



TITLE IX
COHEN v BROWN

By Leigh Ernst Friestedt

Vanderbilt University School of Law – Feb. 17, 2022

Copyright © 2022 Equity IX, LLC.

EQUITY IX
SportsOgram

Title IX – Equal Opportunity

TITLE IX – 1972 EDUCATION AMENDMENTS ACT

No person in the U.S. 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

Admissions → ALL Education Programs → Athletics



REGULATIONS - Equal Opportunity (1975)

1. Selection of sports and levels of competition *effectively accommodate the interests and abilities* of both sexes
2. Provision of equipment and supplies
3. Scheduling of games and practice times
4. Travel and per diem allowance
5. Opportunity to receive coaching and academic tutoring
6. Assignment and compensation of coaches and tutors
7. Provision of locker rooms, practice and competitive facilities
8. Provision of medical and training facilities and services
9. Provision of housing and dining facilities and services
10. Publicity



POLICY INTERPRETATION - Three Part Test (1979)

Prong One: Whether intercollegiate level of participation for male and female students are provided in numbers *substantially proportionate* to their respective enrollments

Prong Two: Where the members of one sex have been and are *underrepresented* among intercollegiate athletes, whether the institution can show a *history and continuing practice of program expansion* which is demonstrably responsive to the developing interest and abilities of the members of that sex, OR

Prong Three: If fail prongs one and two... Whether it can be demonstrated that the *interests and abilities* of the members of the *underrepresented* sex have been *fully and effectively accommodated* by the present program

Uneven Playing Field

Brown University (1990 – 91)

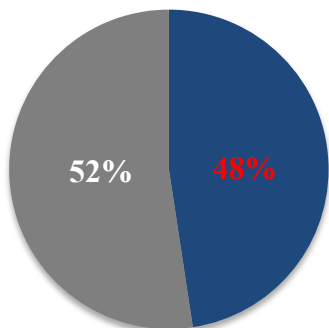
Undergraduate Enrollment		
	Students	%
Men	2,951	52%
Women	2,683	48%
Total	5,634	

Varsity Athletes		
Teams	Athletes	%
16 Men	566	63%
15 Women	328	37%
31 Teams	894	

Varsity Athletes (Post-Cuts)		
Teams	Athletes	%
14 Men	529	63%
13 Women	305	37%
27 Teams	894	

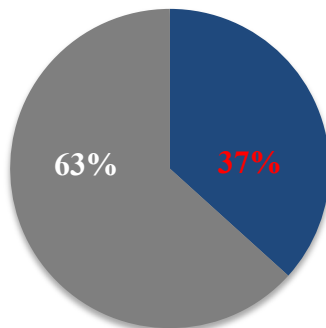
Participation Opportunity
Prong One

Undergraduates



11% Disparity

Varsity Athletes



■ Men ■ Women

Varsity Teams Demoted
Prong Three

WOMEN	Athletes	Budget
Gymnastics	12	\$24,901
Volleyball	11	37,127
2 Teams	23	\$62,028
MEN	Athletes	Budget
Water Polo	27	\$9,250
Golf	10	6,545
2 Teams	37	\$15,795

Budget Reduction = ~\$78,000

Three Prong Test

PRONG ONE – SUBSTANTIALLY PROPORTIONATE

Participation Opportunity

- Participation Opportunity = Actual Participants on Intercollegiate Team
- Club and Donor-Funded Varsity Teams ≠ Intercollegiate Varsity Teams
- Brown predetermines gender balance of athletic programs through sports offered, size of teams, coaches, recruiting and admissions

13% Disparity

- Female Student Enrollment = 51%
- Female Intercollegiate Participation = 38%
- 200 more athletic opportunities for men

Not Substantially Proportionate

PRONG TWO – HISTORY AND CONTINUING PROGRAM EXPANSION

Program Expansion

- Does not require gender parity, but must continue to increase intercollegiate athletic opportunities for underrepresented sex
- Reducing teams for the overrepresented sex ≠ Expansion
- Improving the quality of underrepresented programs ≠ Expansion

1970s Women's Sports

- Women's varsity teams established 1971-77. Winter indoor track added in 1982
- Men's varsity teams established before 1927

History Expansion - Not Continuing

PRONG THREE – INTERESTS & ABILITIES FULLY & EFFECTIVELY ACCOMMODATED

Fully & Effectively Accommodated

- Underrepresented sex with the ability and interest to compete at intercollegiate level... must be fully and effectively accommodated
- *“Interest and ability rarely develop in a vacuum; they evolve as a function of opportunity and experience.”*

Unmet Interest & Ability

- Gymnastics, fencing, skiing and water polo demonstrated interest & ability to compete
- Brown tried to quantify relative interests

Not Fully & Effectively Accommodated

Note: 13% disparity calculated based on Brown 1993-94 undergraduate enrollment of 2,796 men (49%) and 2,926 women (51%). Varsity team athletes comprised of 555 men (62%) and 342 women (38%).

Brown Appeals – U.S. Supreme Court

U.S. District Court
Rhode Island
(1992)

U.S. Court of Appeals
First Circuit
(1993)

Preliminary Injunction – Brown Ordered:

- Restore Gymnastics and Volleyball to university-funded varsity status
- No reduction funding or status of other women’s varsity teams

U.S. District Court
Rhode Island
(1995)

U.S. Court of Appeals
First Circuit
(1996)

U.S. Supreme Court
(1997)

30 Day Trial
Brown in Violation of Title IX

Split Decision
Brown in Violation of Title IX

Writ of Certiorari Denied

1998 Settlement Agreement:

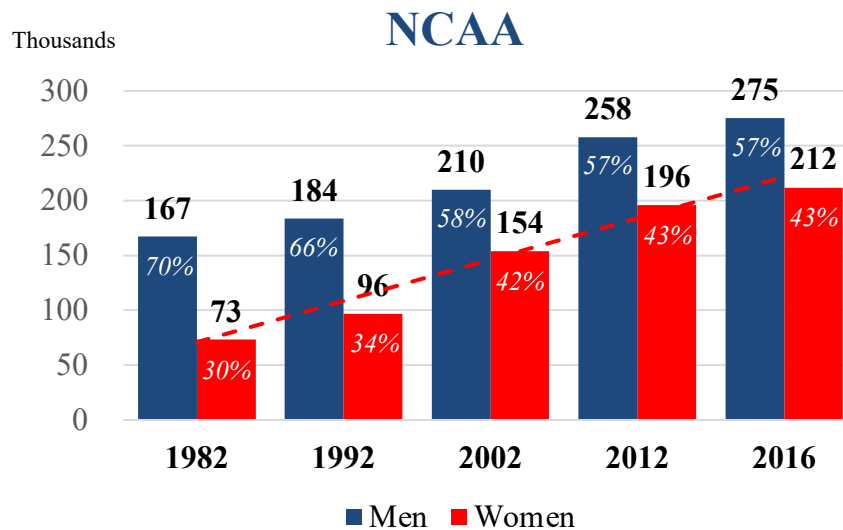
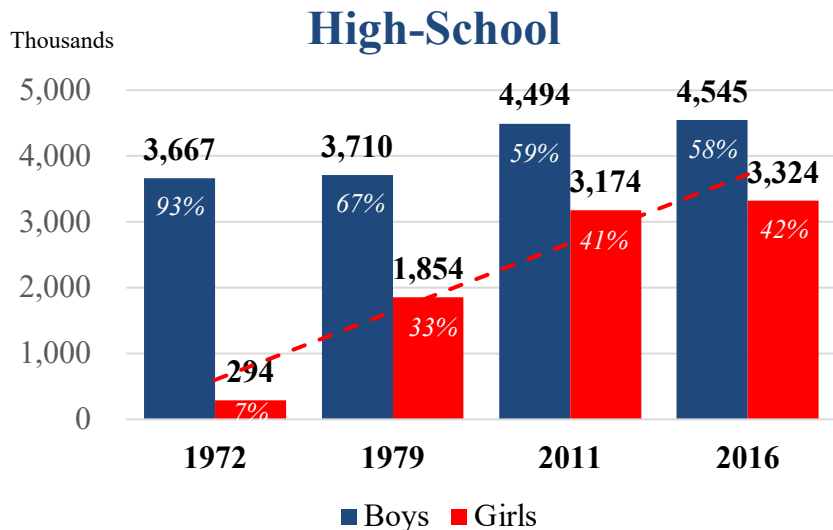
- District Court found Brown’s initial plan to be “*fatally flawed*” Artificially boosting women’s varsity numbers via JV, walk-ons
- Upgrade Women’s Gymnastics, Skiing, Fencing and Water Polo to university-funded varsity status – meet prong three
- Permissible 3.5% variance (undergraduates vs athletes) decreases to 2.25% if Brown eliminates women’s team

U.S. Court of Appeals
First Circuit
(2021)

Aug. 2024 End Date

Impact of Title IX

PARTICIPATION OPPORTUNITIES



Female Undergraduates = 54%

	1972	2016	Increased Opportunities
Boys	3,666,917	4,544,574	877,657
% Total	93%	58%	
Girls	294,015	3,324,326	3,030,311
% Total	7%	42%	

	1982	2016	Increased Opportunities
Men	167,055	274,973	107,918
% Total	70%	57%	
Women	73,351	211,886	138,535
	30%	43%	

Source: NCAA 45 Years of Title IX – The Status of Women in Intercollegiate Athletics (2016).

Note: NCAA began to sponsor Women’s Championships in 1982.