A Title IX Legal Analysis: Analyzing the Intercollegiate "Sport" Status of eSports

Derek Walton, The Ohio State University
Leeann Lower-Hoppe (Advisor), The Ohio State University
Marc Horger, The Ohio State University

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Collegiate esports teams are becoming increasingly institutionalized as university officials see the potential to grow student interest, drive enrollment, and raise revenue through esports (Funk, Pizzo, & Baker, 2018; Jenny, Manning, Keiper, & Olrich, 2016; Keiper, Manning, Jenny, Olrich, & Croft, 2017; Schaeperkoetter, et al., 2017). In light of the growth of collegiate esports, there is not yet clarity as to whether esports constitute intercollegiate “sport” according to law and therefore should be subject to Title IX scrutiny. The current state of collegiate esports has created confusion around Title IX policy implications (i.e. scholarship, benefits, and opportunities) and leaves universities operating esports programs vulnerable to potential Title IX gender discrimination. Therefore, the purpose of this case study is to conduct a legal analysis of the intercollegiate “sport” status of three collegiate esports programs.

Previous literature and litigation has evaluated the intercollegiate “sport” status of activities through a variety of tests (Holden et al., 2017). The most prominent tests outlined in the literature include: cultural test (i.e., does the general public regard the activity as a sport?); institutional test (i.e., do governing bodies, sports organizations, or other respected gatekeepers consider the activity a sport?); legal code (i.e., is there relevant statutory law defining the activity as a sport?); and federal government guidance (i.e., has the government offered any policy guidance?). Aside from these tests, the legal system has attempted to define intercollegiate “sport” through precedent, particularly the Biediger v. Quinnipiac University (2009, 2010, 2013) case. Precedent has established deference to Title IX Policy Interpretations (20 U.S.C. § 1681–1688, 2013) and the 2008 Dear Colleague Letter (Monroe, 2008), which help institutions determine which intercollegiate athletic activities can be counted for the purpose of Title IX compliance.

Given the established precedent from Biediger v. Quinnipiac University (2009, 2010, 2013), a case study was conducted to analyze the intercollegiate “sport” status of collegiate esports. More specifically, the authors utilized case law, Title IX Policy Interpretations, and the 2008 Dear Colleague Letter to assess the collegiate esports programs at the University of Akron, Robert Morris University (Illinois), and the University of Utah. More specifically, the collegiate esports programs were evaluated based upon their governance, program structure and administration, and team preparation and competition to determine their intercollegiate “sport” status.

Results from this case study demonstrate that although collegiate esports programs are operating in a “grey” area, collegiate esports are beginning to fit the legal criterion of an intercollegiate “sport” according to federal law. If collegiate esports teams continue to be managed in a fashion consistent with traditional intercollegiate varsity teams, yet treated outside the scope of intercollegiate “sport”, these programs may continue to operate without respect to Title IX considerations (e.g., equal athletic financial assistance, equal treatment and benefits for athletic teams, and effectively accommodating student interests and abilities). For future practitioners implementing esports programs, the intercollegiate “status” of esports should be carefully considered because creating a pathway of opportunities and benefits for a male-dominant activity (Bauer-Wolf, 2019; Yee, 2018), is plausible grounds for a Title IX gender discrimination lawsuit.