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Title IX: The End of Gender Discrimination?

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SENIOR THESIS APPROVAL

This Honors thesis entitled

“Title IX: The End of Gender Discrimination?”

written by

Micah Smith

and submitted in partial fulfillment of the
requirements for completion of the
Carl Goodson Honors Program
meets the criteria for acceptance
and has been approved by the undersigned readers.

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Introduction

Title IX has, in this day, become a topic that is both controversial and confusing. Nearly anyone in the United States today that is moderately well informed is able to relate something about Title IX and its effects. In response to an inquiry of the nature of Title IX, some would answer that Title IX is the law that requires colleges to have an equal number of athletics teams for men and women. Another person might answer that Title IX is a law that has promoted women's sports to new heights, culminating in the American victory at the Women's World Cup in 1999. A third person could reply that Title IX guarantees women the right to participate in athletics in college. Yet another person, in answer to the previous question, would angrily reply that Title IX is the thing that is rapidly, across the country, destroying men's college athletic teams that produce little revenue, such as wrestling, swimming, and cross country. It is certain that Title IX produces a wide range of feeling from citizens across the country. Much of this wide range of feeling can be blamed on the common misinformation to be found everywhere, even in major media outlets. Proponents on both sides of the issue strongly push the parts of Title IX law that reinforce their stance. The various sources for the regulations concerning Title IX law allow nearly everyone to be right in their opinion. It is only when one pieces together all the inputs to Title IX that a true understanding can begin to form. This study seeks to piece together this variety of information and form it into an understandable whole. It will also address the current state of affairs in Arkansas intercollegiate athletics, an arena that is not without its share of Title IX controversy. It is

my hope that, at the end of this research, a more understandable and unbiased accounting of Title IX and its effects may be produced.

Chapter 1: A History of Title IX

Title IX of the Education Amendments of 1972 was enacted in response to the findings of Congress, during hearings in 1970 held by the House Special Subcommittee on Education, of pervasive discrimination against women with respect to educational opportunities. Title IX itself reads, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving Federal financial assistance.” This act was written in an effort to continue the progress made in the 1960s in reducing discrimination. Title IX was written in language very similar to Title VI of the Civil Rights Act of 1964, the law that made racial discrimination illegal.¹ Using the same type of law, members of Congress now wanted to extend the reach of the civil rights movement to include the protection of women’s rights.

The history of the passage of Title IX is one that is not particularly well known, most likely because of the relatively little debate with which it became law. Beginning in 1970, Representative Edith Green, a Democrat from Oregon, initiated congressional hearings concerning the discrimination against women in education. Two years later, she introduced Title IX to the Education Amendments in the House of Representatives, while Senator Birch Bayh sponsored a bill to the same effect in the Senate. At the hearings for the bill, very few advocates for women’s rights groups testified; this was largely due to the insistence of Representative Green that they not draw any more attention to the bill than was necessary. In this way, it was thought that most members of Congress would

vote for the amendment without knowing what was included. For the most part, this strategy was quite effective, and the bill passed with little debate. The bill drew remarkably little attention from other sources, an amazing occurrence considering that the bill would have an impact of such magnitude.² There was some concern expressed over whether the new law would require schools to allow women to play football, but once these concerns were addressed, there was little more discussion.³

In 1974, the Women's Educational Equity Act was passed to provide funding for research into gender discrimination in education. Essentially, this act is the partner of Title IX; where Title IX gives penalties for noncompliance, this act seeks to promote with incentives and guidance the role of women in education.⁴ This act established the Advisory Council on Women's Educational Programs, as well as authorizing the Commissioner of Education to provide financial assistance directly to entities that promoted educational equity for women.⁵ The 1974 Education Amendments gave Congress the power to strike down any regulations concerning education that they deemed to be against congressional intent. These amendments also delegated to the Secretary of Health, Education, and Welfare the responsibility of preparing regulations to implement Title IX. Specifically included in this authorization under the Secretary's regulation were intercollegiate athletics in all schools receiving federal funds.⁶ Around this time, the possible effects of Title IX were becoming visible to some members of Congress and to leaders in certain areas in athletics, particularly the National Collegiate Athletic Association (NCAA). An amendment to the 1974 Education Amendments was proposed by Senator John Tower. Senator Tower's amendment sought to exclude

revenue-producing sports from the scope of Title IX regulation. Later, in a conference committee that was convened to work out differences in the bills between the two houses, the Tower amendment was rejected.⁷

Later in 1974, a bill presented by Representative Marjorie Holt and supported by Representative Green sought to prevent the Department of Health, Education, and Welfare (HEW) from gathering data on race and gender discrimination in educational institutions. This amendment passed in the House but was defeated in committee in the Senate. Later the same year, another amendment was introduced that was quite similar to the previous one. However, it too was passed in the House and defeated in the Senate. In 1975, Representative Robert Casey presented an amendment that would have prevented HEW from withholding federal financial assistance from schools not in compliance with Title IX.⁸ This, however, also failed to pass Congress.

The Javits Amendment was passed in 1974. It was written to ensure that some differences in treatment could exist between the genders in athletic programs. This amendment instructs the HEW to make reasonable provisions in consideration of the varying nature of different sports. What this meant for schools was that, for a case in which expenditures were not equal for both genders, discrimination did not necessarily exist. Because the equipment required by a football team is different and often more expensive than that required by a volleyball or softball team, expenditures likely will be unequal. This act allows schools to spend more money where it is needed without the concern of punishment. The Javits Amendment clearly gives schools the freedom to have unequal expenditures without violating Title IX.

The first regulations for Title IX were issued in 1975 by HEW and signed by President Ford. Before these regulations were issued, the Office of Civil Rights (OCR) of HEW invited those interested to submit comments and opinions. In response to this call, over nine thousand comments and suggestions were received within six months, offering a glimpse of how controversial this particular statute would become. At the same time, before the regulations were issued, the Subcommittee on Secondary Education held hearings to provide the same level of feedback. After the regulations were submitted to Congress, Congress had a forty-five day period in which to review the guidelines. Congress did nothing to strike down the regulations, thereby allowing the regulations to become effective.⁹

In 1979, HEW issued what was said to be the final policy interpretation for Title IX in athletics. The effect of releasing a policy interpretation rather than a set of regulations was that the department was able to bypass Congress. In this way, the interpretations of the Department were passed on to the public without the possibility of a lengthy debate and a possible defeat. This method, however, did mean that the interpretation might not have quite the same amount of authority as it might have had these been official regulations.¹⁰ An emphasis in the regulations was placed on providing proportionately equal scholarships to both sexes as well as equivalent benefits and opportunities.¹¹ However, this policy interpretation did not require proportional expenditures on men's and women's athletics except in the area of scholarships. Schools were required to offer scholarships according to the gender proportion of participants in athletics rather than in proportion to the gender makeup of the institution as a whole.

This proportionality was extended to all types of federal assistance including grants, loans, and work-study opportunities.

In the policy interpretation, criteria were given as a test to show compliance. The criteria given stated that equal opportunity must be provided for both sexes in the areas of intercollegiate, club, and intramural athletics. The areas in which equal opportunity was required and would be examined were:

- (i) Whether the selection of sports and levels of competition effectively accommodate the interest and abilities of members of both sexes;
- (ii) The provision of equipment and supplies;
- (iii) Scheduling of games and practice time;
- (iv) Travel and per diem allowance;
- (v) Opportunity to receive coaching and academic tutoring;
- (vi) Assignment and compensation of coaches and tutors;
- (vii) Provision of locker rooms, practice and competition facilities;
- (viii) Provision of medical and training facilities and services;
- (ix) Provision of housing and dining facilities and services; and
- (x) Publicity¹²

The inclusion of these various facets of athletics programs enabled those in charge of funding to provide equal support for men and women without necessarily spending equal amounts of money. Also included in the area of equal opportunity was the area of recruiting; schools were not allowed to give recruits of different genders differing levels of accommodation. This aspect of the regulation was to be achieved by the provision of

relatively equal opportunities of recruiters for both male and female teams to recruit, of equivalent funds for recruiting, and of the basic equality in the treatment and opportunities provided to male and female recruits.¹³

The policy interpretation outlines the enforcement tools available to HEW for enforcement of the policies. If a complaint is filed, HEW has 90 days to conduct an investigation and to inform the institution being investigated of its findings. If a violation is found, another 90-day period is provided for HEW to obtain a voluntary compliance plan from the institution. If the plan is acceptable, the institution must continue to carry out that plan to its conclusion under the supervision of HEW. If the plan provided is not acceptable, the formal process leading to the termination of federal assistance is begun.

The policy interpretation of 1979 makes it clear that the interests and abilities of both genders must be equally accommodated. The level of accommodation present is determined primarily by examining levels of participation and the number of available opportunities for each gender. The primary method for checking the accommodation provided by schools in regard to Title IX is known by most as the three-prong test, a test which focuses on the numbers of male and female participants in athletic programs. This test offers a three-step process to check for compliance. If a school is not in compliance according to the first prong of the test, they still have an opportunity to be in compliance according to the second part. If an institution is not in compliance with the second part, there remains one more opportunity to show compliance in the third prong.

The first prong of this test is proportionality of participation. A school is said to be in compliance if the numbers of athletic opportunities for males and females are

roughly proportional to the enrollment of the school in terms of gender ratio. It is generally assumed that “roughly proportional” can be taken to mean within five percent of actual gender ratio. For example, if this test is to be passed, a school with a student population that is seventy-five percent female must ensure that at least seventy percent of the athletic opportunities provided are for females. Compliance using this measurement is usually quite far from a reality in most schools, creating a great need for the second and third prongs.¹⁴

The second part of this three prong test entails showing that the opportunities for the under represented gender have been progressing toward proportional compliance. No specific guidelines are given to define this idea, but, typically, as long as a school has added or is in the process of adding or plans to add more sports for the under represented gender, they are said to be in compliance. Another part of this option for schools is to show a progression toward proportionality by reducing the number of men’s sports and by reducing the number of male participants by limiting the numbers of “walk-ons” to their male teams.

The third part of the three-prong test gives institutions that are not in compliance with the first or second parts of the test one additional method to show compliance. If a school can demonstrate that the interests of the under represented gender have been adequately accommodated, they are said to be in compliance. No specific method of demonstration was originally given by OCR, making it unclear exactly how a school might show this situation to be true for their school. However, it was generally assumed

that an overall lack of interest in athletics among the female population at the school must be demonstrated.

Women's groups brought attention to the problems in enforcement of Title IX with lawsuits in 1977. In *Women's Equity Action League v. Califano* and *Adams v. Califano*, settlements were reached in which HEW promised to clear the backlog of complaints and begin to enforce Title IX more vigorously.¹⁵

An important advance came for Title IX advocates in the 1979 Supreme Court case of *Cannon v. University of Chicago*. In this case, the Court ruled that individuals have the right to file lawsuits against specific educational institutions. This ruling allowed those with grievances to bypass the often backlogged OCR and go directly to the courts.¹⁶ This ruling also had the effect of providing more than one possible punishment for noncompliance. Before this case, even in the original decision that led this case to appeal, it was thought that the only punishment that could be administered would be the removal of federal financial assistance from the school. The court relied in their decision partly on the previous permissibility of lawsuits due to violations of Title VI of the Civil Rights Act of 1964. Because Title IX was modeled after Title VI, the court was able to follow in previous decisions.¹⁷

In 1982, *Haffer v. Temple University* established that schools receiving federal financial assistance are subject to Title IX regulation through all parts of the institution. Temple argued that, because the athletic program itself did not directly receive federal funds, it was not subject to Title IX regulation. However, the court ruled that, although

the athletic program did not benefit directly from federal funds, it is subject to regulation along with the rest of the university.¹⁸

Shortly after the Haffer decision, another important ruling was handed down. In *Hillsdale College v. Department of Health, Education, and Welfare*, the Circuit Court of Appeals found that Hillsdale College could not be required to submit an Assurance of Compliance because it did not receive federal assistance in the area of athletics. HEW's case was built on the premise that, because students at Hillsdale received federal grants and loans, the college could be shown to be accepting federal assistance, thereby bringing the college as a whole under the regulatory power of HEW. However, the court found that this indirect method of receiving federal assistance did not bring all parts of the college under Title IX regulation, but only the student loan and grant program. This decision severely hindered the power of HEW to regulate private schools, those that did not rely directly on the government for funding.¹⁹

The Supreme Court decision in *Grove City College v. Bell* had a profound limiting effect on Title IX action in athletics. The lawsuit was filed by Grove City College as a response to demands by HEW that it provide an assurance of compliance. At the district court level, a verdict was returned in favor of the college, while on appeal at the circuit level, that ruling was overturned. The Supreme Court reached a nearly unanimous decision, but it was one that contained several concurring or concurring in part and dissenting in part opinions. The ruling held that:

1. Title IX was applicable to the school because it did receive federal financial assistance in the form of student assistance programs.

2. The presence of federal assistance in one area did not open up all school programs to the regulations of Title IX. Only those programs that did receive federal monies, in this case the financial aid office, are subject to Title IX enforcement.
3. If an institution does refuse to comply with appropriate Title IX regulation, the Department of Health, Education, and Welfare is justified in withdrawing all federal financial assistance.
4. Requiring the school to comply with Title IX regulation as a condition to the receipt of federal financial assistance is not a violation of the First Amendment rights of the college or students.

This ruling effectively removed the authority of HEW from nearly all intercollegiate athletic programs in the country.²⁰

In response to these perceived reverses in Title IX, the Civil Rights Act of 1984 was introduced to Congress in 1984. This act passed the House of Representatives overwhelmingly, but failed to pass the Senate. The failure in the Senate was due in large part to the filibuster tactics of a determined group of Senators. This act was followed up in 1985 when the Civil Rights Restoration Act was introduced as a new and improved version of the bill that had failed the previous year. However, this version of the bill also failed.

The Civil Rights Restoration Act of 1988 was introduced to the Senate in February 1987 by Senator Ted Kennedy and was cosponsored by more than half of the members of the Senate. After spending more than a year in Congress, it was passed and

sent to President Reagan in March 1988; shortly after receiving it, President Reagan vetoed the bill. Less than a week later, both houses of Congress voted to pass the act over the President's veto. This act was written to restore the broad scope of coverage that had been the standard at earlier times as well as to clarify the application of Title IX of the 1972 Education Amendments, the Age Discrimination Act of 1975, and Title VI of the Civil Rights Act of 1964. This act explicitly defined the phrase "program or activity" to mean

1. Any department, agency, or other instrument of a state or local government,
2. Any government entity that distributes federal financial assistance as well as the entities that may receive such assistance,
3. Any college, university, postsecondary institution, or other public system of secondary education,
4. Any local educational agency or school system, and
5. Any corporation, partnership, or other private organization.

In specific terms, the law would now apply to entire entities rather than small parts of those entities. In regard to college athletics, this act had the effect of returning the institution-wide coverage of Title IX that had been in place previous to the Grove decision.²¹

Franklin v. Gwinnett County Public Schools has proved to be an important case because it has made available a new avenue for securing reparations for those that had been discriminated against. It was in this decision that the court first allowed monetary damages to be awarded to those who had been discriminated against under Title IX. In

this way, schools faced more immediate consequences for their noncompliance than by legal action by OCR. The possibility of monetary damages being awarded was deemed necessary by the court because the traditional courses of action in regard to Title IX would not have helped the petitioner in this case, who was no longer enrolled in school.²²

In 1995, the Office of Civil Rights issued a clarification for Title IX compliance. This clarification did not change any policies concerning compliance, but it did seek to emphasize certain points regarding it. In regard to the first part of the three-prong test, the clarification firmly established the fact that strict proportionality is not required. Exceptions are made to account for fluctuations in student enrollment or differences so small as to make any wholesale changes unreasonable.

For the second part of the test, the update specified that institutions wishing to comply under this part must have a history of expansion of opportunities for the under represented gender in response to the interests of that gender. Further, the institution must show a continuing practice of expansion in response to the prevailing interests of the under represented gender. This makes it clear that this second part of the test is a process that is intended to lead to compliance under the first prong of the test. Other factors that lend to a school's being deemed in compliance in this area would be having a policy of nondiscrimination and a process by which students could request the addition of sports or the expansion of opportunities. Also, the practice of only removing opportunities for the over represented gender is specifically given as an action that does not demonstrate compliance in this regard. For this action to be seen as progression toward compliance, it must be accompanied by additions to the women's program

The clarification also addresses situations relevant to the third part of the test. There are three areas given that would be examined to determine compliance under this part of the test. The first of these areas tries to determine if there is sufficient unmet interest to support an intercollegiate team. To determine this, the OCR would look for requests by students that a particular sport be added, requests that an existing club sport be elevated to intercollegiate status, levels of participation in club and intramural sports, questionnaires of students regarding interest in particular sports, and participation levels of admitted students at the interscholastic level. In this way OCR would be able to assess the level of interest. The second area OCR would evaluate looks to determine if there is sufficient ability to sustain an intercollegiate team. OCR would evaluate the athletic experience of students; the opinions of coaches, administrators, and athletes on the existence of such experience; and the possible previous existence at the club or intramural level of a team with competitive experience to determine if the ability to sustain a team is present. The third area OCR would examine is the level of competition that would be present for a new team. If there are in the school's athletic conference or in the school's geographic region similar teams available for competition, there would be considered to be an adequate level of competition available to support a team. If all three of these areas are shown to provide sufficient interest, ability, and competition, a school would not be able to comply with Title IX under the third part of the test.²³

A vastly important decision came out in *Cohen v. Brown University*, a case with a series of appeals decided in 1995 and 1996. This case, decided in a federal district court and appealed to a circuit court, was a class action lawsuit filed against Brown University.

charging the school, its president, and its athletic director with discrimination against women in the area of athletics in violation of Title IX. The class Cohen represented was all current, future, and prospective female students at Brown who might seek to participate in intercollegiate athletics sponsored by Brown University. The suit was filed largely in response to the decision of Brown University to lower the women's gymnastics and volleyball teams from varsity to donor-funded status. In the same decision, men's water polo and golf were also reduced to donor-funded status. Prior to this case, Brown offered 75% more intercollegiate athletic opportunities for men than women, while at the same time men represented less than half the undergraduate population at the university.

In the court's opinion, of the women's teams at Brown that did not have university-funded status, four were in a position to be competitive at the varsity level. The court stated in its opinion that "a court assessing Title IX compliance may not find a violation solely because there is a disparity between the gender composition of an educational institution's student constituency on the one hand, and its athletic programs, on the other hand." This idea that a violation of the statute was not indicated simply by a disparity in the gender proportions is reinforced throughout the court's opinion. The court applied the three-prong test to Brown's athletics program to determine if the university was in compliance with Title IX. Because of the disparity between the gender proportions of the student population and the athletics population, the court found that Brown did not satisfy the first part of the test. In regard to the second prong, the court found that, while Brown did have a history of program expansion, its expansion did not serve to satisfy this prong because it did not seem to benefit the under represented gender.

Further, the court found that simply reducing the numbers of opportunities for men did not show progress toward compliance and would not satisfy this part of the test. As for the third part of the test, the court's finding, that there were as many as four of the women's sports that did not have varsity status that could compete on that level of competition, led to the opinion that Brown did not comply under the third part of the test.

Part of Brown's arguments in the case was that the three-prong test was, in effect, a tool of affirmative action that led to gender quotas. In this way, they argued that the test used to measure compliance with Title IX actually violated the statute. However, the court expressed strongly that Title IX is not, in fact, an affirmative action statute; rather, it is an anti-discrimination statute in the tradition of Title VI of the Civil Rights Act. The fact that the move to reverse the discrimination against one gender in the past may negatively affect the other gender does not necessarily constitute reverse discrimination, although all such actions are open to an equal protection review. In terms of providing equal opportunity, the court found that the most proper way to measure the opportunities available was to measure the current number of participants. A possible limit to the expansion of programs require to comply with Title IX was provided in the decision. The court determined that schools must accommodate the relative interests of both genders. In effect, a school must only accommodate the under represented gender to the point that it accommodates the over represented gender. In this way, reducing the opportunities for men does progress toward compliance, even though this alone cannot be seen as an adequate move toward compliance. The fact that the interests of the traditionally over

represented gender are not fully met does not imply that the interests of the other gender may be ignored until they are met.

The court in this opinion deals with the issue that many find so difficult to understand: the possibility of equal opportunity for both genders in an area that requires a segregation of them. Also addressed in the opinion is the issue of differing interest between genders. To this end the court states, "Interest and ability rarely develop in a vacuum; they evolve as a function of opportunity and experience." In this way, the court effectively ended the possibility that a school could claim that they were not in compliance with Title IX because of a lack of interest from females in their athletic program. The opinion refers to the practice of the Supreme Court of condemning gender discrimination based on "archaic and overbroad generalizations." The court addresses concerns that had been expressed by Brown that the actions required by the District court's decision would disadvantage male athletes at Brown. The court's reply to this is basically that bringing gender proportions in athletics closer to gender proportions in the student population can in no way be seen as a disadvantage to male athletes. The fact that these athletes previously enjoyed an advantage does not thereby guarantee them the same advantage in the future.

In the Brown opinion, the court outlines the requirements for schools that wish to establish their compliance based upon the third prong of the test. "An institution may determine the athletic interests and abilities of students by nondiscriminatory methods of their choosing provided:

- a. The processes take into account the nationally increasing levels of women's interests and abilities;
- b. The methods of determining interest and ability do not disadvantage the members of the under represented sex;
- c. The methods of determining ability take into account team performance records; and
- d. The methods are responsive to the expressed interests of students capable of intercollegiate competition who are members of an under represented sex.²⁴

The Brown decision is the most recent broadly applicable decision concerning Title IX. The current regulations concerning athletics in educational institutions are very similar to the original regulations issued in 1975. The general regulations read:

“No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.”²⁵

The regulations go on to define what separations are allowed on the basis of gender. In any sport in which membership on a team is based upon competitive skill or in any sport that is considered a contact sport, institutions are allowed to maintain separate teams. However, if an institution sponsors a team in a particular sport for members of one sex but does not sponsor a team for members of the other sex, and the athletic

opportunities for members of that sex have been previously limited, persons of the previously excluded sex must be allowed to try out for the team unless the sport is a contact sport. Sports considered to be contact sports under these regulations include boxing, wrestling, rugby, ice hockey, football, basketball and any other sport in which the purpose or major activity involves bodily contact.

The regulations also give stipulations for the equal treatment of male and female teams and athletes. The same criteria as were given in the initial regulations remain in place. A disclaimer is also included, a reminder that equal treatment does not always mean equal expenditures. Finally, the regulations give an adjustment period within which schools must comply with the regulations. The adjustment period given is one year for programs at the elementary school level and three years for all other institutions.

Today, schools are faced with the difficulty of bringing their athletic programs into compliance with Title IX regulations. However, there is a great deal of information available to assist schools in their attempts. According to "Check it Out," a pamphlet published by the National Women's Law Center as an aid to ensuring Title IX compliance, Title IX requires schools in the area of athletics to:

- i) offer male and female students equal opportunities to play sports
- ii) treat male and female athletes fairly; and
- iii) give male and female athletes their fair shares of athletic scholarship money.

The first of these requirements is defined in the three-prong test, discussed earlier. The second requirement, that of dealing with males and females fairly, is said to entail providing an equal quantity and quality of equipment and supplies, game and practice

times, coaches, financial support, and facilities. This does not necessarily require identical treatment, but rather equal overall treatment. In the third area, scholarships, schools are said to be responsible for keeping the proportion of gender balance of scholarship money within one percent of the gender balance of participation.

When Title IX was first introduced thirty years ago, it was a short, very ambiguous law the future implications of which few people understood. In the time since it was passed, several clarifications have been issued and many court decisions have been handed down that have changed the way Title IX is interpreted. In most regards, the current interpretation of this law is now clear, and the compliance of the institutions of higher education in Arkansas with that interpretation will be the subject of the remaining portions of this study.

Chapter 2: EADA Research

The main part of the research conducted for this thesis was the collection of forms created in compliance with the Equity in Athletics Disclosure Act (EADA). Most institutions of higher education in the country that participate in athletics use this form to report statistics from their schools regarding gender equity in the athletic programs. The forms were first used in 1996 and have remained much the same since then. Included in the information found in EADA forms are the number of students enrolled in the institution and the number of participants in each sport. The forms also include a good deal of information concerning the expenditures by the athletic program. There are figures for average salary for head and assistant coaches of men's and women's teams, as well as for the total number of full and part time male and female coaches. Operating expenses, those classified as "game-day expenses," are given individually for each sport and gender. For general expenses and revenues, the only sports for which individual figures are given are men's football, men's basketball, and women's basketball. These three sports are considered to be "moneymakers," the only sports which have a chance to produce enough revenue to pay for themselves. The expenses and revenues of the other sports are given as totals of all sports other than the revenue-producing sports. There are no clear and specific guidelines on how institutions are to collect and classify data, particularly in the area of finances; in most situations there is some possibility of ambiguity in regard to exactly what was spent for each gender or team. To provide an easy solution to this problem, the forms provide a place where revenues and expenses can

be denoted as being for the men's or women's program as a whole, or as simply being for the entire athletics program.

EADA forms are compiled each year by the educational institutions and submitted to the Department of Education. The NCAA keeps aggregate data on all of its institutions, but does not retain individual records. The website for the Department of Education provides the most recent report for each school but does not publish the information for past years. Another place EADA forms may be found is in *The Chronicle of Higher Education*; it provides the most recent as well as some historical data, but only for select schools. In Arkansas, for example, information could be found for the University of Arkansas at Fayetteville, the University of Arkansas at Little Rock, the University of Arkansas at Pine Bluff, and Arkansas State University; the information for only four schools out nineteen was provided in this place. The only possible way I found to obtain all the information needed for my research was to contact the schools directly.

All schools are required to keep a copy of their EADA forms after submission and this form is considered to be public information. For this reason, schools are required to provide copies of or access to these forms to anyone who requests them. In spite of a legal requirement to make this information available, some schools are reluctant to release information such as this that could possibly be used as a basis for a lawsuit against them. One of the major difficulties of the research was obtaining the necessary information. A large part of this difficulty arose from the fact that each school has a different administrative framework, with responsibility for record keeping being held by a different position in many cases. It is possible, and is often the case, that in each school a

person in an entirely different position or department could be in control of that school's EADA reports. At some schools, a request placed with the athletic director would quickly produce the information, while at other schools, the compliance officer, a position required by the NCAA, would be responsible for the gender equity information. Sometimes, at Ouachita for one, the information was held completely separate from the athletic department, usually somewhere high in administrative levels or in an institutional research department. Most of the time, the greatest difficulty was simply finding the person in control of the information in order to request it. At other times difficulties were had at larger institutions where the workload of those responsible for the information made the length of time necessary for obtaining the information much longer. However, at one school in particular, I was told that, "The University will not put itself into the role of providing this type of information to students." This refusal to provide public information to a member of the public is clearly a violation of the regulations concerning such information. At other schools, the reasons for which I could never determine, it seems that EADA reports are not required to be submitted. Most of the time this situation occurred at smaller schools that were not members of the NCAA, but no clear reason for the lack of this information was made apparent to me. For reasons such as these, not included in my research are the University of the Ozarks, John Brown University, Lyon College, Arkansas Baptist College, University of Central Arkansas, and Philander Smith College.

Once the EADA forms were received, the information from them was coded into the Statistics Package for the Social Sciences (SPSS) where some analysis could be

performed. Items of particular interest in the data were statistics on participation numbers and percentages, numbers of sports for each gender, and expenditures for each gender. With a period of seven years over which the data was distributed, it would be expected that institutions not in compliance at the beginning of the sample should show some movement in that direction in order to be in compliance according to the first or second part of the three prong test.

The first area in which compliance can be measured is that of participation. To be considered to be in compliance, the first part of the three prong test requires that the gender proportion of participants in athletics be within five percentage points of the gender proportion of the enrolled student population. This is the only part of the test that provides a permanent “safe harbor” as the second part requires progress toward fulfillment of the first part and the third part can require new proof at regular intervals.

With the data provided in the EADA reports concerning overall student population numbers and athletic participation by gender, the degree of compliance with the first prong of the three part test can be quickly ascertained. To evaluate this aspect of compliance, the actual numbers of enrollment and participation were converted to percentages for a more common reference point. These percentages were then divided into groups that would categorize the degree to which compliance had been obtained or was lacking.(See Figure 2-1)

For 1996, adequate data was available from only four schools to examine the area of proportional compliance. Of these four, none was within ten percentage points of proportionality, with three of the schools being more than twenty percentage points from

proportionality. Under the first part of the three prong test, no school in this year could be considered to be in compliance.

The number of schools with adequate data increases to six for 1997. In this year, no schools were close enough to proportionality to be considered to be in compliance according to part one of the compliance test. However, one school did fall in the five to ten percentage range, close enough to suggest that compliance could be seen in the near future. Of note are the two schools that fall in the category of being more than thirty percentage points away from compliance. A disparity this great is quite notable because it would indicate that these schools have many changes to make to achieve compliance by proportionality.

The data for 1998 gives nine schools that provide sufficient data for this test. Again in this year, no school is within the five percentage point range that would denote compliance. This year also sees one school in the five to ten percentage point range close to compliance. Of the other schools this year, six of the nine fall at least twenty percentage points away from proportionality, a full two thirds of the group. Again in this year, most of the schools represented can not be considered to be even close to compliance by proportionality.

In 1999, there is little change from the previous year. Again, no school meets the standard for compliance in the first part of the three prong test, and only one school is placed in the five to ten percentage points of difference range. In this year one school moved up one category, but remained more than twenty percentage points away from proportionality, keeping the number of schools past that point at six.

In 2000, the first incidence of a school showing compliance by proportionality is seen. In spite of this achievement by one school, the rest of the schools in this year are all more than ten percentage points from proportionality. Some improvement is seen, however, as fewer of the schools, five out of the ten in this year, are in the range or twenty of more percentage points difference.

As in most previous years, in 2001 we see no schools that can be said to be in compliance according to proportionality. Again, one school falls in the five to ten percentage point category, with three others in the ten to twenty percentage range. Still at this point, five out of the nine schools fall more than twenty percentage points away from proportionality.

The most recent year available for evaluation, 2002, contains the necessary data from only seven schools. None of the seven are in compliance by proportionality, and only one is in the five to ten percentage range. Four out of the seven schools with sufficient data fall beyond twenty percentage points of proportionality. Clearly, the continuing occurrence of more than half of the represented schools in the range beyond twenty percentage points of difference is not a positive sign for the status of gender equity.

The results from the tests by year should be taken seriously, but there are possible defects in the data that should be noted. The year that has the most schools with adequate data for this test has ten of the thirteen possible schools, just more than seventy-five percent of the possible number. At its lowest point, the data from 1996 has information for only four of the thirteen schools, a number barely over twenty-five percent of the total

possible. Because of this varying amount of data, trends cannot be deemed conclusive from this test. However, the results from this test should not be ignored because, in many of the schools examined, it can be clearly seen that proportionality is far from a reality.

A more positive result is seen in the next test. For this paired samples test, the data for each school's proximity to compliance by proportionality is analyzed. For each school with data from a four year or larger period, the beginning and ending percentages of female participants are compared to establish what progress has been made toward proportionality. In this analysis, the levels of change in moving toward compliance by proportionality are proved to be statistically significant. This test shows that the progression toward compliance that can be seen is large enough to be significant. Even if schools are not moving up in the levels of compliance used in the previous test, they can be seen moving toward compliance to a significant degree with the aid of this test.(Figure 2-2)

Another way to examine the data concerning the degree to which proportionality has been achieved is to divide the schools up according to their organizational affiliation. For this examination, all schools in the study were divided among three classifications: those in NCAA Division I, those in NCAA Division II, and those with all other affiliations. In this test, time was not considered, only the numbers of times that each school had been categorized in each grouping for level of compliance.

For the schools that are categorized as Division I, it was somewhat surprising that their programs were as close to compliance as they were, considering the presence of large football programs at most of these schools. There were no incidences of a school

being close enough to proportionality to be considered to be in compliance, but in just over ten percent of the cases, schools were within ten percentage points of being in proportionality. Even more notable is the fact that in seventy-five percent of cases, the schools were within twenty percentage points of proportionality. This would put these cases, at most, no more than fifteen percentage points away from compliance. The positive overall results for this category of schools can be attributed largely to the numbers from the University of Arkansas at Little Rock, the only Division I school in the state without a football program.(Figure 2-3)

The results from the schools classified as Division II are not as positive as those from the Division I schools. Using data from thirty-one cases, it can be seen that in more than ninety-five percent of these cases, the difference in percentage points from proportionality is more than twenty. Only one school in one year comes closer than twenty percentage points to proportionality. Related to this great common distance from proportionality may be the fact that all schools that provide sufficient data for this test have large men's football programs. Unlike in the test of Division I schools, there is no one school with a program close to compliance in Division II schools in Arkansas that can improve the appearance of the figures. (Figure 2-4)

In the third categorization by affiliation, that containing schools not a part of NCAA Division I or Division II, there are relatively few cases to be examined, but those present do lend some data useful for interpretation. It is in this category that we see the only incidence of compliance by proportionality. Further, it can be seen that in this data there is no incidence of a school being more than twenty percentage points away from

proportionality. In contrast to the schools of Division II, which fell almost entirely on the opposite side of that mark, of the schools in this third classification, none has a football program. Much as was seen in the results from UALR, not having to balance the participation statistics of a football program usually allows a school to be much closer to compliance than otherwise would be the case.(Figure 2-5)

Another area that can be examined for equity is that of scholarships. Although the three prong test only deals with proportionality in the numbers of participants, part of the aim of Title IX is ensure equity in all aspects of the athletic program. As a part of this overall equity, scholarships are a key ingredient to attaining fair treatment. If a school is unwilling to supply the proportional amount of scholarships, it is unlikely that they will ever be able to attain proportionality in participants. To study the status of scholarship funding in comparison to participation levels, classifications were created to show in general categories the state of each school. Each school in each year can fall into one of the following four categories regarding difference between scholarship funds and participation rates: more than five percentage points of difference in a positive direction (benefiting female athletes), between zero and five percentage points of difference in a positive direction, between zero and five percentage points of difference in a negative direction (benefiting male athletes), and more than five percentage points of difference in a negative direction.

In an evaluation of the differences between participation rates and scholarship funding, it is useful to split the schools by their affiliation just as was done in the study on participation rates. In the first category, Division I schools, it seems that participation

rates lag slightly behind scholarship funding. In just over sixty percent of the cases, schools awarded a higher percentage of scholarships to women than were represented in participation rates. On the negative side of the division, just over four percent of the cases in Division I represent incidences where scholarships are available at rates at least five percentage points lower than participation rates. These statistics indicate that in more than half of the cases for Division I schools, there is more scholarship money awarded per capita for women than for men; and in nearly all cases, scholarship rates are within the typical guidelines for compliance, within five percentage points of proportionality. In most cases, this represents a good financial incentive for female athletes to take advantage of participation opportunities that are available.(Figure 2-6)

In Division II schools, the differences between scholarship and participation rates have a wider distribution than those found in Division I. In more than forty-five percent of cases, schools fall into the first category, offering scholarships at a rate at least five percentage points higher than the rate of participation opportunities. In total, over seventy percent of the cases show scholarships awarded at a higher rate than participation opportunities exist. In spite of this greater occurrence of scholarships preceding participation, incidences of scholarships lagging behind participation exist in slightly greater numbers. In Division II schools, just over ten percent of the cases saw scholarship rates trailing participation rates by more than five percentage points, a situation not particularly conducive to a growth in participation rates. (Figure 2-7)

The third categorization contains a very small sample of cases, partly because this category includes NCAA Division III schools, schools that give no financial aid for

athletic participation. However, for all other schools in this category, the data represents a very positive trend toward more equity in financial aid. In all five cases in this category, schools awarded scholarships at rates at least five percentage points ahead of participation rates. These results show the presence of good incentives for women at schools to participate in athletics. The explanation for this unified result may be found in the relatively small size of the schools represented here, as well as by the lack of football programs at these schools. (Figure 2-8)

In examining the data for scholarship and participation rates, looking at the data over a period of time reveals some measure of progress being made in the promotion of women's athletics. Much as the study of participation rates over time show a high degree of variance in number of variables, so does the study of scholarship rates over time. In spite of this difference, the evidence tends to present a positive trend in this area. With only one or two exceptions, a trend can be seen in increasing the incidences of schools providing scholarships at a rate of at least five percentage points higher than that of participation. At the same time, a trend can be traced in the lessening of the cases of schools that offer scholarships at a lower rate than participation opportunities. From this test, one can see a general trend that shows to some extent a proportional increase in the number scholarship opportunities over the time span of the study. (Figure 2-9)

Data is gathered for the EADA reports in regard to recruiting expenditures, and expenditures are noted as to which gender's teams it goes toward. In terms of the proportionality that should be expected in recruiting expenditures, there is a good deal of ambiguity. Obviously, in the interest of achieving gender equity, one would desire that

the proportion of recruiting expenditures reflect somewhat closely the gender proportions of the general student population. However, because that proportionality does not exist in participation rates, one may assume that, just as in participation rates, recruiting expenditures should progress toward proportionality. This is the stance that will be taken in regard to recruiting expenditures in this evaluation. It will be expected that recruiting expenditures should at least match current participation rates and show a progression toward proportionality.

An evaluation of the change in proportions of both recruiting expenditures and athletic participation show a steady proportional increase in recruiting expenditures for women's teams. Before the year 2000, the percentage of recruiting expenditures designated for women's teams was consistently around five percentage points behind the percentage of participation rates for women. However, for the year 2000 and following, the percentage of recruiting expenditures for women is consistently ahead of the percentage of participation rates. Now, just as for scholarship rates, recruiting expenditures are progressing toward overall proportionality faster than participation rates. This could possibly be an indication of attempts being made by the individual schools to achieve general proportionality.(Figure 2-10)

A final area that can be examined for equity is that of expenditures. An extra difficulty that is encountered when examining total expenditures is that of the differing requirements of varying sports. Whereas a men's baseball team may require a large amount of funding to keep their outdoor field in good playing condition, a women's volleyball team that serves as the balance in participation figures for the baseball team

will likely not require the same amount of funding to keep an indoor court in an equally good playing condition. For this reason, one cannot expect the amount of expenditures to achieve the same proportionality as participation statistics may. Because of this key difference, the focus in the area of expenditures will be on the increase in the percentage spent on women's sports. Because it has been rather well established that women's teams historically begin in a disadvantaged condition regarding participation, it can be assumed that, in order to achieve proportionality in participation, the percentage of expenditures for women will increase to compensate for increased participation, even if not eventually reaching proportionality.

A bar graph (Figure 2-11) gives a visual representation of the changes that have occurred in expenditures for women's sports. A slightly increasing trend can be seen over the past seven years. This is an encouraging trend, indicating that, even if participation rates have not risen to match spending, those athletes that are competing are being better funded. If participation rates are to achieve proportionality, it should be expected that the percentage of total athletic expenditures used for women's teams will increase.

In regard to the commonly heard argument that Title IX has served to reduce the numbers of opportunities for male athletes, no evidence exists for this argument in the data from the EADA reports taken from Arkansas schools. An examination of the mean number of men's sports and the mean number of male participants show some variance but the general trend does not show a significant decline in men's opportunities. The mean number of men's sports in 1996 is 5.25. In 2002, the mean number of men's sports

had increased to 5.7. In terms of average number of sports, there has been no loss for men in Arkansas overall.(Figure 2-12)

Another grouping that can be addressed is the mean number of male participants by year. In 1996, the average number of participants per school was 164.33. After some large jumps in numbers in the interim, the data from 2002 shows an average of 150.36 male participants per school. This shows a decline in actual numbers of between eight and nine percent. This trend shows some loss in men's participation opportunities, but not in the huge jumps that some Title IX critics might have one to believe.(Figure 2-12)

An examination of the actual numbers of participation for each school gives a different picture than is seen in the means. Of the thirteen schools in the study, only two show decreases in men's participation: UALR with a drop of eighteen percent and Williams Baptist College with a drop of five percent. All other schools show a gain over the seven year period being studied. In light of this evidence, it would be difficult to say that men's opportunities in athletics have decreased in the last seven years in Arkansas schools.

Figure 2-1

Year of Report * Compliance Levels Crosstabulation

			Compliance Levels					Total
			In Compliance-Less than 5% difference	5-10% difference	10-20% difference	20-30% difference	30% or higher difference	
Year of Report	1996	Count			1	2	1	4
		% within Year of Report			25.0%	50.0%	25.0%	100.0%
1997	Count		1	2	1	2	6	
	% within Year of Report		16.7%	33.3%	16.7%	33.3%	100.0%	
1998	Count		1	2	4	2	9	
	% within Year of Report		11.1%	22.2%	44.4%	22.2%	100.0%	
1999	Count		1	2	5	1	9	
	% within Year of Report		11.1%	22.2%	55.6%	11.1%	100.0%	
2000	Count	1		4	4	1	10	
	% within Year of Report	10.0%		40.0%	40.0%	10.0%	100.0%	
2001	Count		1	3	4	1	9	
	% within Year of Report		11.1%	33.3%	44.4%	11.1%	100.0%	
2002	Count		1	2	3	1	7	
	% within Year of Report		14.3%	28.6%	42.9%	14.3%	100.0%	
Total	Count	1	5	16	23	9	54	
	% within Year of Report	1.9%	9.3%	29.6%	42.6%	16.7%	100.0%	

Figure 2-2

Paired Samples Statistics

		Mean	N	Std. Deviation	Std. Error Mean
Pair 1	Beginning discrepancy	.2389	9	.07491	.02497
	Ending discrepancy	.2011	9	.08880	.02960

Paired Samples Correlations

		N	Correlation	Sig.
Pair 1	Beginning discrepancy & Ending discrepancy	9	.866	.003

Paired Samples Test

		Paired Differences					t	df	Sig. (2-tailed)
		Mean	Std. Deviation	Std. Error Mean	95% Confidence Interval of the Difference				
					Lower	Upper			
Pair 1	Beginning discrepancy - Ending discrepancy	.0378	.04438	.01479	.0037	.0719	2.554	8	.034

Figure 2-3

SCHOOL * Compliance Levels Crosstabulation

			Compliance Levels			Total
			5-10% difference	10-20% difference	20-30% difference	
SCHOOL	University of Arkansas	Count		5		5
		% within SCHOOL		100.0%		100.0%
	University of Arkansas at Little Rock	Count	2	5		7
		% within SCHOOL	28.6%	71.4%		100.0%
	University of Arkansas at Pine Bluff	Count		2	2	4
		% within SCHOOL		50.0%	50.0%	100.0%
Total		Count	2	12	2	16
		% within SCHOOL	12.5%	75.0%	12.5%	100.0%

Figure 2-4

SCHOOL * Compliance Levels Crosstabulation

			Compliance Levels			Total
			10-20% difference	20-30% difference	30% or higher difference	
SCHOOL	Arkansas Tech	Count		4	3	7
		% within SCHOOL		57.1%	42.9%	100.0%
	Henderson State University	Count		3	2	5
		% within SCHOOL		60.0%	40.0%	100.0%
	Ouachita Baptist University	Count	1	6		7
		% within SCHOOL	14.3%	85.7%		100.0%
	Southern Arkansas University	Count		5		5
		% within SCHOOL		100.0%		100.0%
	University of Arkansas at Monticello	Count		3	4	7
		% within SCHOOL		42.9%	57.1%	100.0%
Total		Count	1	21	9	31
		% within SCHOOL	3.2%	67.7%	29.0%	100.0%

Figure 2-5

SCHOOL * Compliance Levels Crosstabulation

			Compliance Levels			Total
			In Compliance-Less than 5% difference	5-10% difference	10-20% difference	
SCHOOL	Central Baptist College	Count	1			1
		% within SCHOOL	100.0%			100.0%
	Hendrix College	Count		3	3	6
		% within SCHOOL		50.0%	50.0%	100.0%
Total		Count	1	3	3	7
		% within SCHOOL	14.3%	42.9%	42.9%	100.0%

Figure 2-6

SCHOOL * Levels of difference between female scholarship and participation Crosstabulation

			Levels of difference between female scholarship and participation				Total
			>5 percentage points difference in + direction	Between 0 and 5 percentage points difference in + direction	Between 0 and 5 percentage points difference in - direction	>5 percentage points difference in - direction	
SCHOOL	Arkansas State	Count		3	4		7
		% within SCHOOL		42.9%	57.1%		100.0%
	University of Arkansas	Count	5	1			6
		% within SCHOOL	83.3%	16.7%			100.0%
	University of Arkansas at Little Rock	Count	2	2	2		6
		% within SCHOOL	33.3%	33.3%	33.3%		100.0%
	University of Arkansas at Pine Bluff	Count		1	2	1	4
		% within SCHOOL		25.0%	50.0%	25.0%	100.0%
Total		Count	7	7	8	1	23
		% within SCHOOL	30.4%	30.4%	34.8%	4.3%	100.0%

Figure 2-7

SCHOOL * Levels of difference between female scholarship and participation Crosstabulation

			Levels of difference between female scholarship and participation				Total
			>5 percentage points difference in + direction	Between 0 and 5 percentage points difference in + direction	Between 0 and 5 percentage points difference in - direction	>5 percentage points difference in - direction	
SCHOOL	Arkansas Tech	Count	5	2			7
		% within SCHOOL	71.4%	28.6%			100.0%
	Harding University	Count	6				6
		% within SCHOOL	100.0%				100.0%
	Henderson State University	Count	4	1			5
		% within SCHOOL	80.0%	20.0%			100.0%
	Ouachita Baptist University	Count	1	4	2		7
		% within SCHOOL	14.3%	57.1%	28.6%		100.0%
	Southern Arkansas University	Count	1	2	2		5
		% within SCHOOL	20.0%	40.0%	40.0%		100.0%
	University of Arkansas at Monticello	Count		1	2	4	7
		% within SCHOOL		14.3%	28.6%	57.1%	100.0%
Total		Count	17	10	6	4	37
		% within SCHOOL	45.9%	27.0%	16.2%	10.8%	100.0%

Figure 2-8

SCHOOL * Levels of difference between female scholarship and participation Crosstabulation

			Levels of difference between female scholarship and participation	
			>5 percentage points difference in + direction	Total
SCHOOL	Central Baptist College	Count	2	2
		% within SCHOOL	100.0%	100.0%
	Williams Baptist College	Count	3	3
		% within SCHOOL	100.0%	100.0%
Total	Count	5	5	
	% within SCHOOL	100.0%	100.0%	

Figure 2-9

Year of Report * Levels of difference between female scholarship and participation Crosstabulation

			Levels of difference between female scholarship and participation				Total
			>5 percentage points difference in + direction	Between 0 and 5 percentage points difference in + direction	Between 0 and 5 percentage points difference in - direction	>5 percentage points difference in - direction	
Year of Report	1996	Count	1	4		1	6
		% within Year of Report	16.7%	66.7%		16.7%	100.0%
1997	Count	4		2	1	7	
	% within Year of Report	57.1%		28.6%	14.3%	100.0%	
1998	Count	4	4	1	1	10	
	% within Year of Report	40.0%	40.0%	10.0%	10.0%	100.0%	
1999	Count	4	1	5		10	
	% within Year of Report	40.0%	10.0%	50.0%		100.0%	
2000	Count	6	4		1	11	
	% within Year of Report	54.5%	36.4%		9.1%	100.0%	
2001	Count	5	3	4		12	
	% within Year of Report	41.7%	25.0%	33.3%		100.0%	
2002	Count	5	1	2	1	9	
	% within Year of Report	55.6%	11.1%	22.2%	11.1%	100.0%	
Total	Count	29	17	14	5	65	
	% within Year of Report	44.6%	26.2%	21.5%	7.7%	100.0%	

Figure 2-10

Report

Year of Report		Percentage of athletes that are female	Percentage of recruiting expenditures for female sports
1996	Mean	.2726	.2356
	N	6	6
	Std. Deviation	.05578	.10033
	Range	.15	.30
1997	Mean	.3069	.2385
	N	8	7
	Std. Deviation	.11226	.08552
	Range	.31	.23
1998	Mean	.3117	.2791
	N	11	11
	Std. Deviation	.08216	.09255
	Range	.28	.34
1999	Mean	.3273	.2715
	N	11	11
	Std. Deviation	.07816	.09641
	Range	.30	.31
2000	Mean	.3336	.3591
	N	13	13
	Std. Deviation	.10710	.18085
	Range	.36	.64
2001	Mean	.3470	.3830
	N	13	13
	Std. Deviation	.07927	.17382
	Range	.25	.65
2002	Mean	.3337	.3776
	N	11	10
	Std. Deviation	.08354	.11021
	Range	.26	.38
Total	Mean	.3238	.3178
	N	73	71
	Std. Deviation	.08695	.14016
	Range	.37	.73

Figure 2-11

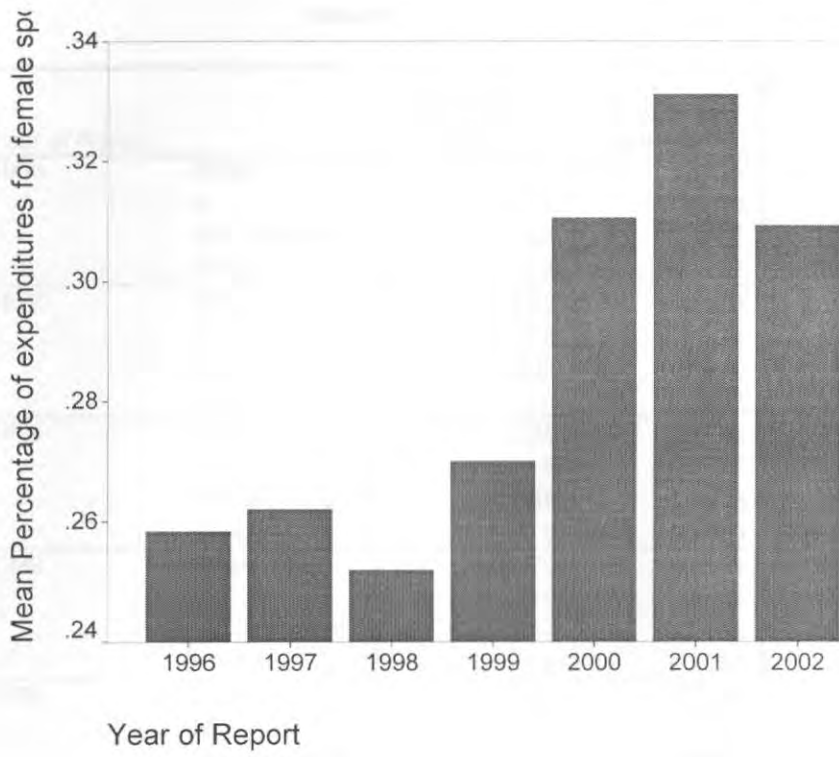


Figure 2-12

Report

Year of Report		# of men's intercollegiate teams	# of male participants
1996	Mean	5.25	164.33
	N	4	6
	Std. Deviation	1.893	67.087
	Range	4	177
1997	Mean	5.20	162.62
	N	5	8
	Std. Deviation	1.304	67.960
	Range	3	192
1998	Mean	5.25	155.00
	N	8	11
	Std. Deviation	1.035	48.029
	Range	3	160
1999	Mean	6.70	192.91
	N	10	11
	Std. Deviation	1.567	72.885
	Range	4	264
2000	Mean	6.00	171.38
	N	12	13
	Std. Deviation	2.256	86.909
	Range	7	344
2001	Mean	6.08	157.85
	N	12	13
	Std. Deviation	2.151	74.763
	Range	7	273
2002	Mean	5.70	150.36
	N	10	11
	Std. Deviation	2.163	67.735
	Range	7	192
Total	Mean	5.87	165.04
	N	61	73
	Std. Deviation	1.875	69.510
	Range	8	356

Chapter 3: Survey Research

The second part of my research involved the replication of a survey originally conducted in 1996. This survey was designed and used in partial fulfillment of the requirements for a graduate degree at Ball State University; in its first use, the survey was part of a study that evaluated the Title IX compliance of schools in the Mid-American Conference. The original survey consisted of sixteen questions, fifteen of which were to be answered simply as yes or no. The final question provided an opportunity for the respondent to give their school's tentative plan for continuing their progression toward compliance. This final question was provided to assist the Mid-American Conference directors in their attempts to move their conference toward compliance.

For my research, I used the same questionnaire as the previous study, altering it only by removing the last question. The survey sent out to compliance officers consisted of fifteen questions, each one able to be answered with a simple yes or no. The final question from the original survey was omitted because the answers to that question could not have been easily coded into SPSS; further, this study is not being conducted in association with any specific conference or other governing body, so little practical use would have been made of such a question. Because this study is concerned with the effects of Title IX in the past rather than the possible future effects, such a question would have yielded no results relating to the purpose of this study.

The questionnaire was sent to the person responsible for overseeing compliance at each of the four year colleges in Arkansas that have an intercollegiate athletics program

with two exceptions: Arkansas Baptist College and Philander Smith. At these two schools, I was unable to locate the person who was responsible for overseeing compliance efforts. After trying for two weeks to locate anyone who would have the knowledge and ability to complete the survey, with numerous messages left unreturned, I abandoned the search. For all NCAA schools, the questionnaire was sent to the person designated by that organization as the compliance officer. In order to be able to better ascertain compliance, the NCAA requires that each of its member institutions designate a primary contact person who will be responsible for collecting data and submitting it to the Department of Education and the NCAA. For schools that are not members of the NCAA, the questionnaire was sent to the athletic director or the person the athletic director named as the primary contact person. The response rate was not particularly high at sixty-four percent, but considering the difficulty encountered in contacting most individuals in busy athletic departments, the response rate was not lower than I had expected.

The mailing sent to each person contained a cover letter explaining the research being conducted (see Figure 3-1), the questionnaire sheet (Figure 3-2), and an envelope that was already stamped and addressed. Every effort was made to ensure that completing the survey would not cause any unnecessary difficulties, in the hopes of increasing the response rate.

The results from this survey give some insight as to what those people instrumental in the decision making process concerning Title IX compliance feel regarding their own school's compliance efforts. Some questions in the survey can be

objectively answered, but most deal with the equitable treatment of the genders, an issue subject to a great deal of interpretation. This survey can in no way be construed as demonstrating compliance toward Title IX; rather it evaluates the opinions of those most responsible for moving the schools toward compliance. If a person in such a role firmly believes that their school is in compliance when it is not, it is highly unlikely that any major efforts will be undertaken to move that school in the direction of compliance. When situations such as this exist, only action by a governmental agency or court is likely to elicit a response from the school. For these reasons, the results from this survey can be best seen merely as indicators of the opinions held in the administrations of the schools in Arkansas.

Question one (Figure 3-3) asks for an objective response to the presence of an increase in female coaching staffs. The responses to this question provide no large surprises; it is to be expected that most schools would find it necessary to add additional staff to compensate for higher participation rates. In the case of the twenty-five percent of respondents that did not increase the size of their coaching staff, it is likely that existing staff could be reorganized or the workload redistributed to handle any additional demands that were placed on the school.

The responses to question two deal with third prong of the three part test for compliance, the full accommodation test. The response of “yes” from all respondents would seem to indicate that even if they failed to comply under the first two parts of the test, they would satisfy the conditions of the third. Answers to this question are highly subjective; because no clear method has been provided to evaluate this question, the

findings by the Office of Civil Rights in an investigation or by a judge in a lawsuit could be quite different.

Questions three (Figure 3-4) and four (Figure 3-5) address the issues vital to the first and second prongs of the three part test. To move in the direction of compliance, more than half of the schools responding added women's teams, while less than twenty percent cut men's teams. Clearly, these responses show a preference for adding sports rather than cutting them. These questions are examples of objective questions, those with answers that can be clearly supported by statistical data.

Questions five (Figure 3-6) and six (Figure 3-7) address the secondary considerations in complying with Title IX, the actual funding of the women's athletic program. Somewhat surprising is the fact that just over half of the respondents answered in the affirmative to each of these questions. Given the well established assumption that gender discrimination did exist in the past, one would most certainly expect expenditures to be increased in order to pay for an increase in participation rates. The responses to these questions can be considered quite accurate, because data exists that can demonstrate the validity of the responses.

Questions seven through fifteen each address a different aspect of the equivalency factor. The overwhelmingly affirmative response to these questions is not a surprise, considering that these are services that are not difficult to provide equally. Further, the lack of equivalency in one of these areas would be quite noticeable; in these areas, differences between sports are not so great as to hinder the average observer from detecting differences in treatment. However, the responses to some of these questions

cannot be clearly supported by statistics, leaving the possibility of error in these responses.

The results from this survey do little to establish the compliance of schools in regard to Title IX. Of the questions that can be answered objectively, responses do not show a move by all schools to compensate for past discrimination. This would not be a possible problem except for the fact that the data from EADA reports shows that most schools in Arkansas are not in compliance with Title IX according to proportionality. Satisfying either the first or second prong of the three part test would require some moves in the direction of raising the proportion of women's participants. For most schools, moves in this direction have been shown, but not in all. In regard to the third part of the test, the survey shows that administrators at each school believe that their school could be deemed in compliance according to that third part. However, because answers to questions like this are subjective, little can be taken from this survey to give conclusive evidence of Title IX compliance. What can be taken from this survey's results is the general satisfaction of compliance coordinators with the situations at their schools. If those responsible for overseeing the implementation of Title IX are satisfied that it is progressing toward the equitable treatment of both genders, it is likely that positive progress is truly being made.

Figure 3-1

Dear Compliance Coordinator,

As a student in the honors program at Ouachita Baptist University, I am presently working on a research project. This project is part of the requirement for completion of the Carl Goodson Honors Program at Ouachita.

My research concerns all schools in Arkansas with 4-year intercollegiate athletic programs and will attempt to show what changes have been made to comply with Title IX guidelines. At the conclusion of my research, I am planning to provide each school with a copy of the report.

Each compliance coordinator in Arkansas has been sent a questionnaire. This questionnaire replicates a similar study conducted in 1996 of schools in the Mid-American Conference. I have listed fifteen questions pertaining to Title IX guidelines. Please check the best answers that apply to your compliance status.

Even though answering the questionnaire is voluntary, your feedback is crucial to the study and will not take more than ten minutes. Within the study, your responses will be categorized by code numbers and not specific individuals. I would appreciate it if you would complete this short form and return it by December 6. For your convenience, I have enclosed a self-addressed stamped envelope for the completed survey.

Thank you for participating in this study. If you have any questions, please feel free to contact me at:

OBU Box 4131
410 Ouachita St.
Arkadelphia, AR 71998
Phone (903)821-6107
Email smi33852@obu.edu

Sincerely,

Micah Smith

Figure 3-2

Title IX Survey

For each of the items below, please answer the following questions according to your current status on each issue.

1. Female coaching staffs have been increased over the past 3 years in an attempt to meet Title IX guidelines. YES ___ NO ___
2. Do the teams available accommodate the interest and abilities of female student-athletes? YES ___ NO ___
3. Have you increased the number of sports teams for female student-athletes over the past three years to reach Title IX guidelines? YES ___ NO ___
4. Have you reduced the number of sports teams for male student-athletes over the past 3 years to reach Title IX guidelines? YES ___ NO ___
5. Have you increased the operational budgets for female student-athletes over the past 3 years to reach Title IX guidelines? YES ___ NO ___
6. Have you increased the amount of scholarship aid for female student-athletes over the past 3 years to reach Title IX guidelines? YES ___ NO ___
7. Male and female student-athletes receive comparable or equivalent access to medical and training facilities. YES ___ NO ___
8. Male and female student-athletes receive comparable or equivalent access to game and practice facilities. YES ___ NO ___
9. Male and female student-athletes receive comparable or equivalent access to locker room facilities. YES ___ NO ___
10. Male and female student-athletes receive comparable or equivalent access to housing and dining facilities. YES ___ NO ___
11. Male and female coaches receive comparable or equivalent access to office facilities. YES ___ NO ___
12. Male and female student-athletes receive comparable or equivalent access to academic advising and tutorial services. YES ___ NO ___
13. Male and female student-athletes receive comparable or equivalent access to support services (statisticians, managers, secretarial and clerical). YES ___ NO ___
14. Male and female coaches receive comparable or equivalent access to sports information services. YES ___ NO ___
15. Male and female coaches receive comparable or equivalent access to recruiting dollars and services. YES ___ NO ___

Figure 3-3

Increase in female coaching staffs?

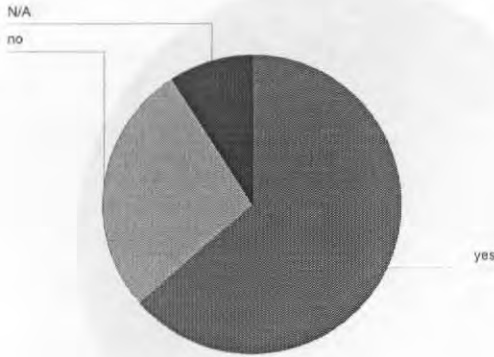


Figure 3-4

Increase in # of female teams?

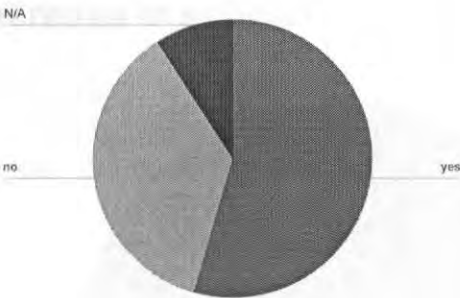


Figure 3-5

Decrease in # of male teams?

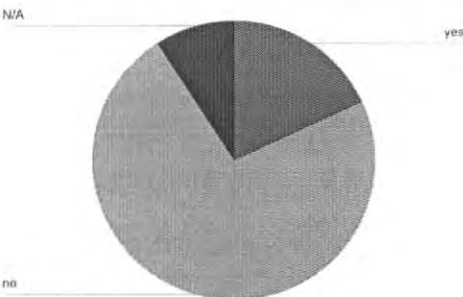


Figure 3-6

Increase in budget for female teams?

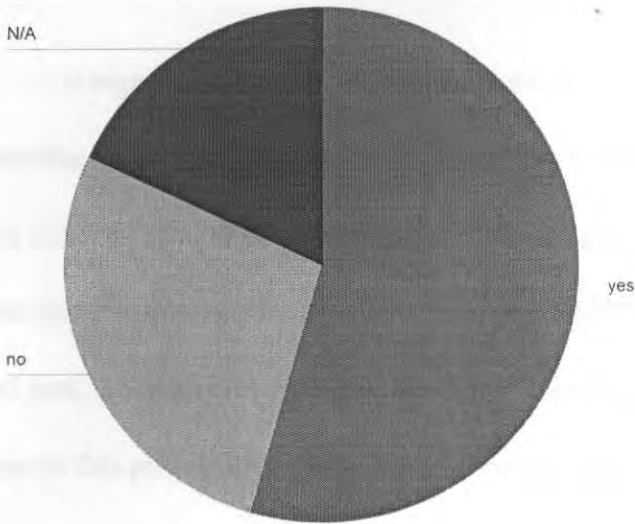
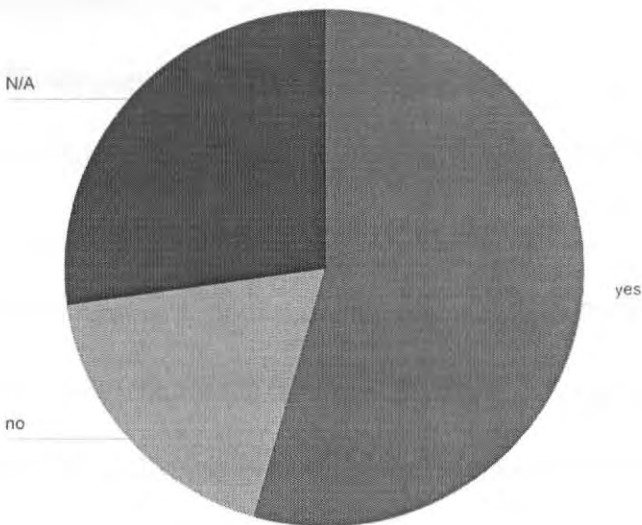


Figure 3-7

Increase in scholarships for females?



Conclusion

In regard to Title IX compliance, a study of this type can do only so much to determine the state of the athletic programs in Arkansas. With the data at hand, only two parts of the critical three part test of compliance can be evaluated. Even if schools fail these first two parts of the test, there is another opportunity to achieve compliance in the third part. To make conclusive judgements concerning compliance levels is beyond the scope of this project. However, with this said, some conclusions can be drawn from this study using the data available.

Under the first part of the test for compliance, there is no school studied here that is in compliance at this time. In only one instance in all the cases evaluated here has a school achieved proportional compliance. Exactly what this fact can be taken to mean is a difficult question. There are some who would argue that this demonstrates the impossibility of achieving the standards set by Title IX regulations. Others would argue that this simply shows a lack of effort and enforcement in Arkansas. In truth, the answer may be found in both of these arguments. After evaluating the data at hand, it seems that, regardless of the reason for the lack of proportional compliance, most schools have a great deal of changes to make in order to achieve proportional compliance. With only one or two exceptions, it is unlikely that, at the present rate, any school will achieve proportionality in the next ten years.

Under the second part of the compliance test, a strong case can be made for the state of compliance being present in nearly all of the schools in the state. With the tests

scene; the outcry over the cutting of men's wrestling teams could likely not even be compared to the reaction over the discontinuation of football programs. The answer to the question of what to do about football is likely the most important that has yet to be found.

Future researchers should be aware of the difficulties associated with investigating the compliance status of Title IX. Because of the strong emotions found on either side of the debate, anyone seeing the possibility of being caught in the middle will likely try to avoid this situation. This is the most likely explanation for the resistance and suspicion one encounters when gathering records concerning Title IX. In spite of the difficulties surrounding the task of gathering information, research in this area is necessary. The Office of Civil Rights is incredibly busy investigating complaints, and much in their investigations is intended to reveal statistics such as those in this study. Further research in this area will most certainly promote the best interests of college athletics. As more is learned of trends and tendencies in college sports, the prospect of fair treatment for all is increased.

Notes

Chapter 1

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2. Ibid., 100-102.
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4. Ibid.
5. United States, Cong., 1974 Education Amendments.
6. Gelb, Joyce and Marian Lief Palley, *Women and Public Policies* (Princeton: Princeton UP, 1982), 102
7. Ibid., 107.
8. Ibid., 108-9.
9. Carlino, Salvatore, *Title IX: A Legislative History, Selected Court Cases, and the Future of Women's Athletics*, Pennsylvania State University, 1985.
10. Gelb, Joyce and Marian Lief Palley, *Women and Public Policies* (Princeton: Princeton UP, 1982), 97.
11. Ibid., 120.
12. Carlino, Salvatore, *Title IX: A Legislative History, Selected Court Cases, and the Future of Women's Athletics*, (Pennsylvania State University, 1985) 26
13. United States, Office of Civil Rights, 1979 Title IX Policy Interpretation.
14. Gavora, Jessica, *Tilting the Playing Field: Schools, Sports, Sex and Title IX* (San Francisco: Encounter Books, 2002), 35
15. Gelb, Joyce and Marian Lief Palley, *Women and Public Policies* (Princeton: Princeton UP, 1982), 116.
16. Ibid., 117.
17. United States, Court of Appeals for the Seventh Circuit, *Cannon v. University of Chicago*, 1979.
18. United States, Court of Appeals, Third Circuit, *Haffer v. Temple University*, 1982.
19. United States, Court of Appeals, Sixth Circuit, *Hillsdale College v. Department of Health, Education, and Welfare*, 1982.
20. United States, Supreme Court, *Grove City College v. Bell*, 1984.
21. Boutilier, Mary A. and Lucinda F. SanGiovanni, "Politics, Public Policy, and Title IX: Some Limitations of Liberal Feminism," *Women, Sport, and Culture* (Champaign, IL: Human Kinetics, 1994), 103.
22. United States, Supreme Court, *Franklin v. Gwinnett County Public Schools*, 1992.
23. United States, Department of Education, Office of Civil Rights, *Title IX Clarification*, 1995.
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