

Under federal regulations for implementing Title IX of the U.S. Civil Rights Act of 1964, which deals with sex discrimination in education, colleges receiving federal funds must provide equal opportunity in intercollegiate athletics for members of both sexes. The Office of Civil Rights of the U.S. Department of Education interprets this to mean that intercollegiate level participation opportunities for male and female students must be provided in numbers substantially proportional to their respective enrollments. This means that, for example, if 40% of the student body at a college is female then roughly (give or take 5%) of the participants in intercollegiate sports at the college should be female. The above standard has come to be known as the proportionality requirement. Under the U.S. Department of Education's interpretation of Title IX, if a school fails to meet the proportionality requirement it must be able to show that its athletic programs satisfy one or the other of the following conditions: first, the program is part of a continuing effort to increase substantially the opportunities for women to participate in intercollegiate athletics; second, despite not meeting the proportionality requirement, the school's athletic programs nonetheless adequately meet the needs and address the interests of female students at the college in regard to participating in intercollegiate sports. The proportionality requirement has been the subject of unabated and intense controversy since the early 1990's. Given unrelentingly tight budgets, colleges and universities say that often they can find no other way to meet the proportionality requirement than by making significant cuts in men's sports programs -i.e. either by eliminating entire programs in certain sports, or by capping the number of participants on various teams. Many colleges and universities would like to see the proportionality requirement eliminated.

Is the proportionality requirement fair or unfair? Explain your answer.

MODERATOR'S ANSWER: The proportionality requirement is a reasonable and fair regulation to promote equality of opportunity for women in intercollegiate sports. One needs to recall that before the passage of Title IX, opportunities for women to participate in sports on the intercollegiate level barely existed. The enormous growth of intercollegiate sports programs for women over the past twenty five years is almost certainly attributable in large part to the enforcement of legal regulations such as the proportionality requirement. It is unfortunate that under the conditions of financial stringency that have affected higher education for many years, colleges and universities at times are in the position of having to curtail men's intercollegiate sports programs in order to expand women's programs. Eliminating the proportionality requirement, however, would not be an appropriate response to this problem, however. Doing so would create an unreasonable risk of wiping out a substantial portion of the progress made in the past twenty five years towards fair equality of opportunity for women in intercollegiate sports.

Case from the February 26, 1998 Intercollegiate Ethics Bowl. Copyright Robert Ladenson, Center for the Study of Ethics at the Illinois Institute of Technology, 1998.