice and competitive facilities, publicity, support services, and the recruitment of athletes. Identical treatment, benefits and opportunities are not required, provided the overall effect of any differences is negligible, or if the disparities are the result of recognized nondiscriminatory factors. Examples of such factors outlined in the Policy Interpretation include: the unique aspects of particular sports, such as football, where the rules of play, equipment requirements, rates of participant injury, and facilities requirement for competition may result in an imbalance in favor of men; special circumstances of a temporary nature; spectator management requirements at more popular athletic events; and, differences that have not been remedied but which an institution is voluntarily working to correct.

Third, and most relevant to the focus of this article, Title IX regulations and the Policy Interpretation require an institution to effectively accommodate the athletic interests and abilities of all enrolled students. More specifically, the Policy Interpre-

tation mandates that institutions accommodate effectively the athletic interests and abilities of its female and male students to the extent necessary to provide equal opportunity in the selection of sports and levels of competition available to members of both sexes. In selecting sports offerings, institutions are not required to integrate their teams, nor provide the same choice of sports to men and women. However, where an institution sponsors a team in a particular sport for members of one sex, it may be required either to permit the excluded sex to try out for the team or to sponsor a separate team for the previously excluded sex. In providing athletes of each sex with levels of competition which equally reflect their interests and abilities, institutions must provide both the opportunity for individuals of each sex to participate in intercollegiate competition, and for athletes of each sex to have competitive team schedules which equally reflect their abilities. Compliance with this two-fold requirement is demonstrated by satisfying any one of the following three tests:

- (1) whether the institution's intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
- (2) where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or
- (3) where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion, such as cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program (Title IX Policy Interpretation (1979)).

The assessment of whether an institution has satisfied the requirements of Title IX is made on a program-wide basis, focusing on the overall provision of equivalent opportunities in the athletic program in terms of athletic financial assistance, equivalence in other athletic benefits and opportunities, and effective accommodation of student interests and abilities. An investigation may, however, be limited to less than all three of these major areas where unique circumstances justify limiting a particular investigation to one or two of the compliance criteria (Title IX Athletics Investigator's Manual (1990)).

It should also be emphasized that comparisons to determine Title IX compliance are not made on a sport-specific basis, comparing particular sport offerings or specific classes of sports (such as revenue-producing versus non-revenue-producing). The revenue-producing sport of football, for example, is given no separate or special treatment under Title IX. In fact, various amendments, introduced in Congress to exempt revenue-producing sports from the requirements of Title IX, were each defeated (Heckman, 1992). The large number of athletes required for football, however, increases the number of male participants in the overall program, thus increasing the amount of financial aid to be allocated to men under the proportionality test. With respect to other program components, certain special

requirements of football are recognized as nondiscriminatory differences justifying departures from equivalency in such areas as medical services, equipment, facilities required for competition, maintenance of those facilities, special event management needs related to crowd size, and special publicity requirements. The accommodation of interests and abilities of both men and women at an institution becomes more problematic when football's large roster size is factored into the equation. Since women do not have a corresponding sport requiring such a large number of athletes, the athletic participation ratio between men and women at most institutions is dramatically skewed in favor of male opportunities.

■ RECENT TITLE IX CASE LAW

The specific application of Title IX principles to college athletic program offerings was recently considered in three U.S. Circuit Court of Appeals cases. Each decision highlights the inherent conflict between athletics cost containment in the 90's, and the Title IX requirement mandating that college athletic departments effectively accommodate the athletic interests and abilities of all students. Not only do these decisions further elucidate the application of Title IX to college athletics, but they also underscore that, in times of fiscal restraint, women must ultimately receive "a larger slice of a shrinking athletic opportunity pie" (*Cohen v. Brown University* (1993)).

Roberts v. Colorado State University (1993).

In *Roberts*, members of the women's softball team brought action against CSU claiming the university violated Title IX when it eliminated their softball program and, thereby, denied women an equivalent opportunity to participate in varsity athletics. The plaintiffs sought injunctive relief to reinstate their varsity softball team, and requested damages for loss suffered as a result of the cut. The university argued in defense that it had not violated Title IX, since, in addition to women's softball, men's baseball was also eliminated, and that the cuts had, in fact, disproportionately affected males more than females. Prior to the cuts, women accounted for 35.2% of CSU's varsity athletes, and 48.2% of its undergraduate population. After the cuts, the ratio of women participating in athletics improved slightly to 37.7% of all CSU athletes.

The U.S. Court of Appeals for the Tenth Circuit affirmed a district court order granting the plaintiffs a permanent injunction requiring the university to reinstate the women's softball team. In doing so, the court applied the OCR's three-pronged test set forth in the Title IX Policy Interpretation for assessing an institution's performance in effectively accommodating the athletic interests and abilities of members of both sexes. The court concluded the decision to terminate the softball program violated Title IX when viewed in the context of the university's disproportionate athletic participation rate for women, its failure to demonstrate a history of program expansion for women, and its further failure to satisfy the court that the university was fully and effectively accommodating the athletic interests and abilities of female students. In these circumstances, CSU's proportional cutting of men's and women's teams from an already inequitable program was unfair to the underrepresented gender and violative of Title IX.

CSU sought a further appeal to United States Supreme Court, contending that the district court and court of appeals erred in requiring the university to specifically reinstate its women's softball team, rather than affording CSU the opportunity to remedy the discrimination under their own compliance plan. The Supreme Court, however, refused, without comment, to hear the appeal.

Cohen v. Brown University (1993).

In early 1991, Brown announced that, as an athletics cost-cutting measure, it was dropping women's volleyball and gymnastics, and men's golf and water polo from its intercollegiate varsity athletic roster. After the cuts, the teams would participate as club sports only, a status that would allow them to compete against varsity teams from other colleges, but deny them the financial subsidies and support services normally available to varsity teams. Prior to the cuts, the Brown athletic department supported 31 varsity sports, 16 for men and 15 for women. Women accounted for 36.7% of Brown varsity athletes, and 47.6% of its undergraduate population. As a result of the cuts, Brown's sponsorship of varsity sports was reduced to 27 sports, 14 for men and 13 for women, while the athletic participation ratio remained virtually unchanged with women accounting for 36.6% of Brown varsity athletes.

The *Cohen* plaintiffs, student members of the women's gymnastics and volleyball teams, brought a class action suit against the university seeking injunctive relief to restore the two women's teams to varsity status, and to prevent the reduction or elimination of any other women's varsity teams at Brown. The plaintiffs contended that the reduction in status of the two women's varsity programs violated Title IX by denying women an equivalent opportunity to participate in varsity athletics. In defense, Brown claimed that it was proportionally accommodating the athletic interests and abilities of both sexes on campus, and that the reduction to club status of the women's volleyball and gymnastics teams was offset by similar treatment of the men's golf and water polo teams.

The U.S. Court of Appeals for the First Circuit affirmed a district court order granting the plaintiffs a preliminary injunction requiring the reinstatement of varsity women's gymnastics and volleyball at Brown, and prohibiting the elimination or reduction in status of any existing women's intercollegiate varsity team pending a full trial on the merits. In assessing the university's effective accommodation of the athletic interests and abilities of its students, the First Circuit, like the district court, utilized the three-pronged test outlined in the Policy Interpretation. In affirming, the court noted first, that at no time in Brown's history had athletic participation opportunities between men and women been substantially equivalent, when comparing the percentage of women participating in intercollegiate athletics at Brown to the percentage of women undergraduates. Second, Brown had failed to provide any evidence of recent program expansion, to demonstrate that the institution was responsive to the developing athletic interests and abilities of women. In fact, Brown had not added a single women's varsity sport since 1982. And third, Brown was not fully and effectively accommodating the athletic interests and abilities of women at the varsity level, since here the plaintiffs themselves were examples of specific athletic interest and ability and were seeking to forestall the

elimination of two healthy varsity teams. Retaining the two women's teams at the club level was, in the court's opinion, insufficient to satisfy the third prong of the test.

Favia v. Indiana University of Pennsylvania (1993).

In *Favia*, the federal district court for the Western District of Pennsylvania was presented with circumstances similar to *Cohen*. Indiana University of Pennsylvania (IUP) had eliminated school funding for four varsity athletic teams, women's gymnastics and field hockey, and men's soccer and tennis, reducing each to club status. As in *Cohen*, the program cuts were made by the athletic department in response to a directive by the university to reduce its departmental budget. The plaintiff class, members of the women's gymnastics and field hockey teams, claimed that the elimination of the two women's varsity programs violated both Title IX and the Fourteenth Amendment, by denying women an equivalent opportunity to participate in varsity athletics, and sought a preliminary injunction to restore the two women's teams to varsity status, and prevent the reduction or elimination of any other women's varsity teams at IUP. Prior to the cuts, the IUP athletic department supported 18 sports, 9 for men and 9 for women. Women accounted for 37.8% of Brown varsity athletes, and 55.6% of its undergraduate population. As a result of the cuts, IUP's sponsorship of varsity sports was reduced to 14 sports, 7 for men and 7 for women, while the athletic participation ratio for women dropped slightly to 36.5% of IUP varsity athletes.

In granting the preliminary injunction, reinstating the two women's teams and prohibiting the university from eliminating further women's teams, the district court applied the three-pronged test outlined in the Title IX Policy Interpretation for assessing an institution's performance in effectively accommodating the athletic interests and abilities of members of both sexes. The court concluded that participation opportunities between the sexes were not substantially proportionate to enrollment, and that the university had not met its burden of establishing, under these circumstances, a history and continuing practice of program expansion for female student-athletes, or that the interests and abilities of females had been fully and effectively accommodated.

IUP initially elected not to appeal the district court order, but later asked the court to modify the injunction to permit the school to add women's soccer instead of reinstating gymnastics. The district court denied the application, concluding that the motion was in essence a request for reconsideration of a preliminary injunction that had not been timely appealed. IUP appealed to the U.S. Court of Appeals for the Third Circuit, but was unsuccessful. The Third Circuit concluded that, while the proposed substitution of soccer for gymnastics would increase women's participation in athletics at IUP, and thus improve the school's athletics participation ratio, IUP had failed to meet the burden required in a motion to modify a preliminary injunction of demonstrating a significant change in facts from the time the injunction was issued, which would render inequitable the continuation of the order.

In *Roberts*, *Cohen*, and *Favia*, a clear message has been sent that college athletic departments must provide athletic opportunities for students of both sexes in proportion to their enrollment, evidence a history and continuing practice of program expansion responsive to the interest and abilities of the members of the

underrepresented sex, or demonstrate that the interests and abilities of the underrepresented sex are being fully and effectively accommodated. The central finding of each court reaffirmed the plaintiffs' argument in each case that the proportional cutting of men's and women's teams from an already inequitable program was unfair to women and violative of Title IX. Since many college athletics programs would fail the rigors of the three-pronged test for accommodating the athletic interests and abilities of its students, the results in these cases make it virtually impossible for a college, unable to comply with the accommodation test, to drop any women's sport as part of a general cutback in athletic funding. That is not to say, however, that Title IX requires financially strapped institutions to expand women's programs to comply with its effective accommodation requirement. An institution may bring itself into compliance with this prong by reducing opportunities for the overrepresented gender, while keeping opportunities stable for the underrepresented gender, or, perhaps, reducing them to a much lesser extent (*Cohen v. Brown University* (1993)).

Reacting to the decisions in this trilogy of cases, a number of other institutions settled pending Title IX issues by voluntarily adding women's sports or reinstating previously eliminated offerings. For example, in June 1993, nine female athletes filed a federal Title IX complaint against Cornell University after the women's gymnastics and fencing teams were eliminated in a cost-savings move (Update, June 1993). The action came after the plaintiffs had attempted unsuccessfully to reach a compromise with the university to save their sports, even as club programs. The university had reportedly received legal advice that the cuts would not violate Title IX requirements, since they were cutting more from their men's athletics program than from the women's. However, in December 1993, in light of the U.S. Court of Appeals rulings in *Roberts*, *Cohen*, and *Favia*, Cornell concluded that the interests of the university and its students would be best served by settling the claim, and reinstating the women's gymnastics and fencing teams, rather than expending its limited resources on a costly court battle (Herwig, December 1993).

The University of California at Los Angeles reached a similar conclusion in August 1993. In early August 1993, UCLA had announced the cancellation of both men's and women's gymnastics due to athletic department financial problems. However, by late August, UCLA agreed to reinstate the women's program when members of the women's gymnastics team threatened to file a Title IX lawsuit (Update, August 1993).

In July 1993, the University of Texas at Austin entered into an agreement to settle a class-action lawsuit which alleged that the university had violated Title IX and the equal protection clause of the fourteenth amendment by denying varsity intercollegiate athletic opportunities to female students. By agreement, the university committed to increase female participation in varsity sports to 44% by the end of the 1995-96 academic year, to increase to 42% the percentage of athletic scholarships going to women, to institute women's varsity soccer in the 1993-94 academic year and women's varsity softball not later than the 1995-96 academic year (*Sanders v. University of Texas at Austin* (1993)).

In February 1993, members of women's club soccer team at Auburn University filed an OCR complaint seeking the promotion of their club team to varsity status.

This complaint was followed by the filing of a Title IX class-action lawsuit against the university, in April 1993, on behalf of all current and future female student-athletes. The plaintiffs sought increased funding for all women's sports. In July 1993, the school entered into a settlement agreement concerning the soccer-related claims filed against Auburn University both with the OCR and in federal district court, wherein the university agreed to elevate women's soccer from club to varsity status, and to support and maintain that program for at least five years beginning in the fall of 1993. In addition, the university agreed to pay the plaintiffs \$60,000 in compensatory damages, and \$80,000 in legal fees (*Kiechel v. Auburn University* (1993)).

In a further settlement of a class action suit, filed in February 1993 against the entire 20-campus California State University system, university administrators committed to work toward providing male and female students with athletic opportunities and budgetary allocations in amounts proportional to their respective campus enrollments. The settlement requires reasonable progress with a final deadline for compliance of the 1998-99 academic year (Herwig, October 1993).

These are but a few of the more publicized settlements that, in addition to the results in *Roberts*, *Cohen*, and *Favia*, have fueled the advancing cause of gender equity in college athletics, and indicate a realization among some college athletic administrators that their programs must inevitably begin to accommodate the athletic interests and abilities of both sexes on campus.

■ CURRENT GENDER EQUITY INITIATIVES

Notwithstanding these recent developments, many institutions continue to turn a blind eye to Title IX non-compliance. Yet, based on current case law and NCAA statistics revealing that female athletes are, on average, significantly underrepresented in college athletics, the issue seems unavoidable for most institutions, either through a complaint-initiated process, or, more preferably, a self-directed analysis and self-imposed plan for future compliance. Failing any meaningful progress, Congress has also threatened to impose Title IX-related reporting requirements subjecting institutional performance to public scrutiny (Herwig, February 1993). Under these circumstances, some institutions and their governing athletic organizations have taken a proactive lead in embracing the cause of gender equity, by proposing or establishing plans designed to proportionately increase female participation in college athletics.

Immediately following the release of the results of its gender-equity study in March 1992, revealing that women were indeed second-class citizens in intercollegiate athletics (NCAA Gender-Equity Study, 1992), the NCAA appointed a 16 member task force of men and women with divergent views to thoroughly review the gender equity issue and provide recommendations regarding how the NCAA can better assure that opportunities to participate in athletics are offered without regard to gender (Press Release, National Collegiate Athletic Association, March 11, 1992). In July 1993, in accordance with its charge, the task force issued its final report, wherein it defined gender equity, outlined key principles of gender equity, provided guidelines to attain that goal, endorsed "proportionality" as a measure of equity, identified emerging sports for women, and recommended rule changes to

expand scholarship support and participation opportunities for female athletes. More specifically, the task force concluded that an athletics program could be considered gender equitable when the participants in both the men's and women's sports programs would accept as fair and equitable the overall program of the other gender. Endorsing the proportionality concept, the task force suggested that each institution's ultimate goal should be a male and female athletics participation ratio substantially proportionate to the institution's undergraduate student body ratio. Further, the task force identified archery, badminton, bowling, crew, ice hockey, squash, synchronized swimming, team handball and water polo, as emerging women's sports, and suggested legislative revisions establishing financial aid limits in these sports and to permit institutions to utilize these emerging sports in order to meet the NCAA's minimum sports-sponsorship and financial aid award criteria (Final Report, Gender-Equity Task Force, 1993).

Acting on these task force recommendations, the NCAA membership, at the 1994 NCAA Convention, adopted a proposition designed to add gender equity to the Association's principles for the conduct of intercollegiate athletics, and another to establish maximum financial aid limits in emerging sports for women and permit institutions to utilize the emerging sports in order to meet the Association's minimum sports-sponsorship and financial aid award criteria ("Gender Equity, Financial Proposals Draw Little Fire," January 1994). The legislation, while supportive of Title IX and creating new opportunities for women, failed to endorse proportionality as a measure of gender equity or specify penalties for Title IX noncompliance. Therefore, many have been disappointed with the NCAA's current efforts to promote gender equity. Perhaps, however, the Association's purposes, as a national organization, are best served by establishing general principles and avoiding the temptation to micromanage the issue. Given the heterogeneity of NCAA membership, specific gender equity requirements, and resulting penalties for non-compliance, may best be left to the conferences. Some conferences, in fact, have already taken the lead in this regard.

In May 1992, for example, the Big Ten became the first college conference to adopt a gender equity plan, when conference members voted 10-1 to require that, within five years, at least 40% of the participants in intercollegiate athletics at member institutions be women (Herwig, May 1992). When the plan was adopted, women accounted for 30.5% of Big Ten varsity athletes, and approximately 49% of the undergraduate population at Big Ten schools. While praised by some as the first policy of its kind adopted by a college conference, the measure is not without its critics who argue that a 60:40 male to female participation ratio over a five year period is too little over too much time, and that the policy does not outline specific procedures to reach the goal prior to the deadline (Moran, 1992; Asforis, 1992). The University of Iowa, a Big Ten institution, has gone one step further than its conference office, in committing to provide women, by August 1997, with athletic opportunities in proportion to their representation in the undergraduate student body (Press Release, University of Iowa Sports Information Department, April 21, 1992).

In June 1993, the Southeastern Conference adopted a gender equity proposal requiring its member institutions to provide at least two more women's sports

programs than the number of men's sports offered ("Southeastern Conference Principles of Gender Equity," 1993). The proposal, which becomes effective August 1, 1995, requires each conference member to submit a report, based on a Title IX self-evaluation, to the conference office by June 1, 1994, and commits the conference office and member institutions to act affirmatively to increase the quantity and quality of women's athletic opportunities. Specifically, the proposal mandates an equitable distribution of scholarship funding, access to support services, compensation for coaches, and opportunities to participate, coach and administer.

The University of New Hampshire provides another example of an institution voluntarily adopting a Title IX compliance plan. In August 1993, UNH adopted a formal plan to ensure Title IX compliance in athletics, committing to increase the athletic opportunities available to female students, and ensuring that, by the 1997-98 academic year, either the athletic interests and abilities of female students will be fully and effectively accommodated, or participation opportunities will be provided in numbers substantially proportionate to the enrollments of male and female students. The plan envisions increasing squad sizes on current women's teams, and adding women's golf, crew, volleyball and softball ("Plan to Ensure Continued Compliance with Title IX in Athletics at the University of New Hampshire," 1993).

■ THE FUTURE?

For institutions that have been dodging the requirements of Title IX for more than twenty years, it appears the day of reckoning has finally arrived. We can only expect the floodgates of Title IX athletics litigation to burst unless universities and their governing organizations take active steps toward gender equity, including providing women with equitable opportunities to participate in intercollegiate athletics. Unfortunately, this day has come when institutions and athletic departments around the country can least afford it. In a time of cost-containment, the course many schools will take to improve their female varsity participation ratios will be to cut men's programs, usually non-revenue producing sports, rather than add sports for women (Weir, 1992).

Thus, true or not, the perception is that men's athletics opportunities have become the sacrificial lamb for gender equity. For many, the gender equity debate has been reduced to a women's sports versus football issue, since football, in its current form, with 100-member teams and high operating costs, makes it virtually impossible to balance male and female athletic opportunities. Women quite simply do not have a similar large roster, injury-riddled sport of their own, made up of offensive, defensive and special-team units. It becomes readily apparent, under current methods of Title IX analysis, that gender-equity will be difficult to achieve if football is not somehow affected. Yet even the thought of down-sizing football creates a battle cry among coaches and alumni, arguing that football is the cash cow that supports all college athletic programs, whose profitability will be jeopardized by further budget cuts (Osborne, 1992).

A gender equity plan, offering practical solutions acceptable to all involved in this polarizing debate, becomes almost impossible to formulate. Devising a pro-

posals guaranteeing athletic opportunities for female students based on their proportional representation in the undergraduate student body may be economically unattainable without significantly altering men's sports as we now know them, thus attracting predictable opposition from administrators, coaches and participants involved in men's athletics. On the other hand, any plan falling short of a proportional distribution of athletic opportunities between the sexes attracts the wrath of gender equity activists. Can an equitable division of college athletic opportunities between the sexes be realized without significantly affecting programs currently offered to men? In an attempt to respond positively to this question, the author has developed a proposal, the "Three-for-One" plan, premised on compromise, seeking some common ground between those interested in promoting female athletic opportunities, and those interested in preserving the quality of programs for men. The plan is formulated in accordance with the three general areas for assessing Title IX compliance, although addressed in reverse order, requiring that: (1) institutions accommodate effectively the athletic interests and abilities of its female and male students to the extent necessary to provide equal opportunity in the selection of sports and levels of competition available to members of both sexes; (2) all benefits, opportunities and treatment afforded participants of each sex be equivalent; and (3) scholarship assistance be allocated in proportion to the numbers of male and female participants in intercollegiate athletics.

To effectively accommodate the athletic interests and abilities of both sexes on campus, the "Three-for-One" plan creates two sports program pools: Pool A, comprised of football and a group of three sports offered for women only; and, Pool B, encompassing all other varsity sports offerings at the institution. The Pool A grouping is designed to achieve an equitable balance between preserving the flagship sport of football, and enhancing athletic opportunities for women. Since women do not have a high scholarship sport similar to football, the "Three-for-One" plan, in a sense, creates one by grouping together three sports offered by the institution for women only (three-for-one). To qualify as a Pool A for-women-only (FWO) sport, the FWO program must not be offered to men at the institution, and must afford at least twelve participation opportunities. In addition, at least two of the three FWO programs must be team sports. FWO program possibilities will naturally vary regionally and from school to school, but may include such sports as field hockey, volleyball, lacrosse, soccer, or other "emerging sports" recently identified by the NCAA in 1994 Convention legislation. The plan intends that these FWO sports be either added as new sport offerings or identified from current sports offered only to women at an institution, without affecting sports offered to men. In some circumstances, however, economic necessity may require that a FWO sport be created by dropping a matching sport from the men's side. While the distribution of athletics participation opportunities for both sexes in Pool A sports will not necessarily be proportional to the student body ratio, such a grouping is a realistic and practical proposal designed to improve an institution's female athletics participation ratio, while reaffirming the unique status of football in collegiate athletics.

The Pool B grouping encompasses all other varsity sports not included in Pool A. The plan requires that institutions provide athletic participation opportunities to both sexes in Pool B sports in proportion to their respective undergraduate

enrollments, or demonstrate that the interests and abilities of members of the underrepresented sex have been fully and effectively accommodated by the overall athletics program. If an institution does not offer football, all sports would be considered Pool B sports, dictating compliance with the above stated test. Here again, the plan intends that women's sports be added to bring the institution into compliance with Pool B's proportionality requirement, however, compliance, of necessity, may be achieved by dropping one or more Pool B sports offered to men.

Under the "Three-for-One" plan, the division of participation opportunities between the sexes will be considered equitable if the institution has complied with the composition requirements of Pools A and B. The overall athletics participation ratio under the plan may favor men's opportunities. Participation ratios will naturally vary depending on FWO sports selected, yet, on average, institutions following the plan will divide their athletics opportunities 55% to men and 45% to women. While such a ratio may not strictly satisfy the popular proportionality benchmark, the author argues that it will withstand muster under Title IX, since the institution will be able to establish that its overall athletics participation ratio is substantially proportional to its undergraduate student body ratio, or exhibit a history and continuing practice of program expansion responsive to the developing interests and abilities of the underrepresented sex, or demonstrate that the athletics interests and abilities of its students of the underrepresented sex have been fully and effectively accommodated. In addition, an athletics program, developed in accordance with the "Three-for-One" plan, might better satisfy the definition for gender equity proffered by the NCAA Gender Equity Task Force, which considers an athletics program gender equitable when the participants in both the men's and women's sports program would accept as fair and equitable the overall program of the other gender.

After defining an equitable division of athletic opportunities between men and women, the "Three-for-One" plan proposes to address the remaining two Title IX compliance requirements in accordance with current practices. Institutions would be required to afford their male and female athletes equivalent treatment, benefits and opportunities in the eleven program areas enumerated in the Title IX Regulations. Equal athletic expenditures would not be required, but an athletics program must exhibit equivalent treatment and distribution of benefits and opportunities in terms of equipment and supplies, games and practice schedules, travel and per diem allowances, coaches and tutors, medical and training services, housing and dining facilities and services, locker rooms, practice and competitive facilities, and publicity. The division of athletic expenditures, excluding scholarships, would be globally assessed for the entire athletic department, with women's programs, under the "Three-for-One" plan, guaranteed a proportional share. Further, in accordance with Title IX requirements, scholarship assistance would be allocated in proportion to the numbers of male and female participants in the entire athletic department.

Since the "Three-for-One" plan envisions the creation of new programs for women, the obvious question is: how will institutions, bent on cost-containment, pay for these new programs? First, to avoid the easy alternative of cutting men's programs to comply with Pool A and B requirements, the plan's success, or indeed any gender equity initiative, requires the involvement and support of the president's

office at the implementing institution, in formulating the institution's plan for compliance and securing adequate university resources for its implementation. The entire institution must internalize and economically commit to the philosophy that the cost of a well-balanced athletic program is worth the positive public perception emanating from a university that is devoted to providing educational and athletic opportunities to all students regardless of sex.

Second, athletic departments must begin to do a better job of turning their women's sports into revenue producers. Women's athletics is an underrated and undeveloped market, and generating more spectator interest is considered by many to be the next frontier for women's intercollegiate athletics (Harris, 1991). Women's intercollegiate athletics is developing into an entertaining, and certainly less expensive, alternative to men's sports, and one on which athletic departments would do well to focus additional marketing efforts. Women's sports offer the excitement of quality competition, yet currently remain small enough to capitalize on the marketing appeal of direct fan involvement, where spectators pay less and sit closer to the action. Additionally, sponsorship might be attracted from various corporations desiring to be associated with and financially support the popular institutional philosophy that the cost of a well-balanced athletic program is worth the positive public perception derived from a university that is committed to providing educational and athletic opportunities to all students regardless of sex.

Third, since many men's sports in peril of elimination under any gender equity plan are non-revenue producing, Olympics-related programs, the United States Olympic Committee and related national sports governing bodies should become more involved in providing financial support to college athletic programs. Even though the USOC and national sport governing bodies are also suffering from revenue shortages, they do benefit from the collegiate development of Olympic athletes. The cost to develop these same athletes, should colleges continue to cut these non-revenue, Olympics-related programs, would certainly be more than infusing financial support now to help keep them afloat. This extra revenue would allow the current revenue devoted to these programs to be redistributed to existing or new programs for women.

Fourth, while the "Three-for-One" plan does not mandate the reduction of men's sports roster sizes, such a voluntary limitation would allow an athletic department to redistribute cost savings to women's sports, without significantly affecting the quality of programs offered to men. Other cost savings might be achieved through altering current practices, such as further limiting travel squad sizes. Ultimately, however, in the absence of other revenue sources, the elimination of some men's sports may be economically necessary and inevitable.

Finally, in consideration of football's special Pool A classification under the "Three-for-One" plan, the proposal also supports the implementation of a Division I-A football playoff to provide an additional revenue source to indirectly assist in funding women's sports opportunities. Numerous two, four, and eight-team play-offs have been proposed, some incorporating the current New Year's Day bowls, others to be played after the bowls. A number of corporations have recently made pitches to the NCAA to promote and sponsor a football playoff, the most noteworthy, perhaps, being Nike and Disney (Wieberg, 1993). The idea has been debated

among college football fans for years, but has gained recent support within the decision-making ranks of the NCAA. At the 1993 NCAA Convention, Dick Schultz, then NCAA Executive Director, in his "State of the NCAA Address," urged the Association to take a hard look at a playoff as a source of tremendous revenue to sustain existing athletic programs and to support gender equity reforms (Blum, 1993). Proponents of a playoff estimate that a Division I-A football championship could generate revenues as great as \$100 million. Based on conservative estimates alone, however, revenues would be sufficient to ease the financial crunch that already has at least two-thirds of Division I programs in the red and scrambling for some way to pay for the additional demands of gender equity (Weiberg, 1993).

Even though the playoff concept is appealing to college football fans, and may contribute to funding the cost of gender equity, it will not become a reality until the real power-brokers of college sports - college presidents and chancellors - are serious about such an alternative. Recently, however, college presidents showed some real signs of warming to the idea. A significant step in this direction was taken in December 1993, when the powerful NCAA President's Commission appointed a fact-finding task force to consider the pros and cons of a Division I-A football playoff, and to ultimately make recommendations to the Commission, the NCAA Council and the Executive Committee (Wieberg, 1993). If acted upon, implementing legislation could be put to a membership vote as early as the 1995 convention, with a playoff in place for the conclusion of the 1995 college football season.

■ CONCLUSION

The cause of gender equity in athletics is about fairness. Certainly many have and will continue to argue that women will never be able to raise their games to the quality of men's competition, and will never be able to attract the spectators or revenue that men's sports do, yet these are not the real issues here. Athletic competition at our colleges and universities should, first and foremost, serve an educational purpose, as we teach and instill in these young participants the values of teamwork, courage, commitment and fair play. Do not our young women deserve this educational opportunity as much as our young men?

Attitudes toward this issue are changing, and legal imperatives are emerging, producing a social consciousness that will no longer tolerate an inequitable division of athletics opportunities favoring one sex over another. Athletic administrators, facing a certain confrontation with gender equity, must act now to determine how their limited financial resources can be fairly apportioned, in order to ensure that athletics opportunities are equitably divided and sex discrimination eliminated in intercollegiate sports.

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