Cheerleading and Title IX: A Legal Feminist Analysis

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In March 2009, Quinnipiac University, a private institution that competes at the NCAA Division 1 level, announced plans to drop women’s volleyball, men’s golf, and men’s outdoor track. They also indicated that they would be adding competitive cheerleading as a varsity sport. Players on the women’s volleyball team sued under Title IX claiming that Quinnipiac deprived female athletes of equal athletic participation opportunities. In order to determine whether or not the university provided equal athletic opportunities in compliance with Title IX, the court had to determine whether or not cheerleading was a legitimate varsity sport participation opportunity. While the media debated whether or not cheerleaders were athletes, the court avoided that debate and applied a very pragmatic approach in determining that cheerleading, as conducted at Quinnipiac, was not a legitimate varsity sport participation opportunity that should be counted for Title IX compliance purposes (Biedinger v. Quinnipiac University, 2010).

The purpose of this research is to examine competitive cheer in a broader framework beyond the facts of the Biedinger v. Quinnipiac University (2010) case. Feminist legal theory is an approach to law that seeks to enable women to live full and meaningful lives without the limitations of gender roles and gender discrimination (Brake, 2010). Feminist legal scholarship has historically ignored sport, but given the importance of sport in American culture, this is an area that is ripe for analysis. Competitive cheer is examined from a legal feminist perspective to determine whether or not this activity satisfies the goals of Title IX.

Title IX of the Education Amendments of 1972 was enacted to eliminate gender discrimination in educational programs and activities. In 1975, college and university athletics programs became better informed of the expectations in providing equitable opportunities for female and male athletes when the U.S. Department of Education (then the Department of Health, Education, and Welfare) issued Regulations (34 C.F.R. Part 106.41). The Regulations required that educational institutions which sponsored intercollegiate athletics programs provide equal opportunities for both sexes in selection of sports, levels of competition, and a list of program components including equipment, scheduling, travel, coaching, facilities, and medical services (34 C.F.R. Part 106.41(c)(1)). Confusion regarding the requirement to “effectively accommodate the interests and abilities of members of both sexes” (34 C.F.R. Part 106.41(c)(1)) led to the 1979 Policy Interpretation on Title IX and Intercollegiate Athletics (45 C.F.R. Part 26).

The Policy Interpretation was presented in three sections: scholarships, program areas, and interests and ability. The scholarships requirement is a straightforward mathematical formula for providing athletics-related grant-in-aid based on the percentage of male and female athletes participating in the program. The second section added two program factors, recruitment and support services, and provided a framework for determining whether disparities existed. The third section introduced a new three-part test to determine whether institutions were effectively accommodating the athletics interests and abilities of male and female athletes (45 C.F.R. Part 26).

Significant focus for Title IX compliance has been on participation opportunities and the three-part test. According to the 1979 Policy Interpretation, an institution can show that they are meeting the interests and abilities of male and female athletes by meeting one of the following three options: (a) proportionality of participation that is reflective of the student body at large; (b) a continuing history of expanding opportunities for the underrepresented sex; or (c) that the current offerings already satisfy the interests and abilities of the student body. Adding a competitive cheer team could help institutions satisfy the second part, and possibly the first part, of the test.

Determining whether or not competitive cheer satisfies the goals of Title IX depends somewhat upon what feminist theory is applied. It is easy to assume that Title IX is a product of liberal feminism, as this theory focuses on asserting the equality of men and women through political and legal reform (Chamallas, 2003). By defining equality as providing an identical menu of sport offerings to men and women, competitive cheer could only count as a sport if men and women were to participate equally. Although male cheerleaders do exist, they engage in stereotypical masculine activities such as tumbling and lifts while female cheerleaders dance, prance, and perform. From a liberal feminist legal theoretical perspective, competitive cheer would not satisfy the goals of equal competitive opportunity – the activity is not one that men typically compete in, and the roles of men and women within competitive cheer squads continue to perpetuate stereotypes about appropriate roles for men and women.

However, a primary criticism of liberal feminism is that women’s interests and abilities must match those of men in order for equity to exist (Brake, 2010). The sexual difference legal model emphasizes the significance of gender differences and expects the
law to take into account these differences in creating remedies that will achieve equity (Chamallas, 2003). Title IX Regulations are consistent with sexual difference legal theory in that schools are not required to provide mirror image athletics offerings for men and women, but may provide opportunities based on interests. Almost 500,000 high school girls participate in cheerleading (compared to 3,000,000 in all other varsity sports combined) indicating a high level of interest. From this perspective, counting competitive cheer as a varsity sport appears to satisfy the goal of Title IX to add programs based on female students’ interests and abilities.

Radical legal feminists subscribing to the social dominance model (see MacKinnon, 1987) would argue that girls’ interest in cheerleading is not truly by choice, but the result of a “Disney princess” culture that relegates females to subordinate roles as sex objects. Although competitive cheerleaders exhibit a high degree of athleticism in performing synchronized stunts, the emphasis on appearance, use of make-up, and sexy uniforms reinforces a traditional view of femininity that devalues athletic performance (Brake, 2010). Under this approach, counting competitive cheer as a varsity sport would not serve the goal of Title IX to increase athletics opportunities for women, but merely reinforce women’s subordinate role while taking away resources that could be used to provide legitimate sport opportunities.

Although competitive cheerleaders may consider themselves athletes (Adams & Bettis, 2003) and female athletes may not consider themselves feminists, the debate about whether to count competitive cheer as a varsity sport is enriched by using feminist legal theory to examine whether or not this activity satisfies the goals of Title IX.