

COMMISSION “VARIANCE” PROPOSALS WOULD SEVERELY LIMIT ATHLETICS OPPORTUNITIES FOR HIGH SCHOOL GIRLS

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Executive Summary

- **Current proposals under consideration by the Department of Education’s Commission on Opportunity in Athletics would radically undermine basic principles of equal opportunity and have devastating impact on the opportunities available for women and girls to participate in athletics.**
- **At the high school level – which is a gateway for development of athletic skills and interest, as well as a proving ground for access to athletic scholarships – the effect would be particularly damaging. The numbers tell the story:**
 - > **Currently, 30 years after the passage of Title IX, high school girls receive 1.1 million fewer opportunities to play sports than their male peers and \$133 million dollars less per year in athletic scholarships than male athletes when they get to college.**
 - > **Although women and girls have not yet been provided equal opportunity, proposals pending before the Commission would further disadvantage them:**
 - **374,000 and 931,000 FEWER high school participation opportunities compared to the current Title IX equal opportunity standard.**
 - **a LOSS of between \$75 million and \$189 million in college athletic scholarships each year.**
- **These proposals would deprive these girls and women of their right to equal opportunity, the health, social and personal benefits derived from sports participation, and access to athletic scholarships that can make the difference in enabling girls to go to college**
- **In a nation that values equal opportunity but continues to treat its female athletes as second-class citizens, these proposals should be resoundingly rejected.**
- **Rather than pursuing the destructive recommendations currently under consideration, the Commission should recommend that current Title IX athletics policies be maintained and more strongly enforced.**

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Introduction

In June, Secretary of Education Roderick Paige established the Commission on Opportunity in Athletics, which is charged with making recommendations to the Secretary on whether and how changes should be made to long-standing Title IX athletics policies. Although the Commission held four public hearings around the country, it invited virtually no testimony from high school girls about the discrimination they have suffered, and the opportunities they have lost, as the result of inequitable treatment of female athletes. The event sponsored today by the National Coalition for Women and Girls in Education will begin to fill that gap.

Without the benefit of a complete record – and with little information on the terms of current Title IX athletics policies – the Commission has nonetheless made radical recommendations to dismantle the athletics policies. At its meeting in Philadelphia in December, the Commission considered numerous proposals to gut Title IX’s three-part test – the test that enables schools to evaluate whether they are equitably allocating sports opportunities between their male and female students.

This report focuses in particular on proposals that would find schools in compliance with the first prong of the three-part test even if they do *not* provide athletics opportunities to female students that are substantially proportionate to their enrollment. Prior analyses of these proposals demonstrate the significant and damaging effect that they would have on opportunities for female athletes at the college level. *See* Briefing Papers posted at www.ncwge.org. The proposals would also have a devastating impact at the high school level, and would result in the loss of hundreds of thousands of sports opportunities for high school girls nationwide. These consequences are explained below and illustrated in the attached charts.

The Current Policies

Under current Title IX policies, there are three wholly independent ways that schools can show that students of both genders have equal opportunities to participate in sports. Schools can show that:

- the percentages of male and female athletes are about the same as the percentages of male and female students enrolled in the school; **OR**
- the school has a history and a continuing practice of expanding opportunities for the underrepresented gender – which, in most cases, is women; **OR**
- the school is fully and effectively meeting its female students’ interests and abilities to participate in sports.

The first, or “proportionality,” prong of the three-part test is based on the fundamental principle that schools can comply with Title IX when they provide their

female students with the same allocation of athletics opportunities they provide their male students. At bottom, the first prong recognizes that a school that provides equal opportunities to its students is not discriminating and will be found to be in compliance with the law without further inquiry. However, schools are not required to comply with the first prong; even if a school does *not* provide equal opportunities, it can show that it is in compliance with Title IX's participation requirements through the second and third prongs of the test.

The Proposed Changes

The proposed changes to the proportionality prong – the “variance” proposals described below – would fundamentally alter operation of the three-part test. Although each proposal differs slightly in its specifics, all of the proposed changes would allow a school to comply with Title IX's participation requirements *without* providing equal opportunity and *without* satisfying either of the other prongs of the test. Instead, schools that met an arbitrary target for allocation of participation opportunities would be found in compliance without further inquiry.

The specific proposals analyzed in this report are the following:

- **50%/50% standard with variance of +/- 7% (range = 14%):** Under this proposal, the proportionality standard would be replaced with a requirement that schools aim to provide 50% of their athletics opportunities to men and 50% to women. The proposal would allow schools a variance of up to 7%, or, in other words, a range of up to 14%, from this standard – that is, would allow a school to be found in compliance as long as it provided 43% of its sports opportunities to women – *regardless* of the number of women in the undergraduate population.
- **50%/50% standard with a variance of +/- 3.5% (range = 7%):** This proposal would modify proposal (A) by substituting a variance of 3.5% (range of 7%) for evaluation of compliance. In other words, to comply under this approach, a school could provide 45.6% of its sports opportunities to women, no matter how large the size of its female student body.
- **Regional average high school participation plus 3%:** Under this proposal, a college would be in compliance with prong one of the three-part test if its proportion of female athletes was three percentage points higher than the proportion of female athletes at high schools in the region.
- **Proportionality standard with variance of +/- 7% (range = 14%):** This proposal would authorize a variance of up to 7% -- that is, a range of 14% -- from provision of opportunities proportionate to enrollment. Under this proposal, where girls comprise 49.1% of the student body – the national high school average – schools could comply with Title IX's requirements even if they provided only 42.1% of their participation opportunities to female athletes.

- **Proportionality standard with variance of +/- 5% (range = 10%):** Like proposal (D), this proposal would start from a measurement of proportionality but allow schools a variance of 5% from that standard. In a high school with 49.1% girls, the school could provide as few as 44.1% of the athletics opportunities to them and still be in compliance with Title IX standards.
- **Proportionality standard with variance of +/- 3.5% (range = 7%):** This proposal would operate like proposals (D) and (E) above, but would authorize a variance of 3.5%. Under this proposal, a high school with 49.1% girls would be authorized to provide only 45.6% of sports opportunities to those girls.

The Impact of the Proposed Changes

These proposals would cause substantial losses of the participation opportunities to which girls are entitled under the proportionality prong of the three-part test. Aggregated data for schools nationwide make this impact clear. Assuming that opportunities currently afforded to male athletes are held constant, the “variance” proposals pending before the Commission would result in annual losses of between 374,000 and 931,000 participation opportunities for high school girls from a standard of equal opportunity. This means a loss of **between 7.5 million and 18.6 million opportunities over a generation**. See Appendix Figure 1. Female college athletes will suffer comparable levels of losses, see Appendix Figure 2, and data for each of the 50 states show similar effects nationwide. See Appendix Figures 3.1-3.51. .

These losses of course stand to deprive high school girls of the myriad benefits of participation in sports. Study after study has shown that competitive athletics promotes physical and psychological health; responsible social behaviors; greater academic success; and increased personal skills. Title IX’s mandate of equality in sports is especially important for minority girls and women, who experience higher levels of self-esteem, get better grades, and are more likely to graduate from college when they participate in athletics.

These losses also have financial consequences for the girls who do not get to play. Because college athletic scholarships are allocated in direct proportion to participation levels, girls who have been denied equal participation opportunities by the Commission’s proposals stand to lose between \$75 million and \$189 million in college athletic scholarships *each year* – resulting in losses of \$1.5 billion to \$3.8 billion over a generation. See Appendix Figure 4.

These losses are unacceptable in a nation in which high school girls still get more than 1 million fewer opportunities to play sports than their male peers. Although girls comprise 49.1% of current high school students, they receive only approximately 42% of sports opportunities. See Appendix Figure 5. Appendix Table 2 provides the current state-by-state gap between male and female athletic participation opportunities. These data make clear that pervasive discrimination – from fewer opportunities to play to inadequate equipment and facilities to more burdensome schedules to less access to

coaching time – still plagues girls who want to play sports in high school. To relegate them to a permanently second-class status, as the Commission’s “variance” proposals would do, is to authorize perpetuation of the discrimination that has already artificially limited their opportunities. No nation that supports the principles of equal opportunity should allow adoption of such an approach.