Title IX at 50: A Critical Celebration

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This article is a critical celebration of Title IX. Fifty years of this landmark civil rights legislation has brought tremendous progress for girls and women in all areas of the U.S. educational system—including sport. However, Title IX has yet to achieve its full potential. For this to happen, I propose nine pressing issues that must be addressed: enforcing compliance; roster management and other dubious compliance tactics; more opportunities for women of color; the leadership gap; sex-segregated sport; the inclusion of transgender athletes; name, image, and likeness (NIL) opportunities; the athletic arms race; and sexual harassment and violence. Based on current, scholarship, published data, and contemporary examples, this “nine for IX” approach is not a critique of the law but rather a critique of those aspects of American interscholastic and intercollegiate sport that continually hamstring Title IX’s power.

**Keywords:** gender equity, civil rights legislation, interscholastic sports, intercollegiate sports

Fifty years of Title IX of the Education Amendments of 1972 is certainly cause for celebration.1 This landmark piece of civil rights legislation has influenced the exponential growth of girls’ and women’s sport in the United States, as it has in all areas of education. However, “[u]ncritically celebrating Title IX disguises persistent gender inequities in sport,” as Hextrum and Sethi (2021, p. 2) maintain. Accordingly, this article is a critical celebration that applauds what the law has accomplished while also recognizing there is much work left to do, not just in the next 50 years, but in the immediate future, so that the full benefits of Title IX extend to everyone.

To that end, I propose nine pressing issues that must be resolved if Title IX is to fulfill its potential in sport. Based on an extensive review of the relevant literature, available data, and contemporary events, these issues include enforcing compliance; roster management and other dubious compliance tactics; more opportunities for women of color; the leadership gap; sex-segregated sport; the inclusion of transgender athletes; name, image, and likeness (NIL) opportunities; the athletic arms race; and sexual harassment and violence. Importantly, this “nine for IX” approach is not a critique of the law, but rather a critique of those aspects of American sport that continually undermine Title IX’s power. As such, this article also includes suggestions to support Title IX’s continued success.

Enforcing Compliance

Even after half a century, approximately 90% of all educational institutions are not in compliance with Title IX when it comes to sport (Women’s Sports Foundation, n.d.a). The penalty for non-compliance is the loss of federal funding. This has never happened. Instead, individuals have taken their complaints to educational administrators and the Department of Education’s Office of Civil Rights (OCR). They have also gone to court, following the 1979 Supreme Court decision in Cannon v. University of Chicago, where justices interpreted an “implied private right of action” in Title IX that allows individuals to file civil suits against educational institutions. Thirteen years later, in Franklin v. Gwinnett County Schools, the Supreme Court opened the door to award plaintiffs compensatory and punitive damages. Although neither case dealt specifically with sport, their outcomes expanded the enforcement authority of judges and legitimized sex-discrimination lawsuits in education (Melnick, 2018).

Even so, gender inequities persist in interscholastic and intercollegiate sports. Girls make up just 43% of all high school athletes and 44% of National Collegiate Athletic Association (NCAA) athletes, despite the fact that they are the majority of students at both levels (NCAA, 2021b; National Federation of State High School Associations, 2019). This means that the majority of girls and women are not reaping the physical, psychological, social, and educational benefits of sport. And although few athletes will earn college athletic scholarships, women miss out on $1 billion in financial aid each year because of disproportionate opportunities (Champion Women, 2020).

In addition to balancing participation opportunities and scholarships, Title IX requires gender equity in a “laundry list” of treatment, benefits, and opportunities. This is where many of the biggest disparities lie. A 2022 USA Today investigation compared the money spent at 107 public NCAA Division I Football Bowl Subdivision (FBS) schools on travel, equipment, and recruiting for men’s and women’s teams. (Armour et al., 2022; see also Caron, 2021)

And those figures do not take football into account.

It is not just that women are habitually shortchanged, are forced to fly coach when men travel on private planes, or have to...
arrange their practice times around the men’s schedules. It is that schools are undervaluing and underresourcing women’s teams in direct violation of Title IX. Further, these types of inequities “make it more difficult for female athletes to succeed as students, graduate on time, take the classes that they want, or even study their preferred major,” all of which “may also have an impact on future generations’ interest in sports” (Yanus & O’Connor, 2016, p. 35).

Recognizing when athletic programs violate Title IX is the first step toward remedying these inequities. Unfortunately, studies show that most Americans are either uninformed or misinformed about what the law is, what constitutes discrimination, and where they can turn to for help. When polled, 71% of children aged 12–17 and 58% of their parents reported knowing “nothing” about Title IX (Newhouse, 2022). The same is true for nearly 50% of college athletes surveyed, while the remaining 50% showed “large gaps in foundational understandings of what Title IX requires and how it works” (Staurowsky et al., 2017). Less than 20% of all college and university coaches and just 25% of athletic administrators received Title IX information as part of their professional training (Staurowsky & Weight, 2011, 2013). And although every public school district, college, and university is required to have a Title IX coordinator, only 31% of college and university coaches were aware of this, and another 43% were unsure (Staurowsky & Weight, 2011), while more than 50% of high school athletics administrators are either “unaware of or unsupported” by that coordinator (United States Government Accountability Office, 2018).

Title IX literacy is paramount as financial pressures brought about by the COVID-19 pandemic have led to an unprecedented loss of athletic programs (Hartman, 2020; Swanson & Smith, 2020). Between the 2019–2020 and 2020–2021 academic years, the NCAA lost 289 teams and 12,368 participation opportunities across all three divisions (NCAA, 2021a). Some women’s programs successfully fought for reinstatement under Title IX, but historically, men have not had the same recourse (Lorin & Gardner, 2022).

That tide may be shifting, as signaled by Clemson University’s 2021 reinstatement of its men’s cross-country and track and field teams. The previous year, citing “significant financial challenges due to the ongoing pandemic” and concern about “the ability for long-term Title IX compliance,” Clemson announced it would drop the programs to cut $2 million from its budget (Radakovich, 2020). The men fought back with the threat of a Title IX lawsuit, arguing that the percentage of male athletes would no longer be proportionate to the percentage of male undergraduate students at the school—one of three ways of assessing Title IX compliance.2

Women athletes at Clemson simultaneously threatened their own lawsuit on the grounds that the university did not provide them with equitable financial aid, treatment, or benefits. They also supported the men’s complaint. As the women’s lawyer explained, “they are one big family so they decided to fight for each other” (Murphy, 2021). The athletes won on all counts. Clemson reinstated the men’s teams while also agreeing to adjust spending, add at least one new women’s varsity sport, and to work with an outside monitor to develop a Gender Equity Plan and bring all aspects of its intercollegiate athletics program into compliance with Title IX by 2023 (Baker, 2021).

The Clemson case shows what can happen when all sports are allies in the battle for gender equity. Too often, Title IX and, by extension, women’s sports are erroneously blamed for the loss of men’s programs. Importantly, Title IX supporters do not advocate for “leveling-down” strategies, or cutting men’s sport as a method of compliance. Instead, the intent is to “level up” and treat everyone equitably (Brake, 2010).

### Roster Management and Other Dubious Tactics

In order to give the impression of leveling up, some educational institutions have used “roster management” tactics to exaggerate or falsify Title IX compliance. This involves reducing the number of participation spots on men’s teams and adding spots to existing women’s teams, which “enables schools to raise women’s participation numbers without the expense of adding new teams and to cut back on men’s numbers without generating the resistance and anger caused by eliminating entire teams” (Brake, 2010, pp. 124–125).

Yet, in many instances, roster management amounts to little more than a shell game designed to give the illusion of gender parity.

The practice is most conspicuous in women’s intercollegiate rowing. The sport has grown dramatically over the past three decades, primarily because the average Division I team carries 63 women, which helps correct some of the gender imbalance caused by the 118 men on the average Division I football team. But some schools, especially those with big-time football programs, have inflated their women’s rowing teams to suspicious proportions. According to the Department of Education’s Equity in Athletics Data Analysis (EADA) database, Brown University, the most successful women’s program in NCAA history, had 48 women on its 2019–2020 team. In comparison, there were 115 women rowers at the University of Alabama, 120 at the University of Michigan, and 171 at the University of Wisconsin. Investigations have determined that many of these rowers should not have been counted as varsity athletes:

> In most cases, the rosters are inflated by large numbers of “novice” rowers—women recruited from the general student body to give the sport a try. As long as those rookies are still on the roster by the time of the team’s first competition, the schools can officially count them as female athletes. (Cordes, 2019)

To be fair, institutions have had success with these recruiting efforts, and many novice rowers are excellent athletes. Nevertheless, the efforts are also disingenuous because they create teams “so large they leave many of the women with little real opportunity to compete, denying women a true athletic opportunity” (Cordes, 2019). When the Seattle Times investigated the massive rowing team at the University of Washington, it found “dozens of women” who never even practiced with the team but were “counted as crew participants in reports to federal officials” (Willmsen, 2017). Some of the women had no idea they were on the team until approached by reporters.

To end these tactics, the OCR must redefine who counts as a “participant” and clarify what participation means. It should also redefine “participant” to specify who counts as a female athlete. As it stands, “participants” can include any students who “[p]ractice with the varsity team and receive coaching from one or more varsity coaches.” This allows athletic departments to count male practice players as “female participants” (Department of Education, n.d.). For example, Equity in Athletics Data Analysis data show that of the 43 participants on Cornell University’s 2019–2020 women’s fencing team, 21 were “male practice players.” So were 21 of the 33 participants on the University of Tennessee women’s basketball team (Department of Education, n.d.). The Women’s Sports Foundation (n.d.b), has called for an end to these
accounting strategies, arguing that “if male players receive any benefits (training room privileges, insurance coverage, practice uniforms, or equipment, etc.), they must count against a school’s or college’s participation numbers as male participants.”

Of additional concern is that the use of male practice players “violates the spirit of Title IX and is creating fewer opportunities for women” (Finley, 2007). For instance, the NCAA allot 15 full scholarships to each Division I FBS women’s basketball team, but many teams that utilize nonscholarship male practice players do not use all 15 grants. The University of Connecticut boasts the most successful record in NCAA women’s basketball, yet there are only 11 women on the team (Department of Education, n.d.). Four more talented women should receive full scholarships to fund their education and enjoy benefits of being part of such a storied program.

More Opportunities for Women of Color

Title IX is a single-axis antidiscrimination law. It only covers discrimination “on the basis of sex” and does not take into account intersecting identities associated with race and ethnicity. Consequently, girls and women of color have not reaped the same benefits as their White peers.

In point of fact, a 2015 study cosponsored by the National Women’s Law Center and the Poverty and Race Research Action Council determined that 42% of U.S. public high schools are either “heavily white,” in which 90% or more of the student body identifies as White, or “heavily minority,” in which students of color make up 90% or more of those enrolled. Heavily minority schools showed “large ‘female opportunity gaps’” when it comes to sport participation, while those gaps only appeared in 16% of the “heavily white schools” (see also Pickett et al., 2009). As sociologist Felicia Theune (2019) argues, the “persistance of racial segregation in America’s schools has hindered the effectiveness of Title IX and perpetuated an uneven playing field that doubly disadvantages Black women and girls” (p. 7).

College sport is similarly skewed in that women of color are underrepresented in almost every NCAA sport. The exceptions are basketball, and track and field, where Black women are overrepresented, and softball, in which 11.5% of participants identified as Latinx (TIDES, 2021). Conversely, “growth sports,” such as soccer, ice hockey, and rowing, tend to favor White middle- and upper-class girls and women. Researchers caution that while adding new sports may help “in terms of closing the gender gap in sports participation, it may also erect unintended barriers to access and participation in high school and college athletics for non-White women” (Pickett et al., 2012, p. 1598).

These barriers manifest in the NCAA’s “Emerging Sports Program,” introduced in 1994 to increase athletic opportunities for women. These are sports that have not yet earned full sponsorship but “that have the potential to reach the required number of varsity teams to be considered for NCAA championship status” (NCAA, n.d.). Between 1996 and 2015, the NCAA promoted five emerging women’s sports to championship standing: rowing, ice hockey, water polo, bowling, and beach volleyball. As of 2022, another five sports are still categorized as emerging: acrobatics and tumbling, equestrian, rugby, triathlon, and wrestling. Based on information from the NCAA’s Demographic Database, which only classifies athletes by limited and reductive racial/ethnic categories, the majority of emerging-sport participants are White (see Tables 1 and 2). Across all NCAA divisions, Black women make up just 5% of the former and current emerging sports, just 1% of all participants in rowing and water polo, and 0% of all ice hockey players.

Curiously, these discrepancies can also crop up at Historically Black Colleges and Universities (see Dees, 2004; Theune, 2016; Yarbrough, 1997). The most glaring example of this is the 2021 equestrian team at Delaware State University—the only Historically Black College and University to sponsor the sport. Based on the categories from the NCAA’s Demographics Database, Black women were 5% of the 33 team members, 10% of the team was categorized as “other female,” while White women made up 85% of Delaware State’s team. Even more, the equestrian team constituted 15% of the school’s varsity women athletes but received 40% of the total women’s operating expenses (Department of Education, n.d.). In other words, disproportionate athletic opportunities and funding went to White women at a historically Black school.

The National Women’s Law Center and the Poverty and Race Research Action Council (2015) have identified multiple strategies to increase the athletic participation of girls of color. State legislatures should provide equitable education resources to all school districts in their states, including those related to sport. Local governments should take steps to provide low-income and undererved communities with accessible recreation facilities. School districts could partner with community-based nonprofit organizations that introduce girls to different sports and associated life skills (pp. 9–10). The NCAA and other sports governing bodies could help by requiring national organizing bodies that apply for emerging sport status to activate a plan to foster the growth of their sport in underserved communities. As Evans (1998) asserts, “Title IX will never achieve its ultimate goal of gender equity if it does not articulate policies specifically geared to address the unique form of discrimination experienced by Black women” (p. 117).

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### Table 1 Former Emerging Sports by Race, Now NCAA Sports, 2021 (All Divisions)

<table>
<thead>
<tr>
<th>Sport</th>
<th>“Female, White”</th>
<th>“Female, Black”</th>
<th>“Female, Other”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beach volleyball</td>
<td>72%</td>
<td>4%</td>
<td>24%</td>
</tr>
<tr>
<td>Bowling</td>
<td>69%</td>
<td>16%</td>
<td>15%</td>
</tr>
<tr>
<td>Ice hockey</td>
<td>79%</td>
<td>0%</td>
<td>21%</td>
</tr>
<tr>
<td>Rowing</td>
<td>77%</td>
<td>1%</td>
<td>22%</td>
</tr>
<tr>
<td>Water polo</td>
<td>63%</td>
<td>1%</td>
<td>36%</td>
</tr>
<tr>
<td>Average</td>
<td>72%</td>
<td>4%</td>
<td>24%</td>
</tr>
</tbody>
</table>

**Note:** NCAA = National Collegiate Athletic Association. Source: NCAA Demographics Database.

### Table 2 Emerging Sport by Race, 2021 (All Divisions)

<table>
<thead>
<tr>
<th>Sport</th>
<th>“Female, White”</th>
<th>“Female, Black”</th>
<th>“Female, Other”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equestrian</td>
<td>86%</td>
<td>3%</td>
<td>11%</td>
</tr>
<tr>
<td>Acrobatics and tumbling</td>
<td>65%</td>
<td>7%</td>
<td>28%</td>
</tr>
<tr>
<td>Triathlon</td>
<td>73%</td>
<td>2%</td>
<td>25%</td>
</tr>
<tr>
<td>Wrestling</td>
<td>45%</td>
<td>8%</td>
<td>48%</td>
</tr>
<tr>
<td>Rugby</td>
<td>60%</td>
<td>12%</td>
<td>28%</td>
</tr>
<tr>
<td>Average</td>
<td>66%</td>
<td>6%</td>
<td>28%</td>
</tr>
</tbody>
</table>

**Note:** NCAA = National Collegiate Athletic Association. Source: NCAA Demographics Database.
The Leadership Gap

Similar intersectional considerations must be made for women in leadership positions. Before the passage of Title IX, more than 90% of the directors of intercollegiate women’s athletics programs were women, most of whom were White (Acosta & Carpenter, 2000). Women’s sports grew under the governance of the Association of Intercollegiate Athletics for Women (AIAW) and in sex-segregated athletic departments, which kept women in positions of power for the next decade. But in the early 1980s, the NCAA usurped control of women’s sport, the AIAW folded, men’s and women’s athletic departments merged, and women athletic directors were relegated to subordinate roles. As of 2021, women were just 24% of head athletic directors across all NCAA divisions. At the Division I level, which is associated with the most prestige and highest salaries, that percentage drops to 14%, and drops again to 8% in the FBS Autonomy subdivision where racial dynamics continue to favor White women (NCAA, Figure 1).

The underrepresentation of women and, especially, women of color persists in the ranks of college coaching (Table 3). In 1972, women coached more than 90% of women’s intercollegiate athletic teams. It was a time when there was little money or status associated with the position, but as that started to change, men took over. Research shows that systemic sexism, sport’s “old-boy” network, pressures from alumni and donors, tenuous job security, and issues relating work–life balance work against women coaches (Sabo et al., 2016). As of 2021, women coached just 41% of all NCAA women’s teams (Boucher et al., 2021). Men not only coach 59% of all women’s NCAA programs, but they also coach 94% of all men’s programs, which keeps women out of some of the best-paying and most visible positions in sport (Miller, 2015). Even in those positions, studies find that women coaches are consistently paid less and held to higher standards than men (LaVoi et al., 2019; von Allmen, 2013).

Ultimately, the tremendous participation gains for girls and women are not commensurate with their status in coaching, administration, or in other powerful positions such as head athletic trainer, sports information director, and strength and conditioning coaches. To bridge the leadership gap, women athletes should be encouraged and supported to pursue professional development opportunities. Football Australia (2021) launched a “High Performance Coaching Initiative” specifically designed to increase the recruitment, development, and retention of women. A similar project could prove effective in the United States. The NCAA or state high school associations might sanction something like the NFL’s Rooney Rule, which requires teams to interview external minority candidates for head coaching and senior football operation jobs. A similar stipulation for women at the interscholastic and intercollegiate levels might, at the very least, allow talented candidates to get their feet in the door.

Sex-Segregated Sport: Can Separate Be Equal?

In the 1954 milestone case of Brown v. Board of Education of Topeka, the Supreme Court ruled that racial segregation in public schools was unconstitutional. As Justice Earl Warren wrote, “in the field of public education the doctrine of ‘separate but equal’ has no place.” Scholars have extended this same conclusion to sex-segregated sport (McDonagh & Pappano, 2007; Milner & Braddock, 2016).

Conventional wisdom holds that sport is segregated by sex to account for the typical physical differences that manifest after puberty, although Kane (1995) rightly reminds us that those differences exist on a “continuum.” Proponents of sex-segregated sport point out that due to a confluence of historical, social, and biological factors, the best male athletes tend to outperform the best female athletes in comparable events (Capranica et al., 2013; Thibault, 2010). They then take that to mean that sex-integrated sport would disadvantage and discourage girls and women from participating, which would contradict what Title IX is designed to do. Yet, as determined in Brown v. Board, separate is rarely, if ever, equal. What is more, conceding sex-based athletic differences insinuates hierarchy. If most girls and women cannot compete with the best boys and men, the logic goes, then boys and men are the superior athletes and, by extension, more deserving of opportunities, benefits, and rewards.

Critics therefore argue that institutionalized sex segregation naturalizes sexual difference, normalizes gender essentialism, limits women’s opportunities, and relegates women’s sport to second-class status (George, 2002; Leong, 2017; Love & Kelly, 2011). There is a “gendered paradox at the crux” of Title IX, argues Sharrow (2021a). The law “sanctions, rather than

Figure 1 — Demographics by gender and race/ethnicity, NCAA Director of Athletics, all divisions. Source: NCAA Demographics Database.

Table 3 Percentage of NCAA Division I Coaches for Women’s Teams by Gender and Race

<table>
<thead>
<tr>
<th>Race</th>
<th>Female</th>
<th>Male</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>n</td>
<td>%</td>
</tr>
<tr>
<td>White</td>
<td>35.7</td>
<td>1275</td>
<td>42</td>
</tr>
<tr>
<td>Black or African American</td>
<td>5.2</td>
<td>184</td>
<td>6.3</td>
</tr>
<tr>
<td>Asian</td>
<td>0.7</td>
<td>26</td>
<td>1</td>
</tr>
<tr>
<td>Hispanic or Latino/Latina</td>
<td>0.8</td>
<td>27</td>
<td>1.9</td>
</tr>
<tr>
<td>Native American or Alaska</td>
<td>0.1</td>
<td>2</td>
<td>0.2</td>
</tr>
<tr>
<td>Native Hawaiian or Pacific Islander</td>
<td>0.2</td>
<td>6</td>
<td>0.1</td>
</tr>
</tbody>
</table>

challenges, pernicious stereotypes about women’s inferiority. This means that for all that Title IX’s implementation has achieved in increasing opportunity for women, it has simultaneously undermined the goals of full gender equality” (pp. 260–261; see also Sharrow, 2017).

Scholars have proposed different ways to structure sport, such as “voluntary segregation” that would allow girls and the women the choice of where and against whom to compete (McDonagh & Pappano, 2007; see also Milner & Braddock, 2016). Skeptics counter that this would create a “talent drain from having the best female athletes play on ‘men’s’ teams,” which “could slow the development of women’s sports, depriving other women of the chance to compete against the best women in the world” (Brake, 2010, p. 24). Thus, it seems that no matter how one slices it, “[b]oth sides in the argument over separation and integration rely on and reinforce assumptions of male athletic superiority” (Department of Education, n.d., p. 35).

Alternatively, pundits have suggested eliminating sport’s two-sex system altogether (Archibald, 2019; Krane & Barber, 2019). In its place, they propose categorizing athletes by height, weight, or skill level, or by creating “sport classes,” as is used in Para sport, that could be based on a range of biological and social measures (Anderson et al., 2019; Bianchi, 2017; Kerr & Obel, 2017). These options would not only begin to dismantle sex segregation and the sexism it engenders, but they would also make room for transgender, nonbinary, and gender-diverse athletes who do not—or do not want to—conform to the male–female binary structures most sports.

Trans-Inclusive Sport

In the 1970s, supporters of Title IX emphasized why access to sport mattered. It imparts incalculable physical, psychological, social, and educational benefits that should not be denied to anyone on the basis of sex. For these same justifications, transgender students deserve access to sport consistent with their gender identity. In fact, they may need it even more than their cisgender peers. Approximately 85% of transgender youth report feeling unsafe at school, where they are more likely to be subjected to violence and harassment than other students (Movement Advancement Project & GLSEN, 2017).

Sport can help, but, for too many reasons, trans participation is low (Goldberg, 2021; Strauss et al., 2017; Turban, 2021). LGBTQ + youths who play sports show higher academic performance, lower rates of depression, and are 25% less likely to attempt suicide (The Trevor Project, 2020a, 2020b, 2020c). Moreover, “when sporting bodies acknowledge the inherent female-ness of a transgender woman or girl by affirming her right to participate with and against other women or girls, it makes a strong contribution to the social movement toward acceptance and inclusion of transgender individuals” (Buzvis, 2021, p. 441).

With respect to Title IX, the prevailing question has been whether discrimination “on the basis of sex” includes gender identity? State and federal laws, governing bodies, and judicial decisions offer conflicting answers. Under President Obama, the OCR issued a memorandum explaining that transgender students “are protected from sex-based discrimination under Title IX.” Conversely, the Trump administration threatened to withhold federal funding from schools that allowed transgender students to participate in sports consistent with their gender identities. This clashed with the Supreme Court’s 2020 decision in Bostock v. Clayton County, which found that Title VII of the Civil Rights Act of 1964 protects employees from discrimination on the basis of sexual orientation and gender identity, which sets an important precedent for Title IX cases.

In line with Bostock, President Biden (2021), on his first day in office, issued Executive Order 13988, “Preventing and Combating Discrimination Based on Gender Identity or Sexual Orientation.” As it reads, “All persons should receive equal treatment under the law without regard to their gender identity or sexual orientation . . . . Children should be able to learn without worrying about whether they will be denied access to the restroom, locker room, or school sports” (see also Department of Education, 2021). The battles for and against inclusive sport have put transgender athletes—and, indeed, all trans folks—at the center of an increasingly hostile culture war that has “weaponized” Title IX (Reddy, 2021; The Trevor Project, 2022).

High school sports are governed at the state level where regulations vary. The bylaws of the Connecticut Interscholastic Athletic Conference, for instance, stipulate that students can compete in sport consistent with the gender identity. In 2019, the Alliance Defending Freedom (classified by the Southern Poverty Law Center as a hate group) sought to have this overturned. Acting on behalf of a group of cisgender girls, the Alliance Defending Freedom filed a complaint with the OCR claiming that transgender inclusion “threatens to reverse the gains for girls and women that Title IX has achieved since 1972.” This was followed by an Alliance Defending Freedom-backed lawsuit to change the “discriminatory policy” that was “displacing girls in competitive track events in Connecticut.” District court judge Robert Chatingy dismissed the suit in 2021. “Courts across the country have consistently held that Title IX requires schools to treat transgender students consistent with their gender identity,” he wrote in his decision. “Every Court of Appeals to consider the issue has so held” (Ring, 2021).

Undeterred, politicians have introduced a rash of state-level bills to exclude transgender students from sport. From 2020 to 2021, the legislatures in 36 states considered such bills (Sharrow, 2021b). By the end of 2021, 11 state laws were signed or passed by executive order. Ironically, these bills purport to “protect” or “save” girls’ and women’s sports, and to ensure “fairness,” when the politicians behind them have consistently failed to support female athletes in any identifiable way. If they are truly invested in girls’ and women’s sport, they might begin by enforcing Title IX. Instead, as the American Civil Liberties Union correctly assesses, “[w]e must see these efforts for what they are: fear mongering intended to push transgender and nonbinary people out of public spaces” (Medley & Sherwin, 2019).

LGBTQ+ advocates hoped that the NCAA would intervene and refuse to hold championships in states with trans-exclusive legislation. That never happened. Advocates again held hope that the NCAA would approve regulations that would make intercollegiate sport safer and more accepting of gender diverse athletes. Instead, in early 2022, the NCAA announced a new constitution that relegated that authority to each individual sport’s national governing body. This “sport-by-sport model” means that intercollegiate athletes in different sports will be subjected to different regulations, which are backed by varying degrees of research and consideration, and may contradict state-level legislation (National Collegiate Athletic Association, 2022).

It is important to remember that the NCAA (n.d.) professes to be an organization “focused on cultivating an environment that emphasizes academics, fairness and well-being across college sports.” Its member institutions are, above all, academic institutions where discrimination and transphobia should have no place. This is not to say that no policy is the best policy, at least at the
intercollegiate level. Instead, it is a call for principles like those in the International Olympic Committee’s (2021) “Framework on Fairness, Inclusion, and Non-Discrimination on the Basis of Gender Identity and Sex Variations.” Within this framework, the IOC asks that governing bodies consider 10 guiding principles when crafting regulations in their respective sports, including importance of inclusion, the prevention of harm, and the need for evidence-based decisions.

Title IX in the NIL Era

The NCAA’s 2022 constitution also shirks responsibility when it comes to athletes’ ability to benefit from their names, images, and likenesses. Instead, the association has essentially left the details up to divisions, conferences, and individual schools, in accordance with state laws. Among other entitlements, athletes can now hire agents, sign endorsement deals, charge for their autographs, and profit from public appearances, all of which radically redefines the NCAA’s longstanding definition of amateurism.

On the surface, the NIL policy seems like a fair way to compensate college athletes without the university paying them directly, which would unquestionably lead to Title IX violations. However, if an institution is not treating men and women athletes fairly, that affects their NIL earning potential. Attorneys predict that “NIL is headed for a collision with Title IX.” As they explain,

As soon as a university, its employees, or its booster clubs play any role in helping athletes earn money or make deals, the school is necessarily providing a benefit to them. And Title IX requires that male and female athletes be treated equally. If the university arranges or offers deals for men and not women, or vice versa, it has trouble under the law. . . . Here are some examples that could lead to Title IX violations:

- The university trains its men’s basketball team on how to navigate the world of contracts and agents but does not similarly train any women’s team.
- The university allows the football team members to use its trademarked logo in an ad for a sports apparel brand but for not any women’s team members.
- The women’s swimming and diving team coach holds meetings with various vendors to feature her team members on their website, but no men’s team coaches hold similar meetings.
- The men’s baseball team members are paid by the university’s apparel partner to have jerseys sold with their names on the back, but no female athletes are offered similar deals. (Bryant & Joshi, 2021; see also Jessop & Sabin, 2021)

Recruiting is another area of consideration, for although NIL deals are not supposed to be used for recruiting purposes, it is already happening. “We use it,” says University of Southern California football coach Clay Helton. “We have a presentation we do in recruiting to be able to show the advantages of being in a market like L.A.” (Dellenger, 2021). Are women athletes getting the same pitch? Are they equally informed and able to capitalize on the free market? We already know that colleges and universities consistently grant men’s teams more and better marketing and negotiate television contracts that place men on a more prominent stage, all of which makes them more attractive to sponsors. Simply put, the lack of Title IX compliance undermines women’s NIL opportunities.

The inverse is also true: NIL opportunities undermine Title IX compliance, particularly as boosters funnel their financial contributions away from athletic departments and into “collectives” that help athletes capitalize on NIL opportunities. In 2020, donor contributions were 20% of FBS schools’ total revenues, which, under Title IX, are supposed to benefit both men’s and women’s programs (Knight Foundation, n.d.). According to the OCR (1995), if a school receives a donation, that school must “ensure that benefits, services, treatment and opportunities overall, regardless of funding sources, are equivalent for male and female athletes.” But there is no similar mechanism in place for donations to collectives, trusts, and other groups that operate independently of a college or university.

The NIL era is currently too new, too uncertain, and too unregulated to know what will happen. As of March 2022, women athletes earned just 32.6% of all NIL compensations (Voepel, 2022). Certainly, big-name stars like University of Connecticut basketball’s Paige Bueckers and Louisiana State University gymnast Olivia Dunn have netted lucrative deals. But while NIL opens a free market of financial opportunity for college athletes, those opportunities will likely reveal, if not exacerbate, the deeply entrenched and intersectional biases that continue to hold women back.

The Athletic Arms Race

NIL deals are a growing sector of college sports’ “arms race” to build the biggest and most lavish facilities, hire the best coaching staffs, and field the best teams, often at the expense of other athletic and academic programs. In 2017, Clemson University spent $55 million on its football complex to include, among other amenities, a wiffle ball field, miniature golf course, basketball court, sand volleyball court, barber shop, nap room, and a giant slide. This is the same school that, 3 years later, felt compelled to drop its men’s cross-country and track and field teams to save $2 million. In 2019, Louisiana State University unveiled the $28 million renovation of its Football Operations Building, including a new locker room replete with “pods” designed to mimic first-class air travel. “Each pod has a chair that folds out into a bed, storage space, an iPad holder to watch film and more” (Kubena, 2019). At the same time, the Chronicle of Higher Education reported that the school had a $700-million backlog in deferred maintenance for academic facilities, including “threadbare buildings” and a “decrepit” library that was prone to flooding (Jarvis, 2019).

It is no secret that spending on men’s college basketball and football is out of control or that coaching salaries are a big part of that. In 40 states, the highest paid state employees are men’s basketball and football head coaches (McMillen & Kirwan, 2021). At least 26 NCAA Division I institutions pay their men’s basketball coaches more than $3 million a year. The average salary for FBS head football coaches in 2020–2021 was $2.7 million, not to mention the salaries of their massive coaching staffs. During that same time, FBS schools paid more than $107.5 million to buy out the contracts of the head, assistant, and strength coaches whom they fired (Schrotenboer, 2020).

Those who blame Title IX for the loss of men’s sports must pay attention to the bigger financial picture. In 2020, Michigan State University (MSU) cut its men’s and women’s swimming and diving programs to save the athletic department $2 million. Just prior to that decision, the school hired its new head football coach, Mel Tucker, with a $5.5 million annual salary. MSU also paid $3 million to buy out Tucker’s contract from the University of Colorado. This was in addition to former coach Mark Dantonio’s

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$4.4 million annual salary and another $4.3 million for his “longevity bonus” in recognition of his “long service to the University” (Rosenberg, 2020; Solari, 2020; Taylor, 2019). In all, MSU shelled out $17.2 million to its head football coaches in 2020 alone. Meanwhile, swimmers and divers were left high and dry.

FBS college football is not the villain in this Title IX story, but spending in the sport deserves greater scrutiny. So does spending in Division I men’s basketball, particularly because there are only 15 players on a team. Duke University, for example, sponsors 11 men’s varsity sports: Football players make up 30% of varsity male athletes and 44% of the expenses in men’s sports, yet men’s basketball players, who are 4% of the school’s male athletes, receive 35% of all men’s expenses. The nine remaining men’s teams—66% of all male athletes—share just 20% of all men’s expenditures (Department of Education, n.d.).

There are ways to deescalate the arms race in college sports. Economist Andrew Zimbalist (2018) argues persuasively for Congress to grant the NCAA a partial and conditional antitrust exemption so that the association could impose a salary cap on coaches’ earnings. “Knock them [the coaches] down to $200,000 (which would still put them above 99 percent of the faculty), and colleges would be able to add another three to six sports, or, heaven forbid, reduce their large athletic deficits” (Zimbalist, 2007, p. 240).

Another strategy is to subject football to a type of roster management. At the Division I FBS level, football is a head count sport—each of the 85 recipients of football scholarship receives a full ride. The NCAA could reduce the 85-scholarship allowance as it did in 1973 (to 105 scholarships), 1978 (to 95), and 1992 (to 85) and make them equivalencies (partial scholarships) to trim costs, spread the wealth, and comply with Title IX. “Though many coaches would disagree,” reasons USA Today’s Dan Wolken (2018), “the 85-scholarship limit has not only become outdated but also allowed for the kind of extreme roster bloat that lets superpowers stockpile talent.” Reducing the number of football scholarships to 70 or 65 or 60 would also make 15–25 full scholarships available to other men’s programs, many of which, such as volleyball, fencing, tennis, and golf, are forced to make due with 4.5 equivalency scholarships per team.

Opponents of the idea insist that 85 scholarships are necessary for players to develop, to cover injuries, and for the health of the program. Proponents point out that NFL rosters are limited to 53 players and that, in the college game, no more than 45 to 50 players record any meaningful playing time. “If football scholarships were cut to 60,” Zimbalist (2018) calculates, “the average college would probably save close to $1.8 million annually—easily enough to finance an average size FBS soccer team plus an average size FBS golf team, or an FBS tennis team plus gymnastics team, and have a half million dollars or more left over” (p. 348). With money always tight in college sports, this is one cost-saving measure that deserves more attention.

**Sexual Harassment and Assault**

The decision in Alexander v. Yale University (1977) established that sexual harassment, broadly defined to include sexual and gendered violence, constitutes sex discrimination and is therefore a contravention of Title IX. Sexual harassment can “interfere with a student’s academic performance and emotional and physical well-being,” the OCR clarified in 2001. “Preventing and remedying sexual harassment in schools is essential to ensuring a safe environment in which students can learn.” After a period of regression under the Trump administration, the Department of Education (2022) renewed its commitment to Title IX on the occasion of its 50th anniversary by announcing a proposal to “restore crucial protections for students who are victims of sexual harassment, assault, and sex-based discrimination.”

Of all Title IX concerns, sexual harassment is the most urgent (Stimpson, 2022). While these concerns are not confined to sport, there are too many instances in which sport exacerbates the problem. In particular, there are disturbingly frequent accounts of school officials and staff who put profit, reputation, and institutional brand above the health, safety, and well-being of their students and employees. Although it happens at all levels and facets of sport, and at schools big and small, two high-profile debacles at FBS universities demonstrate not just the scourge of sexual harassment, but also the administrative complicity and disregard that allow it to continue, as well the NCAA’s failure to effect change.

In 1997, physician Larry Nassar sexually abused 16-year-old gymnast Larissa Boyce at a camp held at MSU. She confided the assault to MSU gymnastics coach Kathie Klages who, instead of believing the young athlete, instead “berated” her and made her feel as though she was “crazy” and a “liar,” as Boyce later testified (Burns, 2020). Klages apparently ignored a similar report in 2016, but she was not alone. A subsequent investigation found that at least eight other women reported Nassar to least 14 MSU employees, including athletic trainers, coaches, and university police (Kozlowski, 2018).

Those complaints only rose to a Title IX investigation in 2014, when MSU student Amanda Thomashow disclosed that Nassar sexually assaulted her during a physical examination. The ensuing investigation cleared him of any wrongdoing. As reported:

Relying on the medical opinions of four MSU employees who had close ties to Nassar, the Title IX investigator determined Thomashow received an appropriate medical procedure and likely misinterpreted it as sexual assault because she wasn’t familiar with osteopathic medicine and wouldn’t know the “nuanced difference.” (Mencarini, 2018)

MSU allowed Nassar to resume his duties, during which time he continued to abuse his patients. This persisted until 2016, when former gymnast Rachael Denhollander filed her own Title IX report, a criminal complaint with MSU police, and shared her story with the Indianapolis Star (Evans et al., 2018). The publicity emboldened others to come forward with their own accusations against Nassar, who was eventually sentenced to up to 175 years in prison for sexually assaulting hundreds of girls and women under the guise of medical treatment. Who knows how many might have been spared if MSU employees acted appropriately?

Prioritizing institutional reputation over the survivors’ rights proved costly for MSU—although survivors paid a far dearer price. The school settled a lawsuit for $500 million and paid another $4.5 million following an OCR investigation. Yet, incredibly, the NCAA determined that MSU had not violated association rules in its handling of the Nassar case.

The NCAA came to the same conclusion with Baylor University, even after finding that school officials had enabled a “campus-wide culture of sexual violence” (NCAA, 2021c). This culture was most acute within the school’s football program as it rose to prominence under head coach Art Briles, who knowingly recruited athletes with histories of sexual and interpersonal violence (Luther & Solomon, 2015, 2019). In one of several lawsuits against the school, a plaintiff submitted that 31 football players perpetrated 52 sexual assaults between 2011 and 2014, including five “gang
“rapes” that were “committed by 10 or more players at once” (in Coppinger, 2017).

Although multiple women came forward with related charges, coaches, administrators, and athletic trainers failed to report the incidents to the university’s Title IX coordinator, to judicial affairs, and to the Baylor University Police Department. Officials also “directly discouraged complainants from reporting” and “contributed to or accommodated a hostile environment,” as an external review later revealed (Baylor, 2016, p. 2). In all, the athletic department “hindered enforcement of rules and policies, and created a cultural perception that football was above the rules” (Department of Education, n.d., p. 10).

Still, the NCAA ruled that Baylor’s “failings, however egregious, did not constitute violations of NCAA legislation.” President Mark Emmert qualified that “the authority of the NCAA in this area is very limited today. This is a clear demonstration of why the Association needs transformational change to create alignment between authority and responsibility to address the most critical issues in college sports” (NCAA, 2021d). The NCAA has been inconsistent in this respect. In 2012, it fined Penn State $60 million and imposed a 4-year postseason ban on the football program for its unconscionable (in)actions regarding coach Jerry Sandusky, since convicted of sexually abusing multiple children. At the time, Emmert professed that football would “never again be placed ahead of educating, nurturing and protecting young people” (Pearce, 2012). He should be held to his word.

Indeed, the “transformational change” Emmert called for has yet to happen. In 2021, the NCAA updated its “Policy on Campus Sexual Violence” but left enforcement up to individual schools. The 2022 NCAA constitution approved by more than 1,000 members makes no mention of sexual harassment or violence. Why aren’t these offenses NCAA violations?

At the very least, we must “start by believing” reports of sexual harassment (Lonsway & Archambault, 2020). This includes empowering survivors to come forward in a safe, compassionate, trauma-informed environment. Grenardo (2020) proposes schools “adopt guidelines for Title IX complaints against athletes that allow universities to remove athletes from their teams shortly after a Title IX accusation has been made” (pp. 49–50). These policies would be a “powerful deterrent to further sexual misconduct by that student and other college athletes. This, in turn, protects the safety of the university’s educational environment” (p. 62; see also Hernandez, 2021).

As the previous examples instruct, however, schools cannot be trusted to act in accordance with such regulations. For this reason, Weiler (2019) recommends that the federal government require each school to work with a “third-party organization . . . to oversee and manage all Title IX claims.” This would provide “an assurance of an unbiased and properly facilitated investigation” and could make victims “feel safer reporting their claims” (pp. 158–162). The same independent organization might oversee and manage all aspects of Title IX, including sport, to end the sex discrimination that still continues after 50 years.

**We Cannot Wait Another 50 Years**

Taken together, these nine areas point to a pattern of continued sex discrimination and the devaluation of girls and women. Still, a critical celebration reminds us that 50 years of Title IX has also brought tremendous progress in all areas of education, including sport. That progress is nothing short of a cultural shift—a transformation in the understanding and respect for the capabilities of girls and women that, for too long, were underestimated, undervalued, untapped, and uncelebrated. Moving forward, I propose a four-pronged approach to realizing the full potential of Title IX that includes education, transparency, initiatives, and accountability.

**Education**

Basic Title IX literacy is the first step toward ending sex discrimination in school sports. At all levels, all students, administrators, staff, and educators need to know what the law is, what it covers, and why it is important so that they can work together in the fight for gender equity. It must be made clear where to go for assistance. Those who provide that assistance, including Title IX coordinators and all mandatory reporters, must be educated about trauma-informed care.

**Transparency**

In 1994, Congress passed the Equity in Athletics Disclosure Act, which requires all colleges and universities that receive federal funds to annually report on athletic participation data and finances. In the name of transparency, the Department of Education could expand the Equity in Athletics Data Analysis in at least five significant ways:

1. Make sure the data are accurate and comprehensive by standardizing accounting practices, prohibiting fraudulent roster management, and including resources devoted to NIL assistance.
2. Require schools to assess their history and continuing practice of adding opportunities for the underrepresented sex and how they are meeting the interests and abilities of their undergraduate populations.
3. Include data related to the racial and ethnic identities of athletes, coaches, and administrators.
4. Subject schools to periodic audits.
5. Expand to include high schools.

High schools already file similar reports with their state athletic associations, but in most states, accessing that data requires filing a Freedom of Information Act request. By either expanding the Equity in Athletics Data Analysis, or by Congress passing the High School Data Transparency Act, that information would be made available to the public.

**Initiatives**

As previously argued, we need initiatives to get more women in positions of leadership and to curb spending in college sports. We also need initiatives to get all children physically active. The privatization and rising costs of youth sport have priced out too many youths, for whom community-based and school-sponsored sports are their only option (Aspen Institute, n.d.). These programs need more resources and a broader reach to mitigate disparities in social class, race, ethnicity, religion, immigrant status, disability, and geographic location. And they need to be made safe. Adding new opportunities at the college level will continue to further disadvantage already disadvantaged students unless the system changes.

All of this may mean rethinking how we define school sports. In recent years, the Olympic Games have included breakdancing, skateboarding, karate, and kickboxing. While these break with our traditional understanding of American sport, their sponsorship may allow more kids to get in the game.
**Accountability**

Litigation and remediation have been successful, but it should not be incumbent upon injured parties to hold their institutions accountable to Title IX. Rather, there should be checkpoints in place to assess, reward, and penalize schools regarding their commitment to gender equity. As a condition of receiving federal financial assistance, the Department of Education could require institutions to submit full reviews every 3–5 years. Ideally, reviews would be conducted by independent, third-party investigators to keep the process impartial.

The reviews could also be made available to district or state high school associations, or, in the case of intercollegiate sports, to their conferences and national governing bodies. All these organizations could require gender equity as a condition of membership and treat Title IX violations like any other serious infractions. For instance, the NCAA could consider sex discrimination as equivalent to recruiting violations or illegal payments to players, and hand down comparable sanctions, such as fines, scholarship reductions, injunctions on recruiting, exclusion from postseason play, vacation of records, and even the proverbial “death penalty” that would shut down the school’s athletic department for at least 1 year. Similar penalties would send a clear message that gender discrimination is antithetical to college sport’s professed educational mission.

Allowing sex discrimination to continue after 50 years of Title IX is a disservice to the law and to the advocates who fought so hard to get it passed. It is a great law, but we have yet to experience its full power. Above all, Title IX affirms that education, free from sex discrimination, is a civil right. For this, we cannot afford to wait another 50 years.

**Notes**

1. In 2002, Title IX was officially renamed the Patsy Takemoto Mink Equal Opportunity in Education Act in recognition of the law’s coauthor.

2. The Department of Education, Office for Civil Rights (1979) issued its “Intercollegiate Athletics Policy Interpretation” for Title IX, which stipulates that an institution “is in compliance with the three-part test if it meets any one of the following parts of the test: (a) The number of male and female athletes is substantially proportionate to their respective enrollments; or (b) The institution has a history and continuing practice of expanding participation opportunities responsive to the developing interests and abilities of the underrepresented sex; or (c) The institution is fully and effectively accommodating the interests and abilities of the underrepresented sex.”

3. The NCAA first permitted NIL opportunities on an interim basis starting July 1, 2021, under pressure from state legislatures and Supreme Court’s decision in NCAA v. Alston.

4. Klages was suspended in 2017 after records surfaced showing she discouraged athletes from filing complaints against Nassar.

5. Several NCAA conferences ban athletes who have been criminally convicted or disciplined by their schools for violent offenses. At least two institutions have formally adopted the “Tracy Rule,” named for rape survivor and activist Brenda Tracy, which requires background checks for athletes and disqualifies any athlete found responsible for a sexual or violent offense.

**References**


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