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Report to the Ranking Minority Member, Subcommittee on Criminal Justice, Drug Policy and Human Resources, Committee on Government Reform, House of Representatives

December 2000

GENDER EQUITY

Men's and Women's Participation in Higher Education

GAO

Accountability * Integrity * Reliability

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Abbreviations

EADA	Equity in Athletics Disclosure Act
EEOC	Equal Employment Opportunity Commission
GED	general educational development
NAIA	National Association of Intercollegiate Athletics
NCAA	National Collegiate Athletic Association
NCES	National Center for Education Statistics
OCR	Office for Civil Rights
SAT	Scholastic Assessment Test

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Accountability * Integrity * Reliability

United States General Accounting Office
Washington, D.C. 20548

December 15, 2000

The Honorable Patsy Mink
Ranking Minority Member
Subcommittee on Criminal Justice,
Drug Policy and Human Resources
Committee on Government Reform
House of Representatives

Dear Congresswoman Mink:

Discrimination against women in areas such as college admissions, intercollegiate athletics, and employment was widespread 40 years ago. Although civil rights laws in the 1960s barred discrimination in employment, similar protection was not available for students at colleges and universities until the adoption of Title IX of the Education Amendments of 1972.[1] Title IX attempted to address inequities between men and women by prohibiting discrimination on the basis of sex in education programs and activities receiving any federal financial assistance, including federally backed student loans and research grants and contracts. Women's participation in higher education can present only one facet of women's status in our nation's economy and society. In the almost 30 years since title IX was enacted, women's roles in American life have changed greatly, and the effects of title IX on men and women continue to be debated.

You asked us to review and report on what is known about title IX's contribution to changes in higher education. Specifically, you asked us to (1) determine the extent to which women's participation in higher education academic programs has changed since title IX was enacted, (2) determine the extent to which men's and women's participation in intercollegiate athletics programs at 4-year schools has changed since title IX was enacted, and (3) describe what is known about title IX's effect on men's and women's participation and, more specifically, about how federal enforcement of the law has led to change.

[1]20 U.S.C. §§ 1681-1688.

To address these questions, we obtained information from the Department of Education and the two largest athletics associations for 4-year colleges and universities—the National Collegiate Athletic Association (NCAA) and the National Association of Intercollegiate Athletics (NAIA). They provided some similar information for a previous report.[2] We also interviewed representatives of organizations with expertise or interest in title IX and a wide range of views on title IX policy. Our review focused on concerns about gender equity among postsecondary students. As you requested, we are also providing information on women's participation as faculty members and athletics directors and on intercollegiate athletic expenditures. (See app. I for details concerning our methodology.) In conducting our review, we relied on data obtained from Education, NCAA, and NAIA, which, although unverified, are considered the best available and are extensively used by the research community. Because recent information on intercollegiate athletic expenditures was not available from these sources at the time of our review, we also used data published by *The Chronicle of Higher Education* and additional data available on its website. Education plans to make such data available in the future. Our work was done between November 1998 and September 2000 in accordance with generally accepted government auditing standards.

Results in Brief

Since title IX's enactment in 1972, women's participation in higher education academic programs has increased significantly, whether measured by the proportion of students enrolled in higher education who are women, numbers of women enrolled, or the proportion of women who have received degrees in certain fields of study in which men were the predominant degree recipients.[3] In 1950, about one-quarter of undergraduate students were women. Women's share of undergraduate enrollment increased to 43 percent in 1971 and 56 percent in 1997. Women's participation in a number of predominantly male fields such as business, law, and medicine has also increased greatly although changes in other predominantly male fields, such as engineering and physical science, have been smaller. In some predominantly female fields, including elementary

[2] *Intercollegiate Athletics: Comparison of Selected Characteristics of Men's and Women's Programs* (GAO/HEHS-99-3R, June 18, 1999).

[3] We defined predominantly male fields of study as those in which, in school year 1971-72, (1) women earned fewer than 25 percent of the degrees awarded and (2) at least 5,000 bachelor or 1,000 first professional degrees were awarded. The 25 percent figure is based on the Department of Labor's definition of nontraditional occupations.

education and nursing, there have been increases in the proportion of men receiving degrees. In the 1995-96 school year, first-year college men and women were about as likely to receive financial aid and received about the same average amounts of grant and loan aid. Men continue to outnumber women on faculties in predominantly male fields at colleges and universities.

Women's participation in intercollegiate sports at 4-year colleges and universities has increased while men's participation has dropped slightly, although they still participate at a higher rate than do women. From title IX's enactment to the 1997-98 school year, the number of women in intercollegiate sports grew from an estimated 30,000 (1.7 percent of full-time enrolled undergraduate women) to 157,000 (5.5 percent of full-time undergraduate women). Over the same period, the number of men participating fell from about 248,000 (10.4 percent of full-time undergraduate men) to about 234,000 (9.5 percent of full-time undergraduate men). On average, in the 1998-99 school year, NCAA member schools spent more per male intercollegiate sports participant than female participant in recruiting, coaches' salaries, and operations. However, they spent more on athletic scholarships for women than for men. Men continue to hold the majority of athletics director positions in intercollegiate athletics.

Because various factors such as other civil rights laws and changing societal attitudes have also contributed to changes in women's roles, it is difficult to isolate title IX's specific effects. We found widespread agreement, however, among representatives from the higher education community and title IX observers, regardless of their perspective on current title IX policy, that title IX has contributed to increased opportunities and participation for women in the classroom and on the playing field. There was no agreement, however, on whether the law has contributed to the decline in the number of men involved in intercollegiate sports. Although Education has not terminated its funding for any postsecondary institution for a violation of title IX, federal enforcement has had an effect through other means. Education's Office for Civil Rights (OCR), which has the lead enforcement responsibility for most title IX issues, has instead enforced title IX through a variety of methods, including complaint investigations, compliance reviews, and the issuance of policy guidance. OCR's approach to enforcement emphasizes collaboration and negotiation, consistent with statutory requirements to attempt to secure compliance by voluntary means. In addition, private lawsuits have played an important role in title IX enforcement.

We provided the Department of Education, NCAA, and NAIA drafts of this report for comment, and they generally agreed with our findings.

Background

With certain exceptions, title IX requires all educational institutions receiving any form of federal financial assistance to prohibit sex discrimination in academic, extracurricular, and other programs.[4] Because most postsecondary schools have students who receive federal financial assistance, such as federal or federally backed student loans, title IX applies to the large majority of 2-year and 4-year schools, both public and private. Title IX's provisions apply to all operations of college and university programs, including admissions, instruction, financial aid, intercollegiate athletics, housing, employment, and counseling.

As table 1 shows, application of title IX has evolved since it was enacted. For example, in 1984, the Supreme Court held that title IX did not apply to intercollegiate sports and other programs that did not directly receive federal funding. In 1988, however, the Congress passed the Civil Rights Restoration Act, which restored the earlier interpretation and broad application of title IX. It provided that any program, including athletics programs, offered by schools that receive or benefit from federal funding must provide equal opportunities to men and women regardless of whether the specific program benefits from federal funding.

[4]Some schools receiving federal financial assistance are subject to some, but not all, of title IX's provisions. For example, schools with religious affiliations that have religious tenets that conflict with title IX provisions may be granted an exemption from compliance with those provisions. Also, certain single-sex undergraduate programs and military academies are exempt from admissions and recruitment provisions of title IX.

Table 1: Important Events and Cases Involving Title IX Issues

Year	Event/Case	Importance
1972	Title IX enacted[a]	First federal law specifically prohibiting sex discrimination at educational institutions receiving federal financial assistance.
1974	Women's Educational Equity Act enacted[b]	Provided for educational equity for women at all levels of education through grants and contracts for curricula, textbooks, training, research, counseling, and other educational efforts.
1975	Title IX regulations finalized[c]	Responded to nearly 10,000 public comments, most concerning athletics.
1979	OCR policy interpretation concerning intercollegiate sports[d]	Established standards for assessing compliance with requirements concerning intercollegiate sports, including athletic scholarships, other benefits and services, and a three-part test concerning participation opportunities.
1979	*Cannon v. University of Chicago*[e]	Held that private parties may file suit in title IX cases.
1984	*Grove City College v. Bell*[f]	Held that title IX applied only to programs that directly receive or benefit from federal financial assistance. Thus, other programs, such as intercollegiate sports programs that do not receive federal funds are not subject to these laws.
1987	Civil Rights Restoration Act of 1987[g]	Restored institution-wide jurisdiction for applying civil rights laws, superceding the *Grove City College v. Bell* decision.
1990	OCR title IX athletics investigator's manual[h]	Provided detailed guidance for investigators evaluating compliance with title IX in intercollegiate and interscholastic sports, including criteria concerning participation, scholarships, facilities, coaching, and scheduling.
1992	*Franklin v. Gwinnett County Public Schools*[i]	Held that monetary damages are available to plaintiffs in private title IX actions.
1994	Equity in Athletics Disclosure Act[j]	Facilitated assessment of gender equity in schools' intercollegiate athletics programs by requiring schools to report participation and resources for men's and women's sports programs.
1996	*Cohen v. Brown University*[k]	Upheld standards established in OCR's 1979 three-part test for assessing compliance with requirements concerning intercollegiate athletics participation opportunities.
1996	OCR clarification of intercollegiate athletics policy guidance[l]	Provided additional explanation and examples concerning OCR's test to determine whether schools have achieved equal opportunity in intercollegiate athletics participation.
1997	OCR sexual harassment policy guidance[m]	Provided policy guidance on title IX prohibitions against sexual harassment in schools.
1998	OCR "Dear Colleague" letter regarding athletic scholarships[n]	Clarified policy guidance on substantial proportionality in athletic scholarships.

[a]20 U.S.C. §§ 1681-1688.

[b]Originally enacted as section 408 of P.L. 93-380; current provisions of the Women's Educational Equity Act can be found at 20 U.S.C. §§ 7231-7238.

[c]45 C.F.R. Part 86, currently found at 34 C.F.R. Part 106.

[d]Title IX of the Education Amendments of 1972: A Policy Interpretation; Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71413 (Dec. 11, 1979). For details concerning the three-part test, see app. IV.

[e]441 U.S. 677 (1979).

[f]465 U.S. 555 (1984).

[g]20 U.S.C. § 1687.

[h]Department of Education, OCR, *Title IX Athletics Investigator's Manual*, 1990. In conducting investigations, OCR has used this and a previous manual issued in 1980. These manuals have been clarified by more recent policy guidance.

[i]503 U.S. 60 (1992).

[j]20 U.S.C. § 1092(g).

[k]809 F. Supp. 978 (D.R.I. 1992)(Cohen I); 991 F.2d 888 (1st Cir. 1993)(Cohen II); 879 F. Supp. 185 (D.R.I. 1995)(Cohen III); 101 F.3d 155 (1st Cir. 1996)(Cohen IV).

[l]Department of Education, OCR, "Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test" (Jan. 16, 1996).

[m]Department of Education, OCR, "Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties," 52 Fed. Reg. 12034 (Mar. 13, 1997). On Nov. 2, 2000, OCR published in the *Federal Register* for a 30-day comment period "Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties." This revises OCR guidance in light of recent Supreme Court cases relating to sexual harassment in schools. See *Gebser v. Lago Vista Independent School District,* 524 U.S. 274 (1998), and *Davis v. Monroe County Board of Education,* 526 U.S. 626 (1999).

[n]July 23, 1998.

Because many federal agencies fund education activities covered by title IX, they are potentially involved in enforcement activities. (For a list of agencies, see app. II.) Two agencies have major roles: the Department of Justice, which coordinates civil rights enforcement efforts, and Education's OCR, which investigates most types of complaints and allegations. The Department of Justice coordinates the development of federal agencies' title IX regulations, coordinates arrangements for referrals of cases between agencies, and represents federal agencies in title IX court proceedings, as needed. The Equal Employment Opportunity Commission (EEOC) also investigates individual complaints of employment discrimination, including those under title IX if OCR refers them to EEOC, and those filed against recipients of federal financial assistance that are subject to Title VI of the Civil Rights Act of 1964.[5] OCR investigates employment discrimination cases that involve allegations of "systemic" or patterns and practices of employment discrimination and those that allege both employment discrimination and discrimination in federal aid recipients' other operations.[6] Individuals or groups also have the option of filing suit in federal court or filing a complaint through the institution's grievance procedure. They may do so independent of any administrative action, such as a complaint investigation, by OCR or any other agency.

[5]These investigations are conducted under Title VII of the Civil Rights Act of 1964.

[6]Attorney General Order No. 992-83, 28 C.F.R. part 42 (1982); 29 C.F.R. part 1691 (1984).

Education's Office of Student Financial Assistance has responsibility for enforcing another gender-equity law, the Equity in Athletics Disclosure Act.[7] Under this act, coeducational colleges offering intercollegiate athletics and participating in federal student financial aid programs, such as Pell grants and federal student loan programs, must disclose certain information by gender, such as the number of varsity teams, the number of participants on each team, the amount of operating expenses, and coaches' salaries. Colleges must make these reports available to students, potential students, the public, and Education.

Women's Participation Has Increased in Academic Programs in Higher Education

Although women were a minority in higher education before title IX was enacted, women students now substantially outnumber men. In 1997, colleges and universities enrolled 1.5 million more women undergraduates than men undergraduates. Women's participation has increased in many fields of study that were predominantly male in the 1971-72 school year, including law and medicine. In other fields, such as engineering and computer and information science, men remain a sizeable majority even though the gap has narrowed. However, women still comprise a small share of faculty in fields that have been predominantly male. Men's participation in predominantly female fields, such as nursing and elementary education, has also increased, although women remain the overwhelming majority in these fields. Financial aid is generally provided to women and men equally when similar college costs and financial means are considered.

[7] 20 U.S.C. § 1092(g).

Women's Enrollment Exceeds That of Men

Since title IX's enactment in 1972, both men and women have participated in higher education programs in greater numbers, with a marked increase for women. From fall 1971 to fall 1997, the number of women enrolled in the nation's colleges and universities more than doubled, from about 3.7 million to 8.2 million.[8] The number of men enrolled increased by about one-quarter, from about 5.2 million to about 6.5 million. In 1971, a little more than one-half of high school graduates were women, yet women comprised only 43 percent of college undergraduate enrollment. By 1997, the numbers of men and women graduating from high school were about the same, but women represented 56 percent of undergraduates. The Department of Education projects that women's proportion of enrollment will continue to increase to about 58 percent of total enrollment by 2009. According to researchers, fewer men than women attend college in part because men, in the years after high school, are attracted to job opportunities that on average pay more than those available to young women. For example, among students from the high school class of 1992, who received a high school diploma or general educational development (GED) credential and did not attend postsecondary institutions in 1993, women who worked earned an average of 64 percent of the amount men did. In addition, many more men than women enter the armed forces.

Degrees Awarded to Women in Predominantly Male Fields Have Increased but Extent Varies

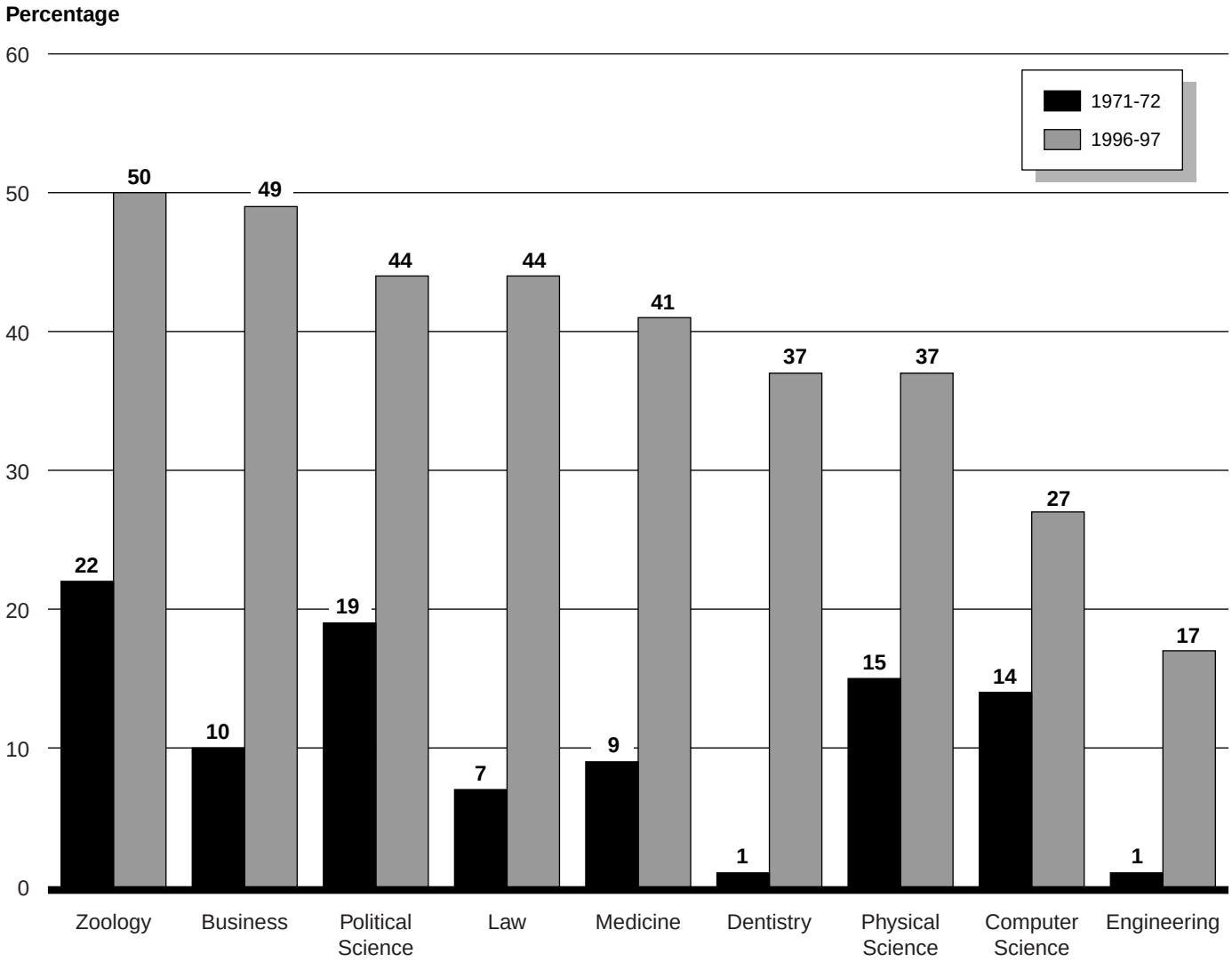
Since the 1971-72 school year, the percentage of women who have received degrees in some predominantly male fields of study has increased significantly (see fig. 1). For example, in school year 1971-72, women received only 1 percent of all dentistry degrees, compared with 37 percent in 1996-97. Women's share of business degrees also increased greatly during this period, from 10 percent to 49 percent.

While women comprise a smaller percentage of baccalaureate degree recipients in such predominantly male fields as engineering, physical science, and computer science, women's share of degrees in these fields has also increased significantly since 1971. For example, women's share of engineering degrees in the 1996-97 school year was 17 percent—up from 1 percent in school year 1971-72. In addition, the percentage of women receiving degrees in the physical and computer sciences at least doubled

[8]This includes undergraduate, graduate, and first professional students at all higher education institutions, including 4-year, 2-year, and less than 2-year colleges and universities. This excludes institutions that offer only vocational and continuing education programs.

over the same period, from 15 percent to 37 percent and 14 percent to 27 percent, respectively.

Figure 1: Percentage of Degrees Awarded to Women in Predominantly Male Fields of Study, School Years 1971-72 and 1996-97



Note: Data shown are for first professional degrees for law, medicine, and dentistry and for bachelor degrees in the other fields of study. For data supporting this figure, see table 5 in app. III.

Several factors contribute to the continued predominance of men in certain fields. For example, an Education study on engineering, a field that has historically seen a low level of participation by women, showed that women and men following an engineering path in college came equally prepared with a math and science background.[9] However, there was a 20-percent gap between men's and women's completion rates. According to the study, women who left engineering did not leave because of poor academic performance, although they expressed a higher level of academic dissatisfaction than men who left the field. The study suggested that women's underrepresentation was due, in part, to their lower level of interest in engineering, their discomfort in a peer environment where they are a minority, and the perception that engineering is a male occupation.

Several other studies had similar findings regarding women in the physical sciences such as physics, chemistry, astronomy, and geology. Recent studies provide insight into the role that precollege preparation, self-confidence, work and family, availability of role models, peer support, and teaching methods play in women's participation in science, math, and engineering.[10] According to these studies, in grade 12, high school girls took fewer courses in science, scored slightly lower on standardized science exams, were more likely to have negative attitudes toward science, and were less likely to declare science as a college major, as compared with high school boys. At the undergraduate and graduate levels, factors that deterred women from preparing for a career in science included peer pressure, neglect or hostility from predominantly male peers and faculty, lack of mentors, insufficient financial support, and the reluctance of some faculty to establish an advisory relationship with individual students.

[9]Department of Education and the National Institute for Science Education, *Women and Men of the Engineering Path: A Model for Analyses of Undergraduate Careers* (May 1998).

[10]Department of Education, National Center for Education Statistics (NCES), *Findings From the Condition of Education, 1997: Women in Mathematics and Science,* NCES 97-982 (1997); Sandra L. Hanson, *Lost Talent: Women in the Sciences* (Philadelphia, Penn.: Temple University Press, 1996); Gerhard Sonnert, W*ho Succeeds in Science? The Gender Dimension* (New Brunswick, Mass.: Rutgers University Press, 1995); and Eileen M. Byrne, *Women and Science: The Snark Syndrome* (The Falmer Press, 1993).

While studies have found that differences between men and women in math and science achievement test scores have decreased over the years, men continue to outscore women in these disciplines. In some cases, the differences were quite small. For example, among 12th graders who took the 1996 National Assessment of Educational Progress test, average math scores for men and women were 305 and 303, respectively; the average science scores were 152 and 148. In other cases, the differences were larger. For example, the National Science Foundation's 1999 study shows that 1996 Scholastic Assessment Test (SAT) math scores for men averaged 527 (from 520 in 1991), while SAT math scores for women averaged 492 (from 482 in 1991).[11]

Research has also identified differences between men's and women's interests in the physical sciences. Surveys of freshmen women, for example, indicate that, while a growing proportion plan to major in the physical sciences, women are still outnumbered by men.[12] Specifically, the percentage of freshmen women planning to major in the physical sciences increased from 0.8 percent in 1971 to 1.6 percent in 1998. While the percentage of freshmen men declined from 3.1 percent to 2.6 percent during the same period, a significantly greater number of men than women showed interest in these subjects.

Women comprised a smaller percentage of doctoral degree recipients than baccalaureate recipients in predominantly male fields. In the 1996-97 school year, for example, women earned 29 percent of all doctoral degrees in business, 23 percent in physical science and science technologies, 16 percent in computer science, and 12 percent in engineering and engineering-related technologies.

Similarly, a smaller percentage of full-time faculty members in these fields were women. In fall 1992, the latest year for which data were available, women comprised 31 percent of business faculty, 17 percent of political science faculty, 36 percent of law faculty, 12 percent of physical sciences

[11]National Science Foundation, *Women, Minorities, and Persons With Disabilities in Science and Engineering: 1988,* NSF 99-87 (Feb. 1999). The study also reported that men consistently outscored women in the verbal components of college entrance exams, such as the SAT, in 1991 and 1996, but these differences were narrower. For women, the average verbal score increased from 495 to 503; for men, it increased from 503 to 507.

[12]Alexander Astin, et al., *The American Freshman: Thirty Year Trends* (Los Angeles, Calif.: University of California, Los Angeles, 1997), and *The American Freshman: National Norms for Fall 1998* (Los Angeles, Calif.: University of California, Los Angeles, 1998).

faculty, 20 percent of computer science faculty, and 6 percent of engineering faculty. For the 1996-97 school year, 24 percent of full-time tenured faculty at all 4-year schools in all fields of study were women.

More Men Earned Degrees in Predominantly Female Fields, yet Men Remain a Small Minority

Women are still the predominant degree recipients in fields such as nursing, elementary education, and home economics, even though men's share of these degrees has risen slightly since 1971. For example, between school years 1971-72 and 1996-97, men's share of degrees increased from 3 percent to 11 percent in nursing, 9 percent to 12 percent in elementary education, and 4 percent to 12 percent in home economics. In contrast, men's share of degrees in special education declined from 13 percent to 11 percent. Overall, women received a somewhat smaller proportion of degrees in these predominantly female fields in 1996-97 compared with 1971-72, yet nearly 9 out of 10 of the degrees in these fields in school year 1996-97 were awarded to women.

Little Difference in Student Financial Aid by Gender Exists After Considering Financial Need and Costs of Attendance

In school year 1972-73, full-time first-year college women received lower average amounts of scholarships and grants than men did. Typically, women relied more on the support of family, friends, and loans, while men had more savings and earnings from employment. In contrast, in 1995-96, first-year college women and men were about equally as likely to receive aid and received about the same average amounts of grant and loan aid.[13] Men's and women's financial need did not vary to a statistically significant extent. Women were, however, more likely than men to have dependents other than spouses. Men were more likely to receive veterans' aid and athletic scholarships.

[13]We excluded noncitizens who were not eligible for aid under federal student aid programs. Among all undergraduates (except for the same noncitizens), men were more likely to receive loans and women were more likely to receive grants. These differences were generally not statistically significant when we compared men and women with similar financial means and costs of attendance. The Department of Education assesses each student's financial means using a formula for an expected family contribution. This formula takes into account such factors as income, assets, dependents, marital status, and the number of family members enrolled in eligible higher education programs (20 U.S.C. § 1087kk).

As the number of women in postsecondary education has increased since the enactment of title IX, so has the amount of financial aid they have received. In the 1972-73 school year, full-time freshmen women from the previous year's high school graduating class (1971-72) received an average of $1,541 ($899 in grants and $642 in loans in constant 1995-96 dollars).[14] Full-time college freshmen women from the high school graduating class of 1995 who attended postsecondary institutions during the 1995-96 school year received an average of $3,535 ($2,392 in grants and $1,143 in loans). The average amount of aid rose 129 percent after adjusting for inflation. By comparison, full-time freshmen men from the same high school classes who attended postsecondary institutions during the next school year received an estimated average of $1,456 ($937 in grants and $519 in loans in 1995-96 dollars) in 1972-73 and $3,027 ($1,952 in grants and $1,075 in loans) in 1995-96. The estimated average amount of aid for men rose 108 percent after adjusting for inflation.

Men's Participation in Intercollegiate Athletics Is Greater Than Women's, but the Difference Has Narrowed

The proportion of college women who participate in intercollegiate sports at 4-year colleges and universities has increased. From title IX's enactment to the 1997-98 school year, the number of women in intercollegiate sports at NCAA (Division I, II, III) and NAIA member schools grew from an estimated 30,000, or 1.7 percent of full-time enrolled undergraduate women, to 157,000, or 5.5 percent of full-time undergraduate women. Over the same period, the number of men participating fell from about 248,000 (10.4 percent) of full-time undergraduate men to about 234,000 (9.5 percent) of full-time undergraduate men. The increase for women was rapid through the mid-1980s, then more gradual. The number of men participating varied, with the lowest participation rate reported in 1981. Despite different trends for men and women, male participants continue to outnumber female participants in intercollegiate sports. Approximately 77,000 more men than women participated in 1997-98.[15]

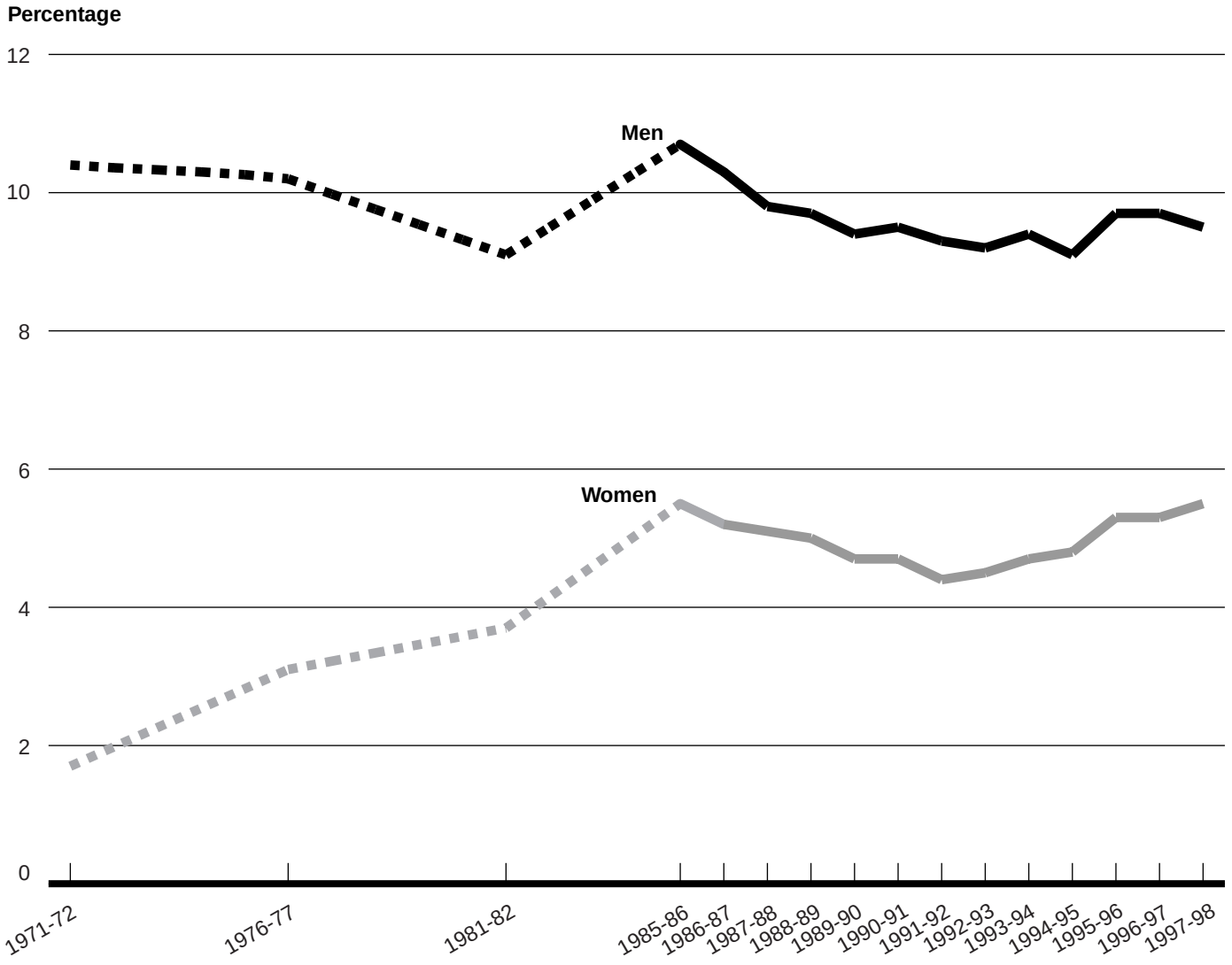
[14]These averages cover students who received aid and those who did not. We adjusted these figures for inflation using the Bureau of Labor Statistics consumer price index for all urban consumers. While we recognize that this index has limitations, we chose to use it to adjust for inflation because we concluded that it was the best available index for this purpose. See, for example, *Consumer Price Index: More Frequent Updating of Market Basket Expenditure Weights Is Needed* (GAO/GGD/OCE-98-2, Oct. 9, 1997).

[15]From 1997-98 to 1998-99, the number of participants on men's teams increased to about 237,000 and the number on women's teams increased to about 167,000. Comparable fall 1998 enrollment data were not available to calculate changes in participation rates.

Unlike marked trends in the number of women athletes, the estimated athletics participation rate—intercollegiate athletics participants as a percentage of all full-time undergraduate students at 4-year colleges and universities—has remained fairly steady for both genders since the mid-1980s.[16] In the first decade or so after title IX came into effect, women's participation rates increased rapidly while men's participation rates declined. Since the mid-1980s, the number of women participating and the number of women's teams have continued to rise, but not much faster than the increase in the number of full-time female undergraduates enrolled at 4-year schools. Despite these increases for women, men's participation rate at 4-year schools was still higher than women's in the 1997-98 school year, as shown in figure 2.

[16]We calculated the two estimated participation rates—one for men and one for women—by dividing the number of male or female intercollegiate sports participants reported by NCAA and NAIA by the number of full-time male or female undergraduates at all 4-year schools in the fall. The total number of intercollegiate sports participants may exceed the number of athletes in intercollegiate sports programs because some athletes participate in more than one sport and are counted more than once in NCAA and NAIA participation statistics. See app. I for notes concerning the limitations of these data.

Figure 2: Estimated Participation Rates in Intercollegiate Sports at 4-Year Colleges and Universities, School Years 1971-72 to 1997-98



Note: Estimates are of intercollegiate sports participants—NCAA Divisions I, II, and III, plus NAIA—as a percentage of full-time undergraduates. Annual estimates of athletics participation were available beginning in 1981. In previous years, NCAA did not compile data annually but did so at 5-year intervals. Fall enrollment data for full-time undergraduates at 4-year schools by gender were not available for 1982 through 1984. For data supporting this figure, see table 6 in app. III.

Women's athletics programs typically have lower expenditures than men's programs, and in many cases they have lower expenditures per participant. However, it is difficult to analyze universities' and colleges' spending on athletics by gender since title IX's enactment because complete and comparable data are not available for several years after its enactment. The Equity in Athletics Disclosure Act (EADA) will facilitate analysis of such spending in the future. The act requires schools to prepare reports on athletics participation and expenditures and make them readily available beginning October 1996, but Education was not required to compile such reports until the Higher Education Amendments of 1998. To implement these provisions, in November 1999, Education published rules for the collection of data concerning each school's athletics participation and expenditures. Such data should provide a basis for analyzing future trends in schools' revenue and expenses for men's and women's intercollegiate sports programs.

In the 1998-99 school year, NCAA coeducational schools spent more per male than female intercollegiate sports participant on recruitment, coaches' salaries, and operations. However, the average expenditure per participant for athletics-related financial aid (scholarships) was higher for women than for men.[17] There were also differences by division as shown in table 2. For example, NCAA Division I-A schools (colleges and universities that typically offer the greatest number of athletic scholarships and have large football programs) spent more per male participant than female participant in each of four expenditure categories. Specifically, recruiting and operating expenditures at Division I-A schools were about 70 percent higher for male than for female participants. In contrast, the average expenditures per participant for schools in Divisions I-AA, I-AAA, II, and III differed much less by gender. Some differences, particularly in Division I-A, may in part reflect the greater noninstitutional revenue typically generated by men's sports programs. In 1997-98, according to NCAA's gender-equity study, the 91 Division I-A schools responding to NCAA's survey indicated an

[17] *The Chronicle of Higher Education* collected 1998-99 EADA reports from 858 of the 959 active, coeducational NCAA member schools—a response rate of 89 percent. These data include only expenditures allocated to either men's or women's intercollegiate sports programs. Expenditures for coed sports are allocated to the men's and women's programs based on the percentage of male and female participants. Expenditure categories include recruiting, athletically related financial aid, coaches' salaries, and operating expenses (lodging, meals, transportation, officials and uniforms, and equipment for both home and away contests). They do not include general expenditures that were not allocated to either gender. They also do not include debt service and replacement of facilities. Division III schools do not award athletic scholarships.

average of $11.8 million in revenue attributable to men's sports and $1.1 million in revenue attributable to women's sports.[18]

Table 2: Intercollegiate Athletics Program Expenditures Per Male and Female Participant, NCAA Colleges and Universities, School Year 1998-99

	Recruiting[a]		Scholarships[b]		Coaches' salaries[c]		Operations ("Game Day")[d]	
Division/ Subdivision	Men	Women	Men	Women	Men	Women	Men	Women
I-A	$987	$579	$6,404	$5,815	$5,136	$3,393	$28,848	$17,111
I-AA	375	256	4,151	4,454	2,356	1,920	9,572	8,415
I-AAA	382	300	4,768	5,634	2,698	2,304	12,014	11,247
II	113	100	2,278	2,421	1,430	1,422	5,262	5,293
III	64	46	[e]	[e]	852	874	1,822	1,787
Weighted average	$347	$229	$4,269	$4,418	$2,212	$1,785	$9,944	$7,467

Note: These calculations were based on *The Chronicle of Higher Education's* compilation of data from coeducational active NCAA members. Participants in intercollegiate athletics represent the sum of the number of intercollegiate (undergraduate) athletes on each team at each school. Some athletes participate on more than one team and are counted more than once in these data.

[a]These calculations are based on data from 815 of the 959 NCAA members. We excluded institutions that did not provide information concerning numbers of participants or recruiting expenditures. We included institutions that indicated they did not have any recruiting expenditures.

[b]These calculations are based on data from 532 of the 596 members of NCAA Divisions I and II. We excluded institutions that did not provide data concerning numbers of participants or scholarships. We included institutions that indicated they did not provide any scholarships. Because an individual is eligible for only one athletic scholarship even if he or she participates in more than one sport, analysts often compare scholarships per athlete rather than per participant. This comparison adjusts for athletes participating on more than one team because it is based on an unduplicated count of athletes. Based on this adjustment, the 532 schools reported spending $4,458 in scholarships per male athlete and $4,861 per female athlete.

[c]These calculations are based on data from 853 NCAA members. We excluded institutions that did not provide information concerning coaches' salaries or numbers of participants.

[d]These calculations are based on data from 856 NCAA members. We excluded institutions that did not provide information concerning "game day" operating expenses—expenses attributed to home, away, and neutral site contests—or numbers of participants.

[e]NCAA Division III schools are excluded from these calculations because they do not award athletic scholarships.

[18]NCAA, *1997-98 NCAA Gender-Equity Study* (Indianapolis, Ind., NCAA, Oct. 1999). Revenue generated by athletics programs is not a consideration in determining whether equal athletics opportunities are available to both men and women. A school has the responsibility to ensure that its men's and women's athletics programs provide equitable services. To do so, it must ensure that appropriate funds are expended for both men's and women's programs without regard to their ability to generate revenue.

Men continue to hold the majority of top positions in intercollegiate athletics. We found only one female athletics director among the 259 NCAA Division I schools responding to our survey for school year 1990-91.[19] More recently, however, private researchers who surveyed NCAA member schools in school year 1997-98 found increased numbers of female athletics directors who are responsible for administering both men's and women's athletics programs. Nevertheless, women were still the minority. These researchers identified 23 women in such positions at responding schools in NCAA Division I, 41 in Division II, and 102 in Division III.[20] In addition, we identified 6 women athletics directors at the 114 NCAA schools sponsoring Division I-A football, as of October 1999.

Title IX and Federal Enforcement Have Contributed to Greater Gender Equity in Higher Education

We found widespread agreement among those we interviewed that title IX has increased women's participation in both academics and intercollegiate athletics even though the law's effect cannot be isolated from the effects of other legal and social changes that have aimed to increase gender equity. There is also widespread agreement that enforcement efforts led by Education's OCR have played a role in title IX's effect on women's increasing participation in higher education programs. These efforts have included developing policy guidance, providing technical assistance to schools and associations, investigating and resolving complaints, conducting compliance reviews, and working with the Department of Justice to file friend-of-the-court briefs in significant title IX litigation. OCR's enforcement efforts emphasize collaboration and negotiation.

Extent of Title IX's Effect Cannot Be Assessed Without Taking Other Factors Into Account

Education and athletics officials, researchers, and legal experts—both critics and supporters of title IX policy—told us they believe that title IX has had a significant and favorable effect on women's participation in postsecondary education because it has eliminated many explicit barriers to opportunities in higher education for women. More specifically, they

[19] *Intercollegiate Athletics: Compensation Varies for Selected Personnel in Athletic Departments* (GAO/HRD-92-121, Aug. 19, 1992).

[20] Vivian Acosta and Linda Jean Carpenter, "Women in Intercollegiate Sport: A Longitudinal Study—Twenty-One Year Update, 1977-1998" (1998). This study was based on a survey administered to all schools that were active members of NCAA in school year 1997-98 and that had a women's athletics program. The researchers received completed surveys from 234 of 308 Division I schools, 196 of 261 Division II schools, and 280 of 363 Division III schools.

said discriminatory practices such as quota systems limiting the number of women admitted to graduate and public undergraduate programs and higher admissions standards for women than for men largely disappeared with title IX's passage.[21] Among the examples cited of pre-title IX discrimination in admissions were the following:

- A prominent public university restricted women to no more than 45 percent of its undergraduate population annually.
- An Ivy League university's school of veterinary medicine admitted two women per year.
- An agriculture college required women's SAT scores to be 30 to 40 points higher than men's to gain admission.
- A prominent private university's school of nursing did not permit married women to be students.

In addition, title IX allowed women to participate in various academic and athletics programs and activities that were previously available only to men.

Those we spoke with noted, however, that women's increased participation was a trend that began before title IX's passage. For example, the percentage of female undergraduates increased before enactment of title IX from about one-quarter of undergraduate students in 1950 to 43 percent in 1971. This suggests that other laws, together with changing social views, likely played a role in shaping the trends we observed. For example, the Equal Pay Act establishing equal pay for men and women was enacted in 1963, and legislation barring sex discrimination in employment was enacted in 1964. Such efforts to bring about more equitable treatment of women in the workplace may have encouraged women to enroll in postsecondary schools and to participate in predominantly male fields of study at colleges and universities. The women's movement and other social trends also contributed to changing attitudes about women's roles. Finally, changes in federal student financial aid policy in the early 1970s gave more middle-class students, men and women alike, greater access to higher education, resulting in higher enrollment levels for both genders.

[21]In a 1971 hearing before a House Committee, the Director of the Department of Health, Education and Welfare's OCR stated that university officials candidly told the office that, in many cases, they had higher standards, such as higher grade point average requirements, for women than for men.

While those we interviewed also agreed that title IX has had the effect of increasing women's participation in intercollegiate sports, their views varied about title IX's effects on men's sports. According to OCR officials, it is a misperception that title IX is responsible for declines in the number of men's sports opportunities. OCR guidance does not require cutting men's teams. Schools choose their own methods for complying with title IX, and none of the OCR options for compliance necessitate cuts in men's athletic programs. Nonetheless, some said title IX has had a substantial detrimental effect on men's sports, citing as evidence that some schools eliminated men's intercollegiate sports teams to add women's teams. Their view is that schools are in effect compelled to cut men's teams in light of decreasing athletics budgets and the threat of a title IX investigation or lawsuit. Others disagreed, saying that the law itself has not significantly harmed men's opportunities and that decreases in some men's sports teams are caused, in part, by declining interest in those sports. They said schools can achieve compliance without cutting men's sports teams by transferring resources from more expensive men's programs to financially vulnerable men's and women's programs.

As with participation trends in academics, factors other than title IX may also have influenced participation in intercollegiate sports. For example, from the mid-1960s to the early 1970s, just before title IX was enacted, men's annual participation rates in intercollegiate sports declined and women's participation rose.[22] Changing social and cultural attitudes appear to have contributed to women's increased interest and participation in athletics before title IX was passed.

[22]Even though the number of male sports participants rose during this period from an estimated 227,000 to 248,000, the number of full-time male undergraduates rose at a faster rate. As a result, the estimated participation rate fell from 11.9 to 10.4 percent between the 1966-67 and 1971-72 school years. During the same period, the estimated number of female intercollegiate participants increased from about 15,000 to about 30,000, and the participation rate rose from 1.1 percent to 1.7 percent.

Although one study asked a limited number of respondents to identify the factors that led to gains in women's participation, we did not find any studies that directly assessed the effect of title IX apart from other factors, such as similar state laws.[23] According to the researchers we contacted, there is no reliable method for separating title IX's effect from the effect of other factors.

Federal Enforcement Has Contributed to Title IX's Effect

We found widespread agreement among the officials, observers, and experts we spoke with that efforts to enforce title IX have contributed to the law's effect on women's participation in academics and in intercollegiate athletics. Although Education had not used its most severe legal sanctions to enforce compliance with title IX at colleges and universities—funding termination or referral to the Department of Justice for enforcement by federal courts—it has facilitated change by using enforcement means short of these measures. These measures include issuing letters of violation and, in the absence of formal findings of violations, obtaining voluntary resolution agreements to address concerns OCR has identified.[24] The legal experts we interviewed said OCR's other enforcement efforts, along with court cases filed against schools by private parties, have been important in establishing accountability and deterring noncompliance. They and others added that most title IX disputes do not involve either OCR or the courts because schools frequently resolve title IX complaints through internal campus grievance procedures required by regulations implementing title IX.

[23]The study was based on a telephone survey administered in 1986 to 61 selected respondents in 12 states with state title IX laws, including state title IX coordinators, vocational education gender equity coordinators, and legislators. More than one-third of the 61 respondents identified the federal law as the cause for gains in women's participation even though most respondents considered their state law to be stronger than the federal law. Most other respondents cited a combination of factors, including the federal law. (See Phyllis W. Cheng, "The New Federalism and Women's Educational Equity: How the States Respond," paper presented at the Association of American Geographers 1988 Annual Meeting; Phoenix, Ariz.; Apr. 7, 1988.)

[24]OCR's data system for cases resolved from fiscal years 1982 through 1993 indicates that the Department initiated administrative procedures that could have led to a suspension of federal funding in cases where OCR found that school districts had violated title IX and in cases where OCR found that colleges and school districts had violated other discrimination laws. Since fiscal year 1994, according to OCR officials, OCR has issued four Notices of Opportunity for Hearing, a step in the process to terminate a school's funding; none of these concerned title IX issues. Also, since fiscal year 1994, OCR referred 21 cases to the Department of Justice, none of which concerned title IX. Eighteen of these involved a single event and allegations of racial discrimination.

OCR's most severe enforcement tool is its ability to recommend that Education undertake a termination process by which a school can be prohibited from receiving federal funding, including participation in federal student loan programs. OCR can also refer cases to the Department of Justice for prosecution. Since title IX was enacted, however, Education has neither suspended nor terminated a college's or university's federal funding, nor has OCR referred to the Department of Justice a case against a postsecondary institution for a title IX violation. The decision not to use these sanctions has been criticized by some and lauded by others. Some individuals we interviewed said that OCR's enforcement has not been aggressive enough and that OCR has gone to great lengths to work out compromises rather than refer a case to the Department of Justice for prosecution. However, title IX requires that OCR seek voluntary resolution of violations before terminating a school's funding. According to OCR officials, when the agency finds violations, it has been able to minimize confrontation and reduce the harm that would be caused by loss of federal funds by obtaining voluntary compliance. It ensures that voluntary compliance agreements, in fact, remedy violations by monitoring implementation of the agreements. Enforcement efforts also include issuing regulations and policy guidance, communicating the requirements of title IX, resolving complaints, and conducting compliance reviews.

OCR's Policy Guidance Emphasizes Athletics and Other Issues

Although OCR has developed regulations and provided guidance on a broad range of title IX issues, intercollegiate and interscholastic athletics have received considerable attention over the years.[25] Examples of OCR's development and communication of athletics policies include such documents as a 1979 policy interpretation that introduced the three-part test[26] that OCR uses to assess equity in opportunities for athletics participation; a 1990 athletics investigator's manual; a clarification of its intercollegiate athletics policy guidance in 1996; and a clarification of its

[25]OCR's athletics policies are designed for intercollegiate athletics, but the general principles often apply to club, intramural, and interscholastic athletics programs, which are also covered by the regulations.

[26]Under the three-part test, intercollegiate athletics programs may establish compliance with title IX by meeting any one of the following criteria: (1) the number of male and female participants is substantially proportionate to their full-time undergraduate enrollments, or (2) the school has a history and continuing practice of expanding the program for the underrepresented gender (usually women's programs), or (3) the school is fully and effectively accommodating the interests and abilities of the underrepresented gender in intercollegiate sports. See app. IV for details.

policy on athletic scholarships in July 1998. OCR also appointed a national coordinator for title IX athletics in 1994.

When individuals have brought lawsuits, court rulings have generally upheld the policy guidance that OCR has developed. For example, members of Brown University's intercollegiate women's gymnastics and volleyball teams sued the university after it eliminated funding for and reduced the status of the teams.[27] They argued that the university had failed to comply with regulations concerning men's and women's opportunities for participation in intercollegiate athletics as interpreted by the Department's three-part test. Brown University challenged the three-part test and argued that it had complied with the regulations requiring that the university be equally effective in meeting the interests and abilities of men and women undergraduates in intercollegiate sports. Through a series of four separate decisions, each of the three parts of OCR's three-part compliance test was considered. In the third decision, the trial judge discussed all three parts, upholding the validity of the OCR compliance test as it was used to enforce title IX.[28]

OCR has developed title IX policy guidance to address sexual harassment and sex discrimination in a number of other areas, including the assignment of pregnant and parenting students; health insurance coverage for pregnancy; preadmission inquiries into marital and parental status; religious exemptions; hiring and assignment of teachers by gender, vocational, and educational opportunities; and graduate and professional school admissions. OCR has also provided information and guidance in other areas with several publications covering title IX in general and others focused on specific concerns. *Title IX: 25 Years of Progress* discusses women's progress since title IX was enacted but also helps communicate title IX requirements. Similarly, OCR documents, including *Title IX Grievance Procedures: An Introductory Manual, Title IX and Sex Discrimination,* and *Nondiscrimination on the Basis of Sex in Federally*

[27]*Cohen v. Brown University,* 809 F. Supp. 978 (D.R.I. 1992)(Cohen I); 991 F.2d 888 (1st Cir. 1993)(Cohen II); 879 F. Supp. 185 (D.R.I. 1995)(Cohen III); 101 F.3d 155 (1st Cir. 1996)(Cohen IV).

[28]This third decision is generally identified as Cohen III, 879 F. Supp. (D.R.I. 1995). For other cases, see *Boucher v. Syracuse University,* 164 F.3d 113 (2d Cir. 1999); *Roberts v. Colorado State Board of Agriculture,* 998 F.2d 824 (10th Cir. 1993); *Kelley v. Board of Trustees of the University of Illinois*, 35 F.3d 265 (7th Cir. 1994); *Horner v. Kentucky High School Athletic Association,* 43 F.3d 265 (6th Cir. 1994); and *Favia v. Indiana University,* 7 F.3d 332 (3d Cir. 1993).

Assisted Programs, provide specific details concerning title IX requirements. OCR publicizes its policies and procedures through publications, the press, Internet web pages, and presentations at conferences such as those sponsored by NCAA. OCR also responds directly to inquiries from schools and organizations regarding interpretations of title IX.

Complaint Investigations Covered a Broad Range of Title IX Issues

Between fiscal year 1982 (the earliest year for which records were available[29]) and fiscal year 1998, individuals and groups filed 5,227 complaints related to title IX at postsecondary institutions.[30] These complaints dealt with such issues as admissions, athletics, employment, harassment, and student health benefits. Focusing on complaints received since fiscal year 1994 provides a clearer view of OCR's complaint resolution efforts because that was the first year in which OCR's case information system began tracking the resolution of each issue in a case.[31] Thus, this tracking system makes it easier to identify the resolution of issues related specifically to title IX.[32]

[29]The Department of Health, Education, and Welfare handled title IX complaints before the establishment of the Department of Education. We were not able to obtain data on numbers of complaints or their resolution for fiscal years 1972 through 1981.

[30]Title IX postsecondary complaints have been a minor proportion of all complaints filed with OCR, representing 9 percent of the approximately 61,000 complaints OCR received and 30 percent of all complaints related to postsecondary institutions. OCR's other civil rights enforcement activities include laws concerning discrimination on the basis of race, color, and national origin (Title VI of the Civil Rights Act of 1964); age (Age Discrimination Act of 1975); and disabilities (Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990).

[31]A previous GAO report discussed OCR's case information system and OCR's revised approach for handling complaints. (See *Department of Education: Resolving Discrimination Complaints Has Improved With New Processing System* (GAO/HEHS-99-4R, Mar. 23, 1999).

[32]OCR's earlier case information system, which provides data for fiscal years 1982 to 1993, indicates the resolution of cases, but 1,419 of the 3,834 title IX postsecondary complaints in the earlier data system also included nontitle IX issues with no indication of how those issues were decided. OCR concluded that 1,656 of these cases were inappropriate for OCR. In 835 cases, no change or corrective action was required to bring the schools into compliance; in 1,214 cases, change was facilitated. In 129 cases, the result was unclear. OCR's disposition on specific issues was not indicated.

During fiscal years 1994 through 1998, OCR received 1,395 postsecondary title IX complaints and acted on 1,455 complaints, including those that had been filed earlier (see table 3).[33] OCR identifies three types of dispositions: a change facilitated, no change required, and complaints inappropriate for OCR. OCR concluded that 860 complaints (59 percent) were inappropriate for OCR action.[34] In 279 resolved complaints (47 percent), OCR officials concluded that the filing of the complaint or OCR's investigation and subsequent action facilitated a change to remedy the alleged violations.[35] In some instances, the school resolved the issue raised by the complainant. In other instances, OCR negotiated an agreement for a change. In 316, or 53 percent, of resolved complaints, OCR concluded that no change was required because, for example, OCR found no violation of title IX or found insufficient evidence to support a finding of noncompliance. Complaints with a change facilitated covered a wide range of prominent athletics issues (see app. IV). Of the 136 cases involving athletics, 27 cases were inappropriate for OCR. Among the remaining 109 athletics cases, OCR facilitated change in 91 cases (83 percent).

[33]During fiscal years 1994 through 1998, OCR acted on a total of 25,236 complaints, including 6,838 concerning postsecondary education. As of the end of fiscal year 1998, 437 postsecondary complaints were pending.

[34]For 19 percent of these complaints, OCR determined that another agency (usually EEOC) had primary jurisdiction. The other complaints were not investigated for a variety of reasons; for example, the school or issue was outside OCR's jurisdiction, or the complainant did not supply sufficient information.

[35]These results do not include allegations of civil rights violations under laws other than title IX, such as allegations of racial or age discrimination, or discrimination on the basis of disability. During fiscal years 1994 through 1998, 612 (42 percent) of title IX postsecondary complaints also involved allegations of violations of other civil rights laws.

Table 3: Disposition of Postsecondary Title IX Complaints With the Office for Civil Rights, Fiscal Years 1994 Through 1998

Issue	Change facilitated[a]	No change required[b]	Inappropriate for OCR[c]	Total
Athletics	91	18	27	136
Sexual harassment	73	109	265	447
Grievance or other procedures	51	35	54	140
Employee issue	24	36	219	279
Retaliation	21	51	65	137
Evaluation and grades	15	49	102	166
Admissions	13	39	75	127
Other student rights	11	16	31	58
Financial assistance	5	11	14	30
Discipline	1	16	30	47
Unspecified education-related service issue	1	2	53	56
Other	39	58	129	226
Total unduplicated count of complaints[d]	279	316	860	1,455

Note: Some complaints covered more than one type of issue. The table indicates OCR's disposition for each type of issue, such as admissions or athletics.

[a]Includes those complaints in which at least one issue resulted in the complainant withdrawing the complaint with change by the institution alleged to have violated title IX or in OCR negotiating an agreement for corrective action. This includes complaints in which one or more issues led to change regardless of whether other issues led to change, did not require change, or were inappropriate for OCR.

[b]Includes those complaints in which (1) the complainant withdraws the complaint without change by the institution alleged to have violated title IX, (2) OCR determined that there was insufficient evidence to support a finding of a violation, or (3) OCR concluded that no violation occurred. This includes complaints in which no change was facilitated in connection with any issue and in which OCR decided no change was required for one or more issues, regardless of whether other issues were inappropriate for OCR.

[c]Includes complaints that (1) were referred to another agency (EEOC or the Department of Health and Human Services, for example) or (2) involved an allegation over which OCR had no jurisdiction. This does not include any complaints in which one or more issues led to change or in which OCR decided no change was required.

[d]Total does not equal the sum of the number of complaints because 298 of them involved issues of more than one type.

OCR Has Initiated Fewer Title IX Postsecondary Compliance Reviews in the 1990s Than in Previous Years

OCR can initiate compliance reviews. According to OCR officials, compliance reviews are selected based on numerous factors, including survey data, OCR complaint information, and information provided by parents, education groups, media, community groups, and the public. These targeted reviews typically address alleged violations that are broader in scope and affect a larger number of individuals than complaint investigations, which often involve a smaller number of individuals. During fiscal years 1982 through 1989, OCR initiated an average of 39 postsecondary title IX reviews each year. That number dropped to an average of about 10 per year in fiscal years 1990 through 1995 and to zero in fiscal years 1996 through 1998. In fiscal year 1999, OCR began two title IX postsecondary compliance reviews concerning intercollegiate athletics. According to OCR officials, the decline resulted from resource constraints and a focus on other title IX priorities. Rather than conducting as many compliance reviews, OCR has emphasized the development and dissemination of policy guidance to assist postsecondary schools in preventing title IX violations.

Recent title IX compliance reviews have been focused on athletics (see table 4). This represents a change from earlier years, when reviews tended to focus more on admissions and other matters such as sexual harassment. Of the 41 title IX postsecondary compliance reviews OCR acted on in fiscal years 1994 through 1998, 30 involved athletics issues. In terms of the changes facilitated, reviews focused on athletics were even more prevalent, accounting for 29 of the 33 changes reported by OCR.

Table 4: Disposition of Title IX Postsecondary Compliance Reviews, Fiscal Years 1994 Through 1998

Issue	Change facilitated[a]	No change required[b]	Total
Athletics	29	1	30
Grievance or other procedures	2	0	2
Sexual harassment	2	3	5
Admissions	0	5	5
Other	1	5	6
Total unduplicated count of reviews[c]	33	8	41

Note: A single review may involve more than one title IX issue. It may also cover allegations of civil rights violations in addition to violations of title IX, such as retaliation, racial or age discrimination, or discrimination on the basis of disability.

[a]Cases include those in which at least one issue resulted either in a change made by the institution reviewed or in OCR negotiating an agreement for a change.

[b]Cases include those in which OCR (1) determined that there was insufficient evidence to support a finding of a violation or (2) concluded that no violation occurred.

[c]Total does not equal the sum of the number of cases because some cases involved issues of more than one type. Six compliance reviews involved issues of more than one type.

Agency and Athletics Association Comments and Our Evaluation

We provided a draft of this report to Education and an earlier draft to Education, NCAA, and NAIA for comment. We discussed the contents with their representatives. In its comments, the Department said that, in general, the report provided a good overview of OCR's title IX postsecondary education enforcement efforts. Both Education and NCAA also provided technical comments, which we incorporated where appropriate. Education's comments are included in appendix V.

As arranged with your office, unless you announce its contents earlier, we plan no further distribution of this report until 7 days after the date of this letter. At that time, we will send copies to the Honorable Richard W. Riley, Secretary of Education; representatives of NCAA and NAIA; and appropriate congressional committees. We will make copies available to others on request. Please contact me at (202) 512-7215 if you or your staff have any questions. Other contacts and staff acknowledgments are listed in appendix VI.

Sincerely yours,

Marnie S. Shaul, Director
Education, Workforce, and
Income Security Issues

Scope and Methodology

We focused our review of title IX and higher education on (1) men's and women's participation in higher education academic programs, (2) men's and women's participation in intercollegiate athletics programs at 4-year colleges and universities, and (3) information about title IX's effect on participation rates and the changes due to federal enforcement. As you requested, we are also providing information concerning women's participation as faculty members and athletics directors and intercollegiate athletic expenditures. In conducting our review, we relied on data obtained from Education and intercollegiate athletics associations which, although not verified, are considered the best available and are used extensively by researchers. Because recent information on intercollegiate athletic expenditures was not available from these sources at the time of our review, we also used data published by *The Chronicle of Higher Education,* as well as additional data available on its website. Education plans to make such data available in the future.

To determine men's and women's participation in higher education academic programs, we gathered and analyzed data on the numbers of men and women who attended institutions of higher education and received bachelor and selected first professional degrees. We also analyzed estimates of male and female students who received financial aid and the average amounts received. We obtained these data from the Department of Education's National Center for Education Statistics (NCES). Data on the numbers of enrolled students and the numbers of degree recipients came from fall enrollment and completion components of NCES' Integrated Postsecondary Education Data System, which provides data for fall 1986 and succeeding years, and its predecessor, the Higher Education General Information Survey, which provides data for earlier years. We used data for all higher education institutions in the 50 states and the District of Columbia and excluded data for U.S. territories. Higher education institutions include 2-year and 4-year colleges and universities that offer associate or more advanced degrees. Full-time enrollment data for the 1960s did not include a count of full-time extension students.

To determine men's and women's receipt of financial aid, we obtained and analyzed data from an NCES study funded by Education, "National Longitudinal Study of the High School Class of 1972." For similar data from a more recent period, we used NCES' National Postsecondary Student Aid Survey for the 1995-96 school year. In analyzing the distribution of financial aid by gender, we considered the proportion of men and women receiving aid and the average amounts of aid they received in loans, grants, and scholarships. We used t-tests to assess the statistical significance of

differences by gender for all undergraduate postsecondary students and separately for five types of institutions: (1) public 4-year, (2) public less-than-4-year, (3) private not-for-profit 4-year, (4) private not-for-profit less-than-4-year, and (5) proprietary (for-profit) institutions. To further investigate the differences in the proportion of male and female students receiving grants and scholarships, we estimated the average proportion of men and the average proportion of women receiving grants in groups based on students' financial standings as measured by their expected family contribution and their estimated costs of attendance.

To analyze participation in intercollegiate athletics at 4-year colleges and universities, we gathered participation statistics from the two largest 4-year intercollegiate sports associations—the National Collegiate Athletic Association (NCAA) and the National Association of Intercollegiate Athletics (NAIA). To estimate rates of participation in intercollegiate sports, we divided the sum of estimated participants for both associations by the estimated total full-time undergraduate enrollment at all 4-year institutions. In several respects, data concerning athletics participation do not provide a precise estimate of intercollegiate participation. For example, both NCAA and NAIA provide estimates of the number of intercollegiate athletes that represent the sum of the number of athletes on each team at each school. Some athletes participate on more than one team and are counted more than once in these data. Some 4-year institutions are members of both NCAA and NAIA. By adding participation statistics for both associations, we counted the athletes at those schools twice. According to NCAA, as of April 1999, 61 schools were members of both associations. Based on the number of teams and team size averages for the 1997-98 school year, we estimated that these schools accounted for about 3 percent of male participants and 2 percent of female participants.

Estimates of the numbers of participants in many years were based on national average squad sizes,[1] rather than a census of athletes on each team. Some 4-year colleges and universities are not members of either NCAA or NAIA but sponsor varsity intercollegiate sports programs. As of fall 1996, NCAA and NAIA schools enrolled an estimated 88 percent of all full-time undergraduate students at all 4-year colleges and universities. The number of student athletes at NCAA and NAIA member schools represents nearly all student athletes at 4-year schools, according to association officials. NCAA data do not include participants for sports sponsored by

[1]The squad size is the average number of players on the team.

fewer than 10 schools, and NAIA data include a few schools located in Canada.

To analyze intercollegiate athletic expenditures, we obtained information from *The Chronicle of Higher Education,* which collected Equity in Athletics Disclosure Act (EADA) reports from 858 of the 959 NCAA member schools for school year 1998-99, the most recent year for which data were available. These schools were active association members and sponsored both men's and women's athletic programs. To calculate expenditures per participant, we analyzed information only for schools that reported both expenditures and the number of intercollegiate athletic participants. As a result, some calculations were based on information provided by fewer than 858 schools. In addition to calculating average expenditures by gender, we calculated averages for groups of colleges and universities (NCAA Division I-A, I-AA, I-AAA, II and III). For each category of expenditures reported by the schools (recruiting, scholarships, coaches' salaries, and operations), we aggregated expenditures and divided them by the total number of male and female participants, respectively. To analyze intercollegiate athletic revenue, we obtained data from the *1997-98 NCAA Gender-Equity Study,* which presents data provided by 747 of the 1031 NCAA member institutions.

To obtain information on the effects of title IX and specifically the role of federal enforcement in realizing those effects, we performed literature searches in general, government, and legal data sources, and discussed title IX with 24 education and athletics officials, researchers, legal experts, and others. From Education, we obtained OCR publications concerning title IX and detailed data concerning all postsecondary title IX cases (compliance reviews and complaints) from fiscal year 1982 through fiscal year 1998. We interviewed OCR and other Department officials, obtained written responses to inquiries, and reviewed documents concerning several selected cases.

Federal Agencies With Title IX Enforcement Responsibilities

The Department of Justice coordinates title IX enforcement. There are 29 federal agencies that have responsibility for enforcing title IX. However, until recently only four agencies had issued title IX regulations: the Department of Agriculture, Department of Education, Department of Energy, and the Department of Health and Human Services. On August 30, 2000, 20 federal agencies and the Department of Justice issued a title IX common rule to eliminate discrimination based on sex in education programs or activities that use federal money or other assistance. The Department of Justice is assisting the following federal agencies in drafting separate title IX regulations: Department of Labor; Institute for Museum and Library Sciences; National Endowment for the Arts; National Endowment for the Humanities; and the United States Information Agency. The Department of Justice is also drafting a delegation agreement that will explain the enforcement responsibilities among agencies in cases where an educational institution receives funding from more than one federal agency.

The 29 federal agencies and departments with title IX enforcement responsibilities are the following:

- Agency for International Development
- Corporation for National and Community Service
- Department of Agriculture
- Department of Commerce
- Department of Defense
- Department of Education
- Department of Energy
- Department of Health and Human Services
- Department of Housing and Urban Development
- Department of the Interior
- Department of Justice
- Department of Labor
- Department of State
- Department of Transportation
- Department of the Treasury
- Department of Veterans Affairs
- Environmental Protection Agency
- Federal Emergency Management Agency
- General Services Administration
- Institute for Museum and Library Sciences
- National Aeronautics and Space Administration
- National Archives and Records Administration

- National Endowment for the Arts
- National Science Foundation
- National Endowment for the Humanities
- Nuclear Regulatory Commission
- Small Business Administration
- Tennessee Valley Authority
- United States Information Agency

Supplemental Information Concerning Title IX and Higher Education

Table 5 shows the data that support figure 1 in the letter portion of this report. Data are for first professional degrees for law, medicine, and dentistry and for bachelor degrees in the other fields. We computed these figures using NCES' data on awards of degrees.

Table 5: Percentage of Degrees Awarded to Women in Predominantly Male Fields of Study, School Years 1971-72 and 1996-97

	1971-72		1996-97		Women as percentage of total	
	Men	Women	Men	Women	1971-72	1996-97
Zoology	4,325	1,197	1,751	1,775	22	50
Business[a]	109,688	11,578	116,512	110,096	10	49
Political science[b]	22,845	5,290	16,081	12,892	19	44
Law[c]	20,266	1,498	22,548	17,531	7	44
Medicine[d]	8,423	830	9,121	6,450	9	41
Dentistry[e]	3,819	43	2,387	1,397	1	37
Physical science[f]	17,663	3,082	12,165	7,255	15	37
Computer science[g]	2,941	461	18,041	6,731	14	27
Engineering[h]	50,638	526	62,510	12,491	1	17

Note: We identified predominantly male fields as those in which, in school year 1971-72, (1) women represented fewer than 25 percent of degree recipients and (2) at least 5,000 bachelor or 1,000 first professional degrees were awarded. The 25 percent figure is based on the same criteria used by the Labor Department to define nontraditional occupations.

[a]Includes degrees in business management and administrative services, marketing operations and marketing and distribution, and consumer and personal services.

[b]Includes degrees in political science and government but excludes degrees in public administration and international relations.

[c]Includes bachelor of law and doctor of law degrees.

[d]Doctor of medicine degree.

[e]Includes doctor of dental surgery and doctor of dental medicine degrees.

[f]Includes degrees in general physical sciences, astronomy, astrophysics, atmospheric science and meteorology, chemistry, geology, miscellaneous physical sciences, physics, science technologies, and other physical sciences.

[g]Includes general degrees in computer science and information science, computer programming, data processing technology, information science and systems, and computer systems.

[h]Includes degrees in engineering and engineering-related technologies, such as electrical and electronic technologies and industrial production technologies.

Table 6 shows the data that support figure 2 in the letter portion of this report. We computed these figures using data from the NCAA, the NAIA, and the NCES fall enrollment data set.

Table 6: Estimated Participation Rates in Intercollegiate Sports at 4-Year Colleges and Universities, School Years 1966-1967 to 1998-1999

	Full-time undergraduates at 4-year institutions (in thousands)[b]		Participants in intercollegiate athletics (in thousands, estimated)		Participation rate as a percentage[c]	
Year[a]	Men	Women	Men	Women	Men	Women
1966-67	1,911	1,346	227	15	11.9	1.1
1971-72	2,385	1,800	248	30	10.4	1.7
1976-77	2,304	2,000	236	63	10.2	3.1
1981-82	2,363	2,290	216	86	9.1	3.7
1985-86	2,330	2,299	249	126	10.7	5.5
1986-87	2,322	2,334	239	122	10.3	5.2
1987-88	2,344	2,410	229	122	9.8	5.1
1988-89	2,387	2,507	231	124	9.7	5.0
1989-90	2,409	2,576	225	122	9.4	4.7
1990-91	2,455	2,637	232	125	9.5	4.7
1991-92	2,474	2,673	230	118	9.3	4.4
1992-93	2,472	2,691	227	120	9.2	4.5
1993-94	2,454	2,682	231	126	9.4	4.7
1994-95	2,430	2,707	222	129	9.1	4.8
1995-96	2,418	2,750	236	145	9.7	5.3
1996-97	2,422	2,802	235	150	9.7	5.3
1997-98	2,450	2,877	234	157	9.5	5.5
1998-99	[d]	[d]	237	167	[d]	[d]

[a]Annual estimates of athletics participation were available beginning in 1981. In previous years, NCAA did not compile data annually but did so at 5-year intervals. Enrollment data for full-time undergraduates at 4-year schools by gender were not available for 1982 through 1984.

[b]The numbers given are fall enrollment figures.

[c]These estimated participation rates were calculated by dividing the estimated number of NCAA and NAIA participants by the total number of full-time undergraduates at 4-year colleges and universities. See app. I for a discussion of the limitations of these estimates.

[d]Data were not available.

Supplemental Information Concerning OCR Cases Involving Intercollegiate Athletics

Because athletics has been a controversial aspect of title IX enforcement, we conducted additional analyses of OCR's actions in this area. From fiscal years 1994 through 1998, OCR acted on 166 cases (136 complaints and 30 compliance reviews) involving athletics issues. OCR concluded that 27 of the complaint cases were inappropriate for OCR. The 139 remaining cases covered 16 different athletics issues identified by OCR staff. Table 7 shows the 10 issues most frequently cited in these cases.

Table 7: Top 10 Athletics Issues in the 139 Cases OCR Acted On, Fiscal Years 1994 Through 1998

Issue	Number of cases
Accommodation of interests and abilities (opportunities to participate in intercollegiate sports)[a]	86
Athletics financial assistance and scholarships	77
Athletics equipment, supplies, and facilities	76
Assignment and training of coaching staff	69
Opportunity to receive coaching	67
Travel and per diem	60
Athletics recruitment	58
Medical and training facilities and services	55
Scheduling	53
Support services	52

Note: Cases typically involved more than one issue. In 17 cases, OCR staff indicated a general athletics issue code without specifying any of the codes shown in this table. According to OCR officials, a complaint concerning a specific athletics issue at a school sometimes prompted investigations of other athletics issues at the school.

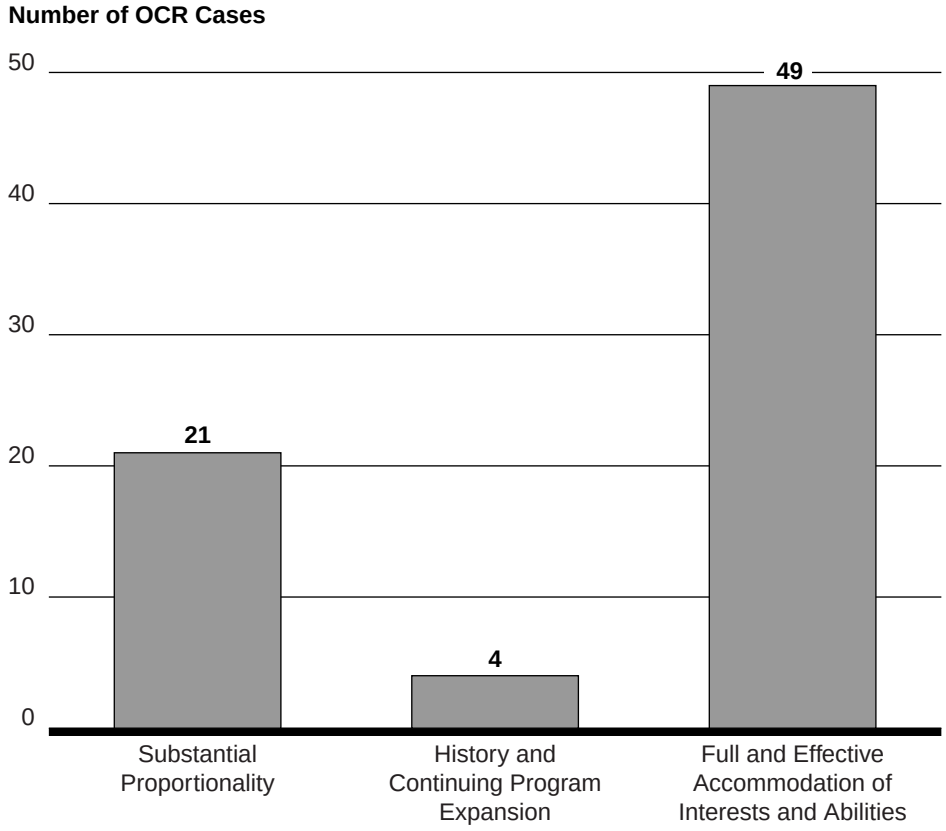
[a]These include cases identified as involving issues concerning accommodation of interests and abilities, denial of participation, or recruitment.

Among the various issues included in an athletics investigation, OCR assesses schools' compliance with requirements concerning equitable opportunities to participate in intercollegiate sports. To comply, schools must meet any one of the three following criteria, which Education refers to as a three-part test: (1) opportunities for intercollegiate-level participation for male and female students are provided in numbers substantially proportionate to their respective enrollments, or (2) the institution can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of members of the underrepresented gender, or (3) it can be demonstrated that the interests and abilities of members of the

underrepresented gender have been fully and effectively accommodated by the present program. According to OCR officials, in no case did OCR agree to hold a school to a standard below that indicated in its regulations and publications, although schools were given time to come into compliance.

In more than half (74) of the 139 athletics cases acted on by OCR during this period, OCR assessed schools' compliance with the three-part test and either determined that the school had complied or determined which part of the three-part test the school would most likely meet. In each case the school selected which part of the three-part test it would use. Figure 3 shows how many of these schools chose each part.

Figure 3: Means of Resolving Cases Involving the Three-Part Test, Fiscal Years 1994 Through 1998



Note: The second and third parts focus on expanding the program for the underrepresented gender and the full and effective accommodation of the interests and abilities of the underrepresented gender. In each of the cases shown, the underrepresented gender was female.

In 21 cases, schools were found to be in compliance or chose to come into compliance with the first part of the three-part test by achieving substantial proportionality in intercollegiate sports participation. OCR assesses proportionality by comparing the percentage of participants in intercollegiate athletics who are women with the percentage of full-time undergraduates in the student body who are women, and comparing the percentage of participants who are men with the percentage of full-time undergraduates who are men. OCR would consider opportunities to be substantially proportionate where the number of opportunities that would be required to achieve proportionality would not be sufficient to support a viable team. If, for example, 50 percent of full-time undergraduates are women and 47 percent of intercollegiate athletes are women (47 women and 53 men), six additional women would be needed to make women's participation proportionate. Because this number is too few to form a team, OCR would regard the school as having substantially proportionate participation. If, on the other hand, the school had twice as many women and men participating (94 women and 106 men), 12 additional women would be required to make women's participation proportional. If OCR determined that 12 additional participants were sufficient to support a viable team for which there was interest and ability on campus, then OCR might determine that participation opportunities at that institution were not substantially proportionate. Disparities could also be regarded as substantially proportionate if the numbers of full-time undergraduate men and women in the student body unexpectedly changed substantially. OCR allows participants who compete in more than one sport to be counted as a participant in each sport. As a result, the total number of participants counted can exceed the actual number of athletes.

In four cases, schools were found to be in compliance with the second part of the three-part test by showing a historical and continuing expansion of the intercollegiate athletics program for the underrepresented gender (typically women's programs).

In 49 (two-thirds) of 74 cases, schools were found to be in compliance or chose to come into compliance with the third part of the three-part test. This required that they provide intercollegiate sports teams for women where sufficient numbers of women were interested in participating in a particular sport, where students had sufficient ability to sustain an intercollegiate team, and where there were opportunities to compete with teams at other schools.

In addition to these 74 cases, OCR identified 10 cases that were resolved before fiscal year 1994. Two of the 10 schools chose to come into compliance through the first part (substantial proportionality) and 8 chose the third part (full and effective accommodation of interests and abilities).

Comments From the Department of Education

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

November 13, 2000

Ms. Marnie Shaul
Associate Director
Education, Workforce, and
Income Security Issues
General Accounting Office
Washington, DC 20548

Dear Ms. Shaul:

Thank you for the opportunity to comment on the second draft of GAO's report entitled "GENDER EQUITY: Men's and Women's Participation in Higher Education," which you provided in a letter to Secretary of Education Richard W. Riley dated October 26, 2000. GAO prepared the draft report in response to a request from Congresswoman Patsy T. Mink, Ranking Minority Member, Subcommittee on Criminal Justice, Drug Policy and Human Resources of the House Committee on Government Reform.

On November 22, 1999, I sent you comments on the first draft of this report, noting that, in general, it provided a good overview of OCR's Title IX postsecondary education enforcement efforts. At that time, my staff provided your staff with technical comments on the draft that corrected or clarified certain aspects of OCR's Title IX program. Our review of this most recent version indicates that many of OCR's suggested revisions have been incorporated into the second draft. However, we wish to provide additional clarifications and revisions as described below.

We are concerned that the draft report does not include information that we believe effectively rebuts the widely held misperception that Title IX is responsible for the decline in the number of men's sports opportunities. We suggest inclusion of the following language on page 4 at the end of the first sentence (the same point also should be made at the end of the first sentence on page 22 of the draft report):

Now on p. 23.

> "OCR's policy guidance makes clear that title IX does not require the cutting of men's teams. Substantial proportionality between

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the numbers of male and female athletes and their respective enrollments is only one of three ways in which schools may demonstrate compliance with title IX. Furthermore, a school's compliance with title IX under substantial proportionality rather than the two other available means of compliance does not require the cutting of men's teams. In fact, most schools investigated by OCR have chosen to comply with Title IX using methods other than substantial proportionality. Thus, most schools are complying with Title IX by methods for which a comparison of the number of male versus female athletes is irrelevant."

In another area, OCR is revising its sexual harassment guidance in light of recent Supreme Court cases relating to sexual harassment in schools, specifically, Gebser v. Lago Vista Independent School District, 524 U.S. 274 (1998), and Davis v. Monroe County Board of Education, 526 U.S. 629 (1999). Although both cases involved elementary and secondary education, the same principles announced by the Court apply in the postsecondary education context. Accordingly, your report could note that, on November 2, 2000, OCR published in the *Federal Register* for a 30-day public comment period "Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties." The revised guidance reaffirms and clarifies the regulatory basis for OCR's 1997 sexual harassment guidance. Enclosed for your information is a copy of the November 2, 2000 *Federal Register* notice.

Listed below are additional changes/additions that provide clarification on OCR enforcement of Title IX.

Page 1, first paragraph, third sentence, replace "at institutions" with "in education programs and activities."

Now on p. 6.

Page 4, second paragraph, first sentence, delete "or benefiting from" and replace the word "end" with "prohibit." In footnote 4, delete "or benefiting from."

Table 1: Important Events and Cases Involving Title IX Issues:

- 1972: Title IX enacted. Delete the word "First" (e.g., Title IV and Title VII of the Civil Rights Act of 1964) and insert the word "specifically" after "Federal law…"
- 1976: Education Amendments of 1976. We are not sure what you are referring to. Could this be clarified?

2

- 1984: Grove City College v. Bell. Revise to read: "Held that Title IX and other funding civil rights laws apply only to programs that directly receive or benefit from federal financial assistance."
- 1987: Civil Rights Restoration Act of 1987. Revise to read: "Restored institution-wide jurisdiction for applying civil rights laws."
- Delete from Table 1 "1990: OCR Title IX athletics investigator's manual. Provided detailed guidance for investigators evaluating compliance with Title IX in intercollegiate…(etc.)."
- 1992: Franklin v. Gwinnett County Public Schools. Insert the word "private" before "title IX actions."
- 1996: OCR clarification of intercollegiate athletics policy guidance and 1998: OCR Dear Colleague letter regarding athletic scholarships. Footnote each item using the following language for both footnotes: "OCR in conducting investigations has used investigators manuals issued in 1980 and 1990 as clarified by these more recent policy issuances."
- 1996: OCR clarification of intercollegiate athletics policy guidance. Revise to read "…concerning OCR's 3 optional standards for determining…"
- 1997: OCR sexual harassment policy guidance. Insert "Title IX prohibitions against" between "guidance on" and "sexual harassment."
- (Add) 2000: Proposed revision to OCR sexual harassment policy guidance. Published in *Federal Register* 11/2/00 for a 30-day public comment period, reaffirms standards regarding sexual harassment, clarifies regulatory basis for the guidance, and provides illustrative examples.
- (Add) 2000: 11/13/00 publication in *Federal Register* of amended regulations governing nondiscrimination on the basis of race, color, national origin, sex, handicap, and age to conform with statutory amendments made by the Civil Rights Restoration Act of 1987.

You also may want to add to the chart the Title IX common rule (discussed below with respect to page 36).

Now on p. 7.

Page 6, footnote c, revise to read: "45 C.F.R. part 86, currently found at 34 C.F.R. part 106."

3

Now on p. 8.

Page 7, first paragraph, second sentence, after the word "investigates" add "sex discrimination in education programs and has administrative enforcement authority."

Now on p. 8.

Page 7, first paragraph, fourth sentence, add "under Title VII" after the word "jurisdiction" and add "that are" before the word "subject."

Now on p. 18.

Page 17, second paragraph, delete last two sentences regarding revenue producing sports since their connection to expenditures is mere speculation.

Page 20, first paragraph, second sentence, replace "policies" with "policy guidance" and add "and resolving" after the word "investigating."

Page 23, first paragraph, add before first full sentence (and before footnote): "These measures include issuing letters of violation; filing Notices of Opportunity for Hearing that can lead to fund termination; and, in the absence of formal findings of violations, obtaining voluntary resolution agreements to address concerns OCR has identified."

Now on p. 24.

Page 23, second paragraph, second to last sentence, revise to read: "…minimize confrontation, reduce the harm to additional students that would be caused by a loss of federal funds, and obtain voluntary…"

Now on p. 24.

Page 23, last sentence, delete "This approach has meant that its enforcement efforts have emphasized other areas such as…" and replace with "Enforcement efforts also include…" The fact that OCR engages in other activities such as issuing regulations and communicating the requirements of Title IX is not a consequence of our approach to resolving cases. Rather, these OCR activities are intrinsic to our Title IX enforcement.

Page 23, footnote 23, line 3, replace "accused of" with "where OCR found" in two places in line 3.

Page 24, first full paragraph, first sentence should read: "Although OCR has developed regulations and provided guidance on a broad range of title IX issues, intercollegiate and interscholastic athletics have received …" The word "athletics" should be inserted in the second sentence of that paragraph before the word "policies."

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Page 25, footnote 27, add at the end "and Cook v. Colgate University, 992 F.2nd 17 (2nd Cir. 1993)."

Page 27, first paragraph, add to the end the following sentence: "Of those cases over which OCR had jurisdiction in the area of title IX athletics, change was facilitated in 83 percent of the cases closed during this period."

Now on p. 29.

Page 28, first paragraph of text (as opposed to footnotes), delete the second sentence and replace with "According to OCR officials, compliance reviews are selected based on numerous factors, including survey data, OCR complaint information, as well as information provided by parents, education groups, media, community groups, and the public."

Now on p. 35.

Page 36, first paragraph, third sentence, revise to read: "Until recently, only four agencies had issued…" The fourth sentence in that paragraph should be deleted and the following inserted: "On August 30, 2000, 20 federal agencies and the Department of Justice (DOJ) issued a Title IX common rule to eliminate discrimination based on sex in education programs or activities that use federal money or other assistance. DOJ is assisting the following federal agencies in drafting separate Title IX regulations: Department of Labor; Institute for Museum and Library Sciences; National Endowment for the Arts; National Endowment for the Humanities; and the United States Information Agency. DOJ also is drafting a delegation agreement…"

Now on p. 39.

Page 41, last paragraph, first sentence should begin with "Among the various issues included in an athletics investigation,…" The second sentence should read, "To comply, schools must meet any one of the three…"

Now on pp. 39 and 40.

Page 42, first paragraph, second line, insert "or" before "(2)…" Also, replace the second paragraph with the following: "More than half (74) of the 139 athletics cases acted on by OCR during this period involved accommodation of interests and abilities. In each case, the school had the choice of determining which part of the three part test it would meet to come into compliance. Figure 3 shows which part of the three part test these 74 schools chose to meet."

Now on p. 41.

Page 43, first full paragraph, second sentence, replace the phrase "who are women" appearing in two places with the phrase "of each gender."

Now on p. 41.

Page 43, first full paragraph, delete seventh sentence (begins with "If the school had an opportunity…") and replace with: "If OCR determined that 12

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participation opportunities were sufficient to support a viable team for which there was interest and ability on campus, then OCR might determine that participation opportunities at that institution were not substantially proportionate." In the next sentence, insert "unexpectedly" before "change."

Now on p. 42.

Page 44, last paragraph, delete second and third sentences and replace with: "To come into compliance, 2 of the 10 schools chose to come into compliance through the first part (substantial proportionality) and 8 chose the third part (full and effective accommodation of interests and abilities)."

Thank you again for the opportunity to comment on the second draft of your report. I hope these comments are helpful. We remain available to assist you and your staff in clarifying any issues in the draft report.

Sincerely,

Norma V. Cantú

Norma V. Cantú
Assistant Secretary
for Civil Rights

Enclosure

6

GAO Contacts and Staff Acknowledgments

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Staff Acknowledgments

In addition, Benjamin F. Jordan, Jr., Ann P. McDermott, Meeta Sharma, Stanley G. Stenersen, and Stefanie G. Weldon made key contributions to this report.

Related GAO Products

Intercollegiate Athletics: Comparison of Selected Characteristics of Men's and Women's Programs (GAO/HEHS-99-3R, June 18, 1999).

Department of Education: Resolving Discrimination Complaints Has Improved With New Processing System (GAO/HEHS-99-47R, Mar. 23, 1999).

Intercollegiate Athletics: Status of Efforts to Promote Gender Equity (GAO/HEHS-97-10, Oct. 25, 1996).

Department of Education: Efforts by the Office for Civil Rights to Resolve Asian-American Complaints (GAO/HEHS-96-23, Dec. 11, 1995).

Women's Educational Equity Act: A Review of Program Goals and Strategies Needed (GAO/PEMD-95-6, Dec. 27, 1994).

Intercollegiate Athletics: Compensation Varies for Selected Personnel in Athletic Departments (GAO/HRD-92-121, Aug. 19, 1992).

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