Leveling the Playing Field: Reforming the Office for Civil Rights to Achieve Better Title IX Enforcement

Sudha Setty
Western New England University School of Law, ssetty@law.wne.edu

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SUDHA SETTY*

I. INTRODUCTION

Title IX of the Education Amendments of 1972\(^1\) was enacted in order to ensure that all students in America's educational institutions\(^2\) are treated equitably, regardless of their sex.\(^3\) Title IX reaches all areas of the educational experience, including hiring decisions,\(^4\) sexual harassment,\(^5\) and athletic programs.\(^6\) While many hurdles to gender equity in athletic programs have been reduced or eliminated over the last twenty years, serious Title IX infractions remain at both the college and secondary

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2. Title IX applies only to "federally-funded" educational institutions, but the definition of federally-funded is broad, and includes all public and most private schools and post-secondary institutions. See Civil Rights Restoration Act of 1987, 20 U.S.C. § 1687 (1988).


6. Although athletics were not explicitly mentioned in Title IX legislation, it became clear that Congressional intent included consideration of athletics with the passing of further regulations two years later. See 34 C.F.R. § 106.41 (1996).
Changes must be made to enforce Title IX properly, emphasizing the equitable treatment of students as its first and foremost goal. This Article focuses on improving Title IX compliance in athletic programs by reforming the Office for Civil Rights ("OCR"), the agency within the Department of Education responsible for Title IX enforcement.

In recent years, scholars focusing on Title IX have blamed its athletic failures on a variety of factors: educational institutions' unwillingness to reallocate resources from popular men's sports to women's sports, the rapid turnover rate of a student body in relation to the time necessary to litigate a complaint, and the lack of communication between institutions and their student bodies. Critics have suggested a wide range of solutions to foster Title IX compliance—from self-policing by the National Collegiate Athletic Association to universities stripping their athletic budgets of "non-revenue" men's sports in order to increase the percentage of women's sports at the institution. This Article, however, argues that OCR reform is the best avenue for improving Title IX, and suggests particular OCR reforms to make the Agency more effective.

The Title IX regulations outline three principal avenues for grievance that are available to students who allege gender discrimination: internal procedures within the school or university, administrative complaint to OCR, or litigation. OCR was designed to be an inexpensive, efficient, and effective method of correcting Title IX violations. Filing an administrative complaint at OCR is free of charge and, if OCR decides the complaint is valid, OCR investigators will visit the educational institution...
in question, assess the situation from an independent perspective, and develop a compliance plan in concert with the educational institution. In theory, this administrative response to gender-based discrimination is ideal. In reality, however, OCR has not fulfilled its potential. This Article addresses several problem areas within OCR’s procedures, including OCR’s approach toward student grievances, its standards for assessing alleged Title IX violations, and its inadequate monitoring and enforcement of institutions in violation of Title IX.

Part II of this Article describes the legislation and regulations that mandate gender equity in educational institutions. Part III summarizes the case law that has affected the scope of Title IX’s application. Part IV suggests specific OCR reforms that, in conjunction with local institutional efforts, would improve compliance with Title IX. Part V outlines approaches previously offered to remedy current Title IX enforcement challenges, and discusses why they do not adequately deal with the non-compliance situation. Part VI asserts that, despite challenges, reforming OCR is currently the most effective option to achieve improved Title IX compliance in our educational institutions.

II. LEGISLATION AND REGULATIONS THAT MANDATE GENDER EQUITY IN EDUCATIONAL INSTITUTIONS

Title IX states in part: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

Although athletics were not explicitly mentioned in the original legislation, Congress subsequently enacted adjunct legislation to Title IX that mandated the same level of gender equity in athletics as it required in all other aspects of education. Despite the facially clear language of the statute and regulations, debate ensued as to its exact and specific requirements in the years after Title IX was passed. Therefore, in 1979, OCR

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16. Many educational institutions were unsure of many of the specific details of the mandate, such as the timeline for reform and what particular aspects of an athletic program needed to be examined under Title IX. See, e.g., Brenden v. Independent Sch. Dist. 742, 477 F.2d 1292, 1298–99 (8th Cir. 1973) (explaining purpose and scope of Title IX
drafted the Policy Interpretation for Title IX to clarify and assist educational institutions that were attempting to determine exactly what compliance with Title IX entailed. The Policy Interpretation explains the standards set out in the Title IX regulations and the factors considered by the Department of Education in determining compliance. It also guides educational institutions in determining whether any gender disparities that may be present are justifiable and, therefore, nondiscriminatory.

The Policy Interpretation outlines a three-pronged test to determine Title IX compliance. The first prong of the test mandates equal participation opportunities, requiring that the same number of women and men have the opportunity to compete within one school’s athletic program. The Policy Interpretation provides three separate means of showing compliance with this first prong. A school may demonstrate equality of opportunity through the creation of athletic programs in which the participa-
tion of males and females in athletics is "substantially propor­
tionate" to their enrollment in the educational institution. If an institution fails to show a proportionate number of female and male athletic participation slots, it can still achieve compliance with the participation requirement through one of two other means: by demonstrating that the institution has expanded the athletic opportunities of the underrepresented sex over recent years, or by illustrating that the interests and abilities of the underrepresented sex have been "effectively accommodated" by the institution, and that there is no need for further expansion of the existing athletic programs.

The second prong of the test mandates allocation of scholar­ship funds proportionate to the number of women and men par­ticipating in sports. Finally, the third prong requires that schools satisfy a list of more specific requirements concerning the administration and management of sports. This Title IX component requires equality in the provision and maintenance of

23. Policy Interpretation, 44 Fed. Reg. 71143, 71418 (1979). See also Gonyo v. Drake Univ., 879 F. Supp. 1000 (S.D. Iowa 1995) (holding that the proportionality test is the most important component of Title IX compliance, and that it takes precedence over compliance with the scholarship component). Under the substantial proportionality prong of equal participation, if a school enrolls 300 women but only 200 men, then three-fifths of the athletic "participation slots" must be allotted to women.

24. Participation in athletics is measured by the number of available participation slots in an athletic program. See, e.g., Cohen v. Brown Univ., 101 F.3d 155 (1st Cir. 1996) (Cohen I) (quoting Cohen II, 879 F. Supp. at 202-203). This number does not necessarily equate with the number of athletes at an educational institution, as students may compete in more than one sport during an academic year.

25. See Pederson v. Louisiana State Univ., 912 F. Supp. 892 (M.D. La. 1996) (holding that substantial proportionality was not the only means of satisfying the participation requirement). But see Kelley v. Board of Trustees, 35 F.3d 265, 271 (7th Cir. 1994); Cohen v. Brown Univ., 991 F.2d 888, 897-98 (1st Cir. 1993) (Cohen I).


27. See id. at 71418. In a situation in which a school fails the first two parts of the equal participation opportunities test, the school can claim to have "effectively accommodated" its students only if it is clear that students of the underrepresented gender have not shown an interest in participating in sports. Some question remains as to the validity of this prong, as demonstrated by the First Circuit's decision in Cohen II. In Cohen II, the court held that Brown University's argument that women students had a lesser interest than their male counterparts was inherently suspect since women historically had been denied the opportunity to participate in athletics. Therefore, the court stated, any measurement of women's interest in sports is often a reflection of past discrimination. Cohen II, 101 F.3d at 175-76.

28. The language of Title IX and the Policy Interpretation does not limit this part of the test to intercollegiate sports. See 34 C.F.R. § 106.37(c) (1992). See also Policy Interpretation, 44 Fed. Reg. 71143, 71415 (1979). Because federally-funded middle and high schools generally do not offer athletic scholarships, this section is primarily used to enforce collegiate practices.
equipment and supplies, scheduling of games and practice times, travel expenses, opportunities to receive coaching and tutoring, medical and training services, and publicity, as well as other factors.\textsuperscript{29}

Because it provides several different compliance options, the three-pronged test for Title IX compliance gives educational institutions ample opportunity to evaluate their athletic programs and then make the necessary changes without suffering federal penalties in the interim. However, as the next part of this Article discusses, challenges brought in the courts prove that the changes have not been implemented as thoroughly or as quickly as the law required.

\textbf{III. THE HISTORY AND DEVELOPMENT OF TITLE IX IN THE COURTS}

Case law has further defined the scope of Title IX, giving students and schools a better understanding of their rights and obligations. In 1979, the Supreme Court decided that plaintiffs alleging a Title IX violation did not have to exhaust administrative remedies, such as an internal grievance procedure or filing with OCR, before filing a private lawsuit.\textsuperscript{30} Additionally, the Court ruled in 1982 that Title IX applies to discrimination against employees of educational institutions as well as to students.\textsuperscript{31}

Title IX plaintiffs suffered a temporary setback in 1984 with

\begin{itemize}
  \item \textsuperscript{29} See 34 C.F.R. § 106.41(c)(1)-(10) (1998). See also Policy Interpretation, 44 Fed. Reg. 71413, 71415 (1979). It is important to remember that Title IX compliance must be viewed in terms of an entire athletic program, and not just one sport. For example, if a men's baseball diamond is superior to a women's softball field, this is not necessarily a Title IX violation. However, the school must show that it has compensated for the disparity between the two fields by giving extra benefits to the women's athletic program in other areas.
  \item \textsuperscript{30} See Cannon v. University of Chicago, 441 U.S. 677 (1979) (holding that Congress intended for a private right of action to be available to remedy Title IX violations).
  \item \textsuperscript{31} See North Haven Bd. of Educ. v. Bell, 456 U.S. 512 (1982). Intentionality of discrimination can usually be established as a matter of law if the differing classification of women's and men's programs are facially sex-based. See Haffer v. Temple Univ., 678 F. Supp. 517, 527 (E.D. Pa. 1987); Canterino v. Barber, 564 F. Supp. 711, 714 (W.D. Ky. 1983). This allowed teachers and school staff to allege those grievances that were previously brought only under Title VII, or those that were not allowed at all.
\end{itemize}
the Court’s decision in Grove City College v. Bell,\(^{32}\) which curtailed the application of Title IX such that most university programs were exempted from its requirements.\(^{33}\) Congress, however, believed that this holding was contrary to its original intent in enacting Title IX.\(^{34}\) Congress reversed Grove City’s holding by passing the Civil Rights Restoration Act of 1987,\(^{35}\) which provides that any educational institution that directly or indirectly receives federal funding is required to comply with Title IX in all of the institution’s programs and activities.\(^{36}\) In 1992, the Supreme Court expanded plaintiffs’ rights under Title IX, deciding that compensatory and punitive damages are available to students if an institution’s employee is shown to have intentionally discriminated against them.\(^{37}\)

More recently, the district court in Cohen v. Brown University (Cohen II),\(^{38}\) found that Brown University violated Title IX. The court held that cutting men’s and women’s programs “equally” was not necessarily nondiscriminatory since educational institutions must still pass the three-pronged participation test.\(^{39}\) Brown University, in its defense, claimed that fewer of its female students had an interest in athletics than did its male students, and it was therefore justifiable to maintain a less well-funded program for female athletes.\(^{40}\) The court found this argument unpersuasive, reasoning that Brown University’s interpretation of Title IX would essentially remove the “effective accommodation” prong altogether.\(^{41}\)


\(^{33}\) In Grove City, the Court essentially held that only programs or activities that are directly funded by the federal government were regulated under Title IX. Id. at 570-74. This greatly curtailed the scope of Title IX, especially for many private colleges, where federal funding is often limited to financial aid and research programs. In those situations, athletic programs were completely exempt from the mandates of Title IX. See Cohen I, 991 F.2d 888, 894 (1st Cir. 1993).


\(^{36}\) See 20 U.S.C. § 1687(2)(a) (1994). For example, even if a college only receives federal funding through its financial aid program, all of its programs must comport with Title IX’s mandate.


\(^{40}\) See id at 208.

\(^{41}\) The burden of proof for showing that an educational institution was not effectively accommodating the interests and abilities of the underrepresented gender initially
The Supreme Court's denial of certiorari in Cohen II was a major victory for female college athletes. In practice, however, many female college athletic programs still do not comport with Title IX requirements. In fact, students continue to file Title IX lawsuits. Plaintiffs often bring a challenge either because a particular sport is not offered to women, or because a female athlete seeks to join a male sports team. According to the Policy Interpretation, members of the underrepresented sex must be given the opportunity to compete on a team of the opposite sex if that is the only viable solution to meeting the interest and ability of the athlete in question. Where plaintiffs invoke this rule in lawsuits regarding secondary school athletics, courts have been guided by the plain language of the Policy Interpretation and have held that girls, who are historically the underrepresented sex in athletics, generally have the right to compete on boys' teams.

Litigation established and broadened the scope of Title IX, much to the benefit of female athletes. Some commentators have argued that litigation is the most effective method of issuing a "wake-up call" to educational institutions. The threat of

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42. See Cohen II, 879 F. Supp. at 209. For example, a player on a women's basketball team may seek to push her athletic ability further by being allowed to practice and play with the men's basketball team at her educational institution.


44. See Horner v. Kentucky High Sch. Athletic Ass'n, 43 F.3d 265 (6th Cir. 1994). Boys are not always granted the same opportunity because of their historic advantage in sports and because of the judiciary's concern that allowing boys onto girls' teams will serve only to decrease the number of participation slots available to girls. See Williams v. School Dist. of Bethlehem, Pa., 998 F.2d 168 (3d Cir. 1993); Kleczek v. Rhode Island Interscholastic League, Inc., 768 F. Supp. 951 (D.R.I. 1991). But see Gomes v. Rhode Island Interscholastic League, Inc., 469 F. Supp. 659 (D.R.I. 1979), vacated as moot, 604 F.2d 733 (1st Cir. 1979) (holding that a boy could play on his school's girls' volleyball team because it best suited his interests and abilities). This trend that would work against the spirit and language of Title IX legislation. The concern in these situations is that men who request to play what are traditionally considered to be women's sports, such as volleyball or field hockey, would displace women who want to play that same sport, thereby denying participation of a woman on a sports team.

45. See supra notes 30-40 and accompanying text.

litigation, they assert, encourages schools to remedy discrimina-
tory practices before having to face potentially embarrassing
lawsuits and the possibility of having to pay attorney's fees if the
discrimination is found to be intentional.47

However, litigation can pose problems as well. The financial
burden and length of a lawsuit makes litigation prohibitive for
many potential student-plaintiffs. These obstacles often lead
parties to settle their lawsuits instead of litigating their claims.48
Since most students graduate from college in four to five years,
institutions can draw out lawsuits so that the student-athletes
alleging discrimination graduate before final judgments are
handed down. The school may then argue that the case is non-
justiciable. In Cook v. Colgate University,49 the University's ap-
peal of the district court's decision delayed the final decision long
enough so that all of the plaintiffs had graduated and were
therefore ineligible to play. This case was ultimately dismissed
as moot.50 Although litigation can be a viable means toward im-
proving Title IX compliance, it is neither accessible to all who are
interested nor always timely enough to effect changes that will
benefit the student-athletes who allege discrimination in the
first place.

If reformed, OCR's process for assessing potential violations
can fully overcome the obstacles posed by litigation and provide a
fast, free means of determining violations and developing com-
pliance plans. What remains is the problem of reforming OCR
such that it can live up to its potential and provide an effective
and efficient avenue toward gender equity in athletic programs.

47. See Franklin v. Gwinnett County Pub. Sch., 503 U.S. 60 (1992); Civil Rights At-
48. The need to save time and money by settling before trial applies to both plain-
tiffs and defendants. See Randy Franz, CSF Women's Volleyball Restored, Orange
County Reg., May 21, 1992, at C1. California State University at Fullerton reportedly
could have saved $200,000 in trial-related expenses by quickly settling a Title IX lawsuit
filed by the University's women's volleyball team. See id.
49. 802 F. Supp. 737 (N.D.N.Y. 1992), vacated as moot, 992 F.2d 17 (2d Cir. 1993).
50. See Cook v. Colgate Univ., 992 F.2d 17, 19 (2d Cir. 1993).
IV. A COMPREHENSIVE ADMINISTRATIVE APPROACH TO ENFORCEMENT

An essential part of increasing OCR's effectiveness is to encourage the agency to utilize its full powers. Changes toward this end, in addition to community and post-secondary efforts to educate students about their legal rights under Title IX, would create an effective and powerful tool for ensuring Title IX compliance in colleges and universities. This part of the Article contains ideas for reforming OCR to make it a stronger and more effective enforcement mechanism.

A. REFORMING OCR

OCR has the power to be an extremely effective tool in the fight to combat gender discrimination in athletics. Despite the efforts of Congress and the courts in broadening the scope of Title IX and supporting its purpose, OCR has not been able to effect the necessary changes in schools and colleges in the years since the enactment of Title IX. OCR should effectively inspect discrimination complaints, develop strict plans for compliance, properly monitor actions taken to fulfill compliance plans, and enforce these plans when institutions fail to live up to their obligations under the law. Reform of OCR would result in a more comprehensive and effective system of compliance.

First, OCR must implement uniform standards to determine Title IX violations. Research indicates that OCR compliance officers use significantly different standards in determining Title IX violations. In one case, the Atlanta regional office of OCR as-

53. Investigating alleged Title IX violations should be distinguished from monitoring compliance. The investigation conducted by OCR enforcement officers occurs when a complaint is made, but before a Letter of Finding is issued. Monitoring by the enforcement officers occurs after an educational institution has agreed to take specific measures to remedy Title IX violations. Letters of Findings are the reports issued by OCR after an on-site investigation of a school. Typically these letters will include the nature of the complaint, whether the educational institution is taking action to change its program, and the details of the compliance plan.
54. See Heckman, supra note 52, at 68.
sessed no violation of the substantial proportionality test despite a twenty-eight percent disparity between female student enrollment and female athletic participation.\textsuperscript{55} Yet in a different case, the Boston regional office found violations in two situations in which only a six percent disparity was found.\textsuperscript{56} The Kansas City regional office has declared that an educational institution did not violate Title IX without ever seeing the pertinent information, such as budget information, during the assessment process.\textsuperscript{57} In other cases, OCR officers in one region\textsuperscript{58} placed emphasis on specific program areas that other regional offices dismissed as unimportant in similar cases.\textsuperscript{59}

Letters of Finding also indicate that OCR enforcement officers are not insisting that educational institutions fully comply with Title IX. For example, one regional office excluded booster club activity from its assessment of a school's equipment and supplies, even though the Policy Interpretation explicitly demands its inclusion.\textsuperscript{60} Another office approved a university compliance plan that ignored altogether the costs of football equipment and supplies which had been previously allocated, despite the fact that football cannot be excluded from consideration under Title IX.\textsuperscript{61} Finally, one OCR office permitted a school district to comply with a majority of the remedial actions set forth in the compliance plan instead of demanding full compliance with all of the goals.\textsuperscript{62}

Given the guidelines and the Policy Interpretation, such disparate treatment of educational institutions is unacceptable. If OCR is to serve as a primary enforcement mechanism for Title

\textsuperscript{55} See id. at 69.
\textsuperscript{56} See id.
\textsuperscript{57} The Kansas City OCR office, without demanding the recruitment budgets for men's football, basketball, and baseball, declared the University of Nebraska to have no violation of its recruiting practices. See id. at 156.
\textsuperscript{58} There are twelve regional OCR offices that together cover all states. See U.S. Department of Education/Office for Civil Rights, Enforcement Offices (visited Feb. 7, 1999) <http://www.ed.gov/offices/OCR/ocregion.html>.
\textsuperscript{59} See Heckman, supra note 52, at 184.
\textsuperscript{60} See id. at 187. See also 34 C.F.R. § 106.41(c)(2) (1998) (including booster club activity in an assessment of an athletic program's equipment and supplies).
\textsuperscript{61} See Heckman, supra note 52, at 19, 184, referring to OCR File No. 3-89-2045 (Towson State University). Although the high cost of football equipment is to be taken into consideration in the determination of a Title IX violation, major discrepancies in funding between men's and women's athletic programs cannot be ignored altogether.
\textsuperscript{62} See Heckman, supra note 52, at 21-23, 184.
IX, it must ensure that its compliance officers understand Title IX so that they can effectively and efficiently assess whether a violation exists, and determine how best to remedy it. To this end, OCR must revise its Title IX Athletics Investigator's Manual to provide more specific guidance and instruction.¹³

1. *Establish Clear Guidelines*

OCR should issue national guidelines regarding Title IX standards which could then be followed uniformly by all compliance officers. OCR should provide concrete guidelines on how to assess potential violations, including specific examples of what situations are acceptable, unacceptable, or borderline under Title IX standards.

In addition, OCR must implement stricter compliance plans. OCR investigators need to ensure that proposed compliance plans effectively remedy discriminatory practices at a school and also must prepare the school to contend with future potential Title IX violations. To that end, OCR should check the history of program expansion and downsizing, and prohibit universities from maintaining significant participation discrepancies for teams that the institution “emphasizes” for men, but not for women.¹⁴

Investigators must assess whether there are Title IX violations in other areas of an athletic program in question, even if those particular areas have not been the subject of complaints. Requiring the investigator to inspect all aspects of a particular athletic department will require additional resources, but will ensure that the school or university's compliance with Title IX will be complete.

¹³ The investigator’s manual is not a legislative document, but provides guidelines for Title IX monitoring and enforcement for use by designated Title IX officers at schools and post-secondary institutions. In 1997, OCR distributed a clarification of the three-part test for Title IX compliance discussed supra, Part II. See U.S. Department of Education/Office for Civil Rights, Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (last modified Nov. 25, 1998) <http://www.ed.gov/offices/OCR/clarific.html>. This clarification was intended primarily for school and university officials, and was not geared for internal use within OCR. See Norma V. Cantu, Assistant Secretary for Civil Rights, Letter accompanying Clarification of Three-Part Test (last modified Nov. 25, 1998) <http://www.ed.gov/offices/OCR/clarific.html>.

¹⁴ See Heckman, supra note 52, at 184.
In order to understand fully the compliance status of any athletic department, the investigating officer must interview students in a meaningful way. One study showed that athletic directors were unaware of any possible Title IX violations within their athletic departments, yet interviews with students and athletes at those schools described serious Title IX violations in the areas of quality of equipment, preferential time slots for games, school support, and facilities. As this study makes clear, student input is essential in determining if an athletic program violates Title IX.

Currently, OCR provides no guideline to investigators regarding the appropriate number of students to interview. OCR should require compliance officers to interview enough students so that the investigator meaningfully understands the students’ experience. Students who initiate the complaint should have the opportunity to help with the compliance plan, if only to ensure that the original violation will be properly addressed. In addition, OCR investigators should interview athletes and other students to assess potential violations.

OCR should issue guidelines specifying how many students to interview, based on the nature of the alleged violation. For ex-

65. Surveying students’ athletic interests is a common method of assessing potential violations of the “effective accommodation” prong of Title IX. See Telephone Interview with Rodger Murphey, Spokesperson for OCR (Feb. 26, 1999).

66. Athletic directors who also serve as Title IX Coordinators for a district would deal with OCR investigators if a Title IX violation were alleged.

67. See Connecticut Women’s Education and Legal Fund (CWEALF), Keeping Score: A Report Regarding Connecticut Secondary Schools and Title IX’s Mandate for Gender Equity in Athletics 12-19 (1997). Assuming that the students and athletes gave accurate reports as to the facilities and equipment provided them, the school in question was clearly in violation of the Title IX regulations.

68. See Telephone Interview with Rodger Murphey, Spokesperson for OCR (Feb. 26, 1999).

69. 34 C.F.R. § 100.7(e) (1996) provides a non-retaliation safeguard for students who come forward to make Title IX-related complaints, or testify, assist, or participate in any manner in an investigation, proceeding, or hearing under Title IX. This protection extends to discussions involving the compliance plans as well. These students should not be compelled to assist in the development of a compliance plan, but affording them this opportunity would allow school officials to gain input in creating a plan that would help act as a preventive measure against future Title IX problems.

70. The Title IX Athletics Investigator’s Manual (1990) indicates no requirement that non-athletes be interviewed by OCR. See Heckman, supra note 52, at 23—24. Letters of Finding generally do not indicate the number of students interviewed during an investigation. See id. at 11. In one case, however, OCR made a determination of how well a school “effectively accommodated” its students’ interests in athletics based on six student interviews. See id.
ample, if a complaint alleges a quantifiable violation such as unequal locker facilities, the officer may only need to interview a relatively small percentage of students. Interviewing twenty percent of the team members involved, coupled with an inspection of the boys’ and girls’ locker rooms, among other things, should give the investigator a clear idea of whether a violation exists. If, however, the potential violation is not readily quantifiable, more extensive and comprehensive interviews will be required. For example, if a team alleges that it was cut from the athletic program despite significant student interest, at least fifty percent of the students involved must be interviewed. Ideally, all of the team members would be interviewed, but this could prove to be administratively impossible for compliance officers. Therefore, a fifty percent interview rate strikes a balance — students can be assured that their input is being taken into consideration, and OCR compliance officers can maintain a level of efficiency in the assessment process.

2. Increase Monitoring of Compliance Plans

OCR should increase its monitoring of compliance plans and subsequently penalize educational institutions that are not in compliance with Title IX. A comprehensive study of the Letters of Findings71 conducted by the Women’s Sports Foundation revealed that since 198872 OCR has never initiated an administrative enforcement proceeding, referred a case to the Department of Justice for enforcement, or decided to withhold federal funding for a school not in compliance with Title IX.73 Each of these remedies is within the power of OCR and can be a powerful tool to encourage reform.74 The effect of OCR’s unwillingness to take

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71. This study examined OCR documents, primarily Letters of Findings, involving over 160 cases filed from 1988 to 1992. OCR processes, as well as the necessary requirements to establish “equal opportunity” under Title IX, were examined to determine how OCR was approaching and dealing with complaints regarding Title IX violations. See Heckman, supra note 52, at 182–185.

72. The study covered Letters of Findings issued after the Civil Rights Restoration Act of 1987 was passed. See 20 U.S.C. § 1687 (1988). In addition, OCR’s spokesperson confirmed that none of these enforcement measures has ever been taken by OCR. See Telephone Interview with Rodger Murphey, Spokesperson for OCR (Feb. 26, 1999).

73. See Heckman, supra note 52, at 194. See also Carol Herwig, Federal Office Gets Tougher with Title IX, USA TODAY, July 21, 1994, at 7C.

punitive action against non-compliant institutions is further compounded by two factors. OCR has a history of designating an institution as compliant with Title IX as soon as it has received assurance from the institution that changes will be made, but before any compliance efforts have necessarily been made.\(^7\) From 1988 to 1992 only thirty-one compliance reviews were conducted among all of OCR’s regional offices, which is an average of less than one review per office per year.\(^6\) As a result, schools in violation of Title IX can automatically achieve compliant status without actually effectuating any change and will probably be able to avoid a compliance review.

Once a school accepts a compliance plan, OCR should not automatically designate that school as in compliance.\(^7\) Instead, an OCR representative should note the acceptance of the plan and follow up to ensure that a school is fulfilling its promised reforms by conducting at least one compliance review within one year of the acceptance of the plan. If a school is unreasonably dilatory in its reforms or satisfies only some elements of the plan, then OCR needs to take further action, such as referring a case to the Department of Justice for enforcement and threatening revocation of federal funding. Although the threat of funding revocation is available, it is not credible because it has never been used. Further, OCR’s stated policy for dealing with non-compliant institutions is to renegotiate a new compliance agreement, not to seek outside enforcement.\(^8\) Referring cases for enforcement, and perhaps revoking funding in the most extreme cases, would force schools to realize that penalties for non-compliance are a real possibility. As a result, the school would then have a motivation to adhere to the compliance plans in the first place. Because loss of funding is a strong measure that would inevitably cause harm to students and staff, OCR should revoke funding only after enforcement proceedings and a school’s subsequent refusal to comply. Schools have had over twenty years to comply with the mandates of Title IX, yet over eighty

\(^7\) See Heckman, supra note 52, at 194.
\(^6\) See id. at 26. Among the 31 reviews conducted, only 20 were full reviews, while 11 were partial reviews. See id.
\(^7\) See id. at 184.
\(^8\) See Telephone Interview with Rodger Murphey, Spokesperson for OCR (Feb. 26, 1999).
percent still have not done so.\textsuperscript{79} Clearly more forceful action is necessary to provide notice to schools that non-compliance is simply intolerable.

3. \textit{Resolve Complaints More Expeditiously}

OCR should ensure that complaints are resolved in a more expeditious manner. One of the disadvantages of litigating a Title IX dispute is the length of time, which can be so long that the athletes who initially filed the complaint may graduate before a final resolution.\textsuperscript{80} Opting to use OCR as an enforcement mechanism should afford complainants a faster way to resolve disputes. OCR does not have a strict guideline as to how quickly a Letter of Finding should be issued,\textsuperscript{81} and some OCR cases have taken years to be resolved.\textsuperscript{82} Forcing student-athletes to wait several years is unacceptable. OCR investigators should issue a Letter of Finding based on a thorough investigation within 180 days, if reasonable under the circumstances. This time limit would encourage compliance officers to work expeditiously with schools, forcing schools to cooperate with OCR in resolving complaints. Even allowing for the time necessary to implement the promised changes, such a deadline ensures that more students who file Title IX complaints with OCR will be able to reap the benefits of reforms in their schools if a Title IX violation is found.

OCR has stated that Title IX complaints, particularly those involving alleged facilities violations, are often time-consuming because of the amount of data that must be collected and analyzed before issuing a Letter of Finding.\textsuperscript{83} To reduce the time necessary for this process, OCR must assign more data gatherers and analysts to deal with complex situations. To this end, OCR should request, and Congress should grant, more funds geared

\textsuperscript{79} See Women's Sports Foundation, supra note 7, para. 6.
\textsuperscript{80} See, e.g., Cook v. Colgate Univ., 802 F. Supp. 737 (N.D.N.Y. 1992), vacated as moot, 992 F.2d 17 (2d Cir. 1993).
\textsuperscript{81} See Telephone Interview with Rodger Murphey, Spokesperson for OCR (Feb. 26, 1999).
\textsuperscript{82} See Heckman, supra note 52, at 20. Heckman describes an OCR investigation of unequal scholarship funding at the University of Michigan that took seven years to resolve. See id.
\textsuperscript{83} See Telephone Interview with Rodger Murphey, Spokesperson for OCR (Feb. 26, 1999).
B. EFFECTING CHANGE AT MANY LEVELS

OCR can become a powerful force in encouraging Title IX compliance and in demanding reform when necessary. OCR's activities would produce better results in less time, while spending less taxpayer money, if other efforts were made on a local level to prepare for and facilitate the mandated changes to athletic programs. Schools and colleges are mandated by law 84 to make a greater effort to educate students, coaches, Title IX coordinators, and community members about the requirements of Title IX. They must highlight the responsibility of educational institutions to their student-athletes as well as the grievance procedures available to the athletes. Greater awareness would allow educational institutions to evaluate their programs before a student files a complaint with OCR. If an institution shows support for potential changes in its athletic program by educating its students, then students may be willing to resolve the situation internally. In turn, administrators and coaches must make a greater effort to communicate with athletes about all aspects of their treatment in athletics and to make themselves available to listen to complaints from students. A dialogue about the conditions of men's and women's athletic programs is the necessary first step in combating the institutional apathy that occurs due to student turnover every few years. Only with increased communication on this individual level can students and coaches effect larger changes within an educational institution that will endure after students have graduated.

This heightened awareness and communication will undoubtedly make OCR's task easier if it is required to assist in developing a compliance plan, as more members of a school or university community will be aware of the rights and obligations asso-

84. See 20 U.S.C. § 1681(a) (1994). See also 34 C.F.R. § 106.9 (1998) ("Dissemination of Policy: (a) Notification of policy. (1) Each recipient [federally funded institution] shall implement specific and continuing steps to notify . . . students and parents of elementary and secondary school students . . . that it does not discriminate on the basis of sex in the educational programs or activities which it operates, and that is required by Title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Assistant Secretary finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and this part . . . .").
ciated with Title IX. Any compliance plan drawn up in conjunction with an educated and aware student body will most likely be a stronger and longer-lasting compliance plan that helps prevent future Title IX violations.

Because the barriers to communication may initially be extremely high, a structured mechanism may be helpful in dealing with Title IX and increasing general awareness as educational institutions begin to achieve compliance. One way to facilitate the implementation of Title IX in high schools is by creating a local Title IX or Equity Advisory Committee, which would be composed of administrators, students, coaches, faculty, and parents.85 Another suggestion is to publish reports on Title IX compliance on a regular basis, thereby educating faculty, coaches, staff, students, and community members on progress that has been made toward gender equity in the university or school district. Federally-funded educational institutions are already required to complete self-evaluations of their programs if evidence of a possible violation of Title IX exists.86 Schools also must keep the records and findings of their self-evaluations on file for three years and make them available to OCR upon request.87 These steps would not create an inordinate financial burden on an educational institution, but they would expedite the task of OCR and curtail some of the expenses that would otherwise be borne by the Department of Education and taxpayers.

Additional mechanisms are already in place for universities. The Equity in Athletics Disclosure Act of 1994 mandates that all institutions of higher education report each year on athletic participation figures, scholarships, program budgets and expenditures, and coaching salaries by gender. Such reports not only assist OCR in determining Title IX violations and in pinpointing

85. Such a committee would, in essence, add another layer of bureaucracy to the compliance process. The additional costs would be minimal, however, if the committee were composed of volunteers. As a valuable benefit, members of a community would be able to shape the way in which Title IX compliance was achieved for their schools.

86. See 34 C.F.R. § 106.3(c)(i) (1998). See also 34 C.F.R. § 106.3(c)(2)-(3) (1998) (indicating that schools must also take action to remedy any Title IX violations and policies that serve to effect such violations); 34 C.F.R. § 106.3(a) (1998) (mandating remedial action upon a showing of discrimination); 34 C.F.R. § 106.3(b) (1998) (permitting affirmative action to overcome the effects of past discrimination due to Title IX violations found by the educational institution).

87. See 34 C.F.R. § 106.3(d) (1998).

the best avenues for reform, but also establish the basis for an honest dialogue between an institution and its students, increasing trust and cooperation toward reform.

In addition to increasing awareness and communication, educational institutions must take a serious look at the details of their athletic programs and determine their priorities. As a result, schools and universities would be better prepared to make changes when OCR arrived to assess potential Title IX violations and to help develop compliance plans. Schools can look to local organizations for advice and technical assistance in bringing themselves into compliance, thereby curtailing the length of time that OCR needs to spend assisting each educational institution.89

If budget constraints are so prohibitive that relatively minor changes such as upgrading equipment and improving facilities are impossible to implement immediately, schools should consider creative ways to make their programs equitable. For example, a school might consider ideas such as rotating superior playing fields, locker rooms, and, when possible, equipment between women’s and men’s teams. Another method of dealing with budget problems is to temporarily reduce team rosters in some sports in order to reallocate funds toward women’s athletics.90 This short-term approach can be used to alleviate immediate concerns of discrimination while a school develops a long-term plan for remedying Title IX violations. Although these adjustments are not painless and may temporarily decrease the success of some men’s sports teams, they provide a temporary solution to the problem of non-compliance with Title IX without significantly constraining men’s athletic programs or engendering ill-will toward women’s athletic programs and Title IX’s mission.

V. OTHER PROPOSALS FOR INCREASING TITLE IX COMPLIANCE: BENEFITS AND DISADVANTAGES

Because gender equity in sports has been an elusive goal for

89. See Heckman, supra note 52, at 194. Local women’s rights organizations are often willing to work with schools to develop compliance plans that are similar to those drawn up by OCR, though they lack the authority to penalize schools that do not follow through with the plans.

90. See CWEALF, supra note 67, at 22 (recommending this approach as effective in taking preventive action against potential Title IX violations in schools).
so many years, legal scholars have offered a variety of non-litigation suggestions to improve Title IX compliance. While these proposals offer certain benefits to complainants and educational institutions, they also suffer from serious disadvantages.

A. FOOTBALL

One proposal is the exemption of football from the scope of Title IX, a move that may bring many universities into compliance with the substantial proportionality test of Title IX.\(^{91}\) Although this is an appealing option to many sports enthusiasts who fear that college football teams will suffer as a result of Title IX's mandate, there is little historical or pedagogical justification for such an action. Congress explicitly rejected the idea of exempting football and other potentially revenue-producing sports from the rubric of Title IX with its refusal to enact the Tower Amendment in 1974.\(^ {92}\) Furthermore, the Policy Interpretation for Title IX specifically notes that sports such as football should not receive any special treatment under Title IX.\(^ {93}\) Instead, the Policy Interpretation reflects an understanding that sports such as football require greater funding because of the amount of equipment necessary to play the sport safely, and that such factors should be taken into consideration in assessing whether a Title IX violation exists.\(^ {94}\) Clearly, however, Congress did not intend for football to be able to escape the breadth of Title IX simply because of its popularity.\(^ {95}\)

Many sports enthusiasts argue that college football should be the single exception to Title IX because it is a profit-generating sport. Their contention is that the revenue generated from football can be used to support the football team, or even used to

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91. For a discussion of the substantial proportionality test, see supra Part II.
92. See 120 Cong. Rec. 15,323 (1974). Senator John Tower encouraged passage of an amendment that proposed to exempt revenue-producing sports from Title IX by (1) asserting that many athletic programs would lose viability if men's revenue-producing sports were curtailed to comply with Title IX, and (2) claiming that men's revenue-producing sports provided necessary resources to expand women's sports programs, thereby encouraging Title IX compliance. See id.
94. See id. at 71419. As explained in Part II, supra, an educational institution can devote the necessary funds toward football without violating Title IX so long as the women's sports teams are given extra benefits to compensate for any significant disparities in funding.
support "non-revenue" sports, thus fostering Title IX compliance over the long term. 96 It is spurious, however, to consider football a revenue sport when eighty-one percent of collegiate football programs operate at a deficit. 97 Even among Division IA universities, over one-third of football programs maintain annual deficits in excess of one million dollars. 98 Therefore, the argument that football raises revenue that can then be used for a university's other sports activities is not well-founded.

A second proposal involves reducing the size of football squads to promote increased Title IX compliance. 99 The National Collegiate Athletic Association ("NCAA"), which governs most intercollegiate sports, 100 states that Division I football teams can offer up to eighty-five athletic scholarships per year. 101 In addition, college rosters often hold up to 105 players. 102 Because schools have traditionally allowed football teams to train with so many players while offering no numerically comparable women's team, reduction in football rosters appears to be a relatively easy way to improve compliance with the substantial proportionality test. 103 Proponents of this approach note that most professional football teams carry only forty-seven players, and even at the college level, many programs carry only sixty-five players to their away games. 104

97. See Women's Sports Foundation, supra note 7, para. 10.
98. See id.
100. The NCAA also falls under the rubric of Title IX because it receives dues from federally-funded member institutions. See Smith v. National Collegiate Athletic Assoc., 139 F.3d 180, 187–89 (3d Cir. 1998) (holding that if allegations that the NCAA receives dues from federally-funded members are proven, then it would subject the NCAA to Title IX). See also 20 U.S.C. § 1687 (1994).
101. See NCAA Division I Manual, Bylaws 15.5.5.
102. See Shook, supra note 9, at 11.
103. For example, suppose a school with equal numbers of male and female students has a men's sports program that has 300 participation slots and a women's sports program that has only 250 slots. Under the substantial proportionality test, this school would have to add 50 more participation slots in its women's athletic program if it wanted the men's program to remain untouched. If that school, however, had a football team that carried 100 students on its roster, it could decrease that number to 50 students and pass the substantial proportionality test without further adjustments to its athletic programs. See supra note 9 and accompanying text.
104. See Blaine Newnham, College Football Blocks Way to Obtaining Gender Equity,
This apparent discrepancy between National Football League ("NFL") teams and Division I teams is primarily superficial, as NFL teams carry an injured-reserve list in addition to their regular roster. NCAA teams, on the other hand, carry rosters that include all eligible players, including injured players, reserve players, and those expected to play. In addition, relying solely on reducing the size of college football teams may jeopardize the safety of the players. Freshmen student athletes often need time to develop physically and are not prepared to play football, a full contact sport, during their first year. Finally, although reduction of football rosters may lead to a better ratio of participation opportunities and some surplus in funds, this approach does not offer a comprehensive solution for universities with more substantial Title IX violations.

B. "PROFIT CENTERS"

A third proposal involves making a distinction among sports as "profit centers" for a university, distinguishing revenue-generating sports as "businesses" from those having educational value as "amateur." Under this proposal, sports that a college or university chooses to designate as "businesses" would be exempt in calculating possible violations of Title IX. Students involved in these "businesses" would be treated as employees. Proponents of this proposal acknowledge that Congress, agencies, or courts would have to promulgate standards to ensure that educational institutions are not improperly designating sports as businesses simply to avoid Title IX. It is possible that such standards could be defined, but it remains unclear how university activity would be monitored and standards enforced.

Although this proposal could help save some men's sports potentially imperiled by budget cuts, the profit center proposal, like the football exemption approach outlined above, fails to acknowl-

Seattle Times, June 11, 1993, at C1; Letter via electronic mail from Rebecca McCurdy, NCAA Governance Intern to author (Feb. 4, 1999) (on file with the Columbia Journal of Law and Social Problems).

105. See Newnham, supra note 104, at C1.
106. See McCurdy, supra note 104.
108. See id.
109. See id.
edge that most college sports do not operate at a profit. There are situations in which television networks pay to air certain athletic events, corporations offer sponsorship of certain teams, and substantial ticket revenue is collected from certain sporting events. However, even if a team does generate revenue, it is rarely enough to offset the costs the team incurs, such as facilities maintenance and insurance.

The profit center approach also defeats the purpose and spirit of Title IX, which calls for reform that would reflect a sense of equity in all aspects of education. Removing some sports from the educational equation undermines Title IX by allowing educational institutions to bypass it. Congress rejected the Tower Amendment because it excluded football and other sports that could potentially generate revenue under the philosophy that Title IX was meant to encompass all sports and thereby enhance the educational process for all students and student-athletes. The profit center approach to Title IX compliance disregards this ideal altogether, instead opting for reform that would undermine gender equity in sports by exempting some sports from Title IX’s purview.

C. UPGRAADING WOMEN’S CLUB TEAMS

A fourth potential approach involves upgrading existing women’s club level teams to varsity status, and instituting junior varsity teams for popular women’s sports in order to increase the participation slots available to female students. While this is

110. See supra note 97 and accompanying text.

111. For example, NBC paid forty million dollars for the rights to air all of the University of Notre Dame’s home football games through 2005. See John Niyo, Big Ten Could Stage Championship with Irish in Fold, Detroit News, Dec. 10, 1998, at F5.

112. For example, Nike provides many universities with money for athletic programs and facilities. See, e.g., Pro and Con: UA’s Nike Deal Controversial, The Tucson Citizen, Jan. 26, 1998, at 9A; Vince Sweeney, Athletic Department Hopes to Block Misinformation, Wisconsin St. J., Dec. 29, 1995, at 11A.

113. As stated earlier in the text, if only a small percentage of college football teams are generating positive net revenue each season, a blanket solution that is premised upon football revenue is not only insufficient but also logically faulty. See supra note 97 and accompanying text.

114. See supra notes 1-6 and accompanying text.

115. See 120 Cong. Rec. 15,323 (1974) (a defeated attempt to curtail the scope of Title IX).

116. For example, an athletic program with 200 varsity participation slots for men and only 150 for women could upgrade a women’s club team to varsity status in order to
an ideal proposal for female athletes, it is not financially feasible for most universities. Many universities are faced with serious budget constraints, forcing them not only to stop expansion of athletic programs, but to reduce them significantly. Thus, any expansion of women's sports programs may have to be funded by a reallocation of resources from men's sports. As stated above, this approach may solve proportionality problems for some universities, but does not provide a practical long-term solution. For example, many educational institutions cannot reduce team participation slots within their men's sports programs without sacrificing the safety or integrity of a team. Given the fiscal constraints of most universities, upgrading women's sports is an unrealistic and incomplete solution for improving Title IX compliance.

D. NCAA ENFORCEMENT

Finally, scholars have suggested the use of the NCAA as an enforcement mechanism. This strategy seems appealing because the NCAA already has policing responsibilities, such as penalizing institutions for recruiting violations. Additionally, the NCAA requires each member institution to submit an annual report containing gender equity information about its athletic programs. However, since the NCAA governs only intercollegiate athletics, it has little practical effect on intracollegiate and secondary school athletic programs. If Title IX is to be improved their male/female ratio of participation slots.

117. See, e.g., Randy Franz, $200K saved by Cal State Fullerton, Orange County Reg., May 21, 1992, at C1.
119. See notes 105–106 and accompanying text.
120. See Miguel, supra note 11, at 302.
122. See Miguel, supra note 11, at 302.
123. Intracollegiate sports, such as club teams, are only covered by Title IX if they regularly participate in varsity level competition. See 44 Fed. Reg. 71413, note 1 (1979); Student Assistance General Provisions, 60 Fed. Reg. 6940 (1995) (proposed Feb. 3, 1995).
124. In addition, the Supreme Court recently held that the NCAA, as an organization that benefits economically from institutions that receive federal funding, is not subject to the mandates of Title IX. See National Collegiate Athletic Ass'n v. Smith, 119 S.Ct. 924 (1999). It seems ironic that a private organization that is not subject to Title IX should be put in charge of Title IX enforcement.
fully effective and if women athletes in college are to have equal opportunities, change must occur at all levels of education, including middle and high schools. Title IX enforcement at earlier levels would encourage more girls to get involved with sports in the first place, and would afford them an equal opportunity to continue their athletic endeavors throughout their educational careers. OCR is the only agency with the power to effect change at all of these levels of education.

VI. DEFENDING THE OCR APPROACH AS THE MOST VIABLE SOLUTION

Admittedly, using OCR as the primary vehicle toward Title IX enforcement would add expenses to the Department of Education's budget. The number of compliance officers who not only assess violations but also conduct regular follow-up visits to institutions to ensure the implementation of the compliance plan would have to increase significantly. In addition, the personnel at OCR would have to increase proportionately in order to accommodate the larger field staff and the expected rise in requests from students and educational institutions to assess athletic programs and assist in reform. While the additional money that would be allocated toward OCR may be substantial, it is necessary to uphold the law. In the long term, taking a proactive approach to resolving Title IX inconsistencies may result in lower future costs, such as the need for OCR monitoring and enforcement.

Congress enacted Title IX in 1972 and the Policy Interpretation discussing the role of OCR in the reform implementation process in 1979. Before both of those enactments, Congress

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125. See Women's Sports Foundation, supra note 7. Commentators note that sports benefit female athletes in other ways as well; they have higher self-esteem than other female students, they are less likely to become pregnant while in high school, and they have a greater chance of graduating. See id. Although female sports participation has increased tremendously since Title IX's enactment, studies show that participation opportunities decline for girls after the age of nine. See id.

126. For fiscal year 1999, OCR employs approximately 380 investigators among all of its regional offices. See Telephone Interview with Rodger Murphey, Spokesperson for OCR (Feb. 26, 1999).

127. In addition, educational institutions would undoubtedly save money by forestalling costly litigation.

must have been fully aware of the potential financial and bureaucratic burden it was placing on the federal government. Nevertheless, Congress passed the legislation in hopes that Title IX would be a "strong and comprehensive measure [that would] provide women with solid legal protection from the persistent, pernicious discrimination which is serving to perpetuate second-class citizenship for American women." 129

Congress has not looked to curtail the scope of Title IX in years since, as evidenced by the rejection of the proposed Tower Amendment 130 and by the adoption of the Javits Amendment, which provides that all sports are covered by Title IX. 131 As stated previously, Congress also reaffirmed its commitment to Title IX's broad scope by passing the Civil Rights Restoration Act of 1987. 132 As Congress chose to establish and maintain standards for Title IX compliance, it did so with the knowledge that any expectation of a government agency being a powerful enforcement mechanism would require significant resources. Thus, Congress has the responsibility of allocating more resources toward OCR, increasing funding such that OCR can effectively fulfill all of its duties.

As discussed in Part IV, it is essential that the body overseeing Title IX compliance has national scope so that the standards enforced are uniform and can be anticipated and understood by educational institutions. OCR is especially well suited to this purpose because it can monitor Title IX violations on both the collegiate and secondary school levels. Critics of current Title IX standards note that female participation in athletics declines before students reach college age and thus Title IX effectively punishes male collegiate athletes for a societal problem that they did not create. 133 These commentators argue that if girls in the middle school and high school level are not encouraged and given equal opportunities to play sports, it is difficult to understand how there will be sufficient interest and ability 134 in a sport by

130. The Tower Amendment would have exempted "revenue-producing" sports from the scope of Title IX, but was rejected in committee. See 120 Cong. Rec. 15,323 (1974).
133. See, e.g., Michael Straubel, Gender Equity, College Sports, Title IX and Group Rights: A Coach's View, 62 Brook. L. Rev. 1039, 1041-43 (Fall 1996).
134. Interest and ability are the factors that are considered in determining whether
the time these same women enter college. OCR has the power to effect change on all educational levels, setting uniform standards with which all educational institutions must comply and enforcing the law in the way Congress intended. Other organizations, such as the NCAA, fall far short of the ideal due to reasons outlined in Part V. OCR, an agency with the specific purpose of rectifying Title IX violations, would be the ideal choice if modified as discussed in Part IV. In the final analysis, the potential obstacles in the path of effective OCR supervision of Title IX compliance are offset by the substantial benefits of such a plan.

VII. CONCLUSION

Over twenty-five years after the enactment of Title IX, schools and colleges across America are still falling short of one simple and obvious proposition that Congress endorsed: All students, regardless of sex, should have equitable opportunities in all areas of their educational experiences. It is clear, however, that gender equity has not yet been achieved. Current estimates indicate that at least eighty percent of all colleges and universities fail to comply with Title IX. In addition, societal attitudes toward men’s and women’s athletics often reflect the perception that female athletes are somehow not as qualified as their male counterparts. Just last year, Michael Tranghese, Commissioner of the Big East Athletic Conference, said, “[y]ou have to understand that males are made up differently from women, and I try to be sensitive to women. Men compete, get along, and move on with few emotions. But women break down, get emotional... These are entirely different sports cultures.”

an educational institution has satisfied the third prong of the participation test. See supra Part II.

135. See generally Beveridge, supra note 12.
137. See Women’s Sports Foundation, supra note 7. 
138. Robert Lipsyte, Coach’s ‘Gift’ to Injured Athlete Sets off a Fast-Breaking Debate, N.Y. Times, Feb. 26, 1998, at A1. University of Connecticut (“UConn”) women’s basketball coach Geno Auriemma arranged with the coach of an opposing team to allow Nykesha Sales, a star player for UConn, to take an uncontested shot at the beginning of a game. Auriemma did so in order to allow Sales, who suffered a career-ending injury in the previous game, to break UConn’s scoring record. Tranghese’s approval was necessary to arrange the uncontested shot. His comments, noted in the text, were made in response to a journalist’s question as to whether he would grant approval to a similar situation in men’s basketball. He stated that he would not consider granting such approval in a
Society has come a long way toward accepting women as strong athletes, but more progress is necessary. Better enforcement of existing regulations and laws is a major step in effecting change on all levels of education, and can potentially benefit female athletes of all ages. OCR must wield its significant power in bringing institutions into compliance. With reform and initiative, OCR can live up to its full potential, helping America's female athletes do the same.