

2007 North American Society for Sport Management Conference (NASSM 2007)

Title IX Compliance Past & Present: A Comparative Analysis of *Favia v. Indiana University of Pennsylvania (1992)* and *Choike, et al. v. Slippery Rock University (2006)*

Robin Ammon, Jr, Slippery Rock University
Barbara Osborne, University of North Carolina-Chapel Hill

**Session 26: Legal aspects
Presentation (25-minute)**

Saturday, June 2, 2007

11:00 AM - 11:25 AM

Title IX was enacted as part of the Educational Amendments Act to ensure equality in athletics at higher education institutions. Since its enactment in 1972, perhaps no federal statute has had more direct impact on intercollegiate sport than Title IX. Title IX has helped to further expand female participation in sport and to provide women with the same opportunities as men in educational programs that receive federal funding. Before Title IX about 1 in 27 females participated in sports and since the enactment of Title IX that number has grown to 1 in 2.5 (Miller, 2006).

When Title IX was passed into law in 1972, there was no mention of athletics or extracurricular programming in the broad language of the act. Regulation and enforcement of the law was left to the then Department of Health, Education and Welfare (HEW). Title IX has gone through many changes since it was passed by Congress. Each of these changes has further defined the rules and regulations institutions must follow. The NCAA is required to follow these rules and regulations in order for its members to be compliant with the law (Brady, 2006).

In 1979, the Department of Education's Office for Civil Rights (OCR) established the three-prong test that determines if a school is compliant with Title IX-now commonly known as the Effective Accommodation test. In this test, schools had to prove compliance with one of the three options in order to meet the third section of the 1975 Regulations passed by the HEW. These three options are:

1. Substantial proportionality measured by comparing the percentage of undergraduate enrolment to the percentage of student-athletes by sex.
2. History and continuing practice of program expansion which is responsive to the developing interest and abilities of the underrepresented sex.
3. Demonstrate that the interest and abilities of the members of the underrepresented sex have been fully and effectively accommodated by the present program.

If a university meets one of the three prongs, it is said to be in compliance with Title IX. Failure to comply with Title IX has resulted in a number of lawsuits against athletic departments.

Although Title IX enforcement can occur through the OCR or the courts, the court decisions have been instrumental in forming Title IX policy as well as shaping the general public's perspective of title IX. In 1996 the OCR determined that the proportionality prong (#1) a "safe harbor" and since then many NCAA Athletic Directors have believed it to be the best way to reach Title IX compliance. While many university athletic directors believe the proportionality prong to be the safest option, either program expansion (prong #2) or effective accommodation (prong #3) will also ensure compliance.

In order to reach compliance using the proportionality prong university athletic directors are faced with the decision of adding female sports, eliminating male sports or a combination of two. Unfortunately this has resulted in a number of athletic programs being eliminated. More than 400 men's teams have been eliminated in the last 30 years. However, of the 948 schools that added women's programs between 1992-2000 72% were able to do so without eliminating any other program (Brady, 2006). Slippery Rock University (SRU) is a Division II institution in the Pennsylvania State Athletic Conference (PSAC) located in Western Pennsylvania. The university had the largest number of intercollegiate varsity athletic teams (23) in Division II, and university administrators made the decision in January 2006 to eliminate five male and three female varsity sports. The elimination of these sports was part of the university's plan to erase a \$2 million shortfall. The administrator's action gave rise to many issues and concerns regarding Title IX and compliance at the university.

This study analyzed two contemporary cases published over the past 15 years. The decisions from *Favia v. Indiana University of Pennsylvania (1992)* and *Choike, et al. v. Slippery Rock University (2006)* were reviewed and will be discussed. Both schools are members of the Pennsylvania State System of Higher Education (SSHE), the Pennsylvania State Athletic Conference (PSAC)

2007 North American Society for Sport Management Conference (NASSM 2007)

and both universities chose the proportionality prong to reach Title IX compliance. Research variables including number of sports eliminated, type of sports eliminated, the plaintiff's and defendant's arguments, holdings and summary of the courts decision will be compared and contrasted.

This type of legal analysis may assist future sport managers in understanding the issues involving Title IX compliance. This knowledge may encourage university athletic department to modify their practices in order to reduce the potential for future litigation.