On the Basis of Sex: Title IX and the Business of College Athletics

BY LYNETTE PACZKOWSKI • JANUARY 20, 2021

As colleges and universities continue to face tough decisions regarding how to deliver their academic offerings to students – full return to campus, 100% remote learning, or a hybrid method – many also struggle with the financial implications of those decisions – students opting to take a "gap year" or explore lower-priced alternatives, decreased or eliminated revenue from room and board, decreased or eliminated revenue from ticket sales for athletics and entertainment offerings, and increased expenses for cleaning and sanitization, as well as the maintenance of quarantine spaces.

For many schools facing these financial obstacles, cutting sports became and continues to be a fiscally-attractive option. Schools looking to do so, however, cannot make their decisions in a vacuum; looming in the distance is Title IX.

Title IX prohibits discrimination on the basis of sex in any education program or activity receiving federal funds, such as student financial aid. It applies to sports by ensuring men and women have equitable participation opportunities, as well as access to scholarships.

While Title IX doesn't prevent women's sports from being eliminated, any elimination has to be done in a fair and equitable manner to ensure that the school remains in compliance with the law. In other words, decisions cannot be made solely on the basis of which programs cost the most money and generate the least revenue in return.

In some respects, the inquiry into whether a school remains in compliance with Title IX after cutting sports is not necessarily what gets cut, but, rather, what is left. That is, do the school's remaining programs offer equitable participation opportunities and access to scholarships?

Given that the greatest revenue-generators for a school tend to be male sports like football and basketball, less-profitable men's sports have felt vulnerable to the mandates of Title IX. By way of example, the big-business Division I FBS schools, which provide 85 football scholarships, need a large offering of women's sports to stay compliant with Title IX, particularly if they also want to offer other men's sports programs with high scholarship rates like basketball or hockey.

Many teams have taken matters into their own hands, undertaking various forms of grassroots fundraising to keep their seasons alive. How quickly college and university budgets will rebound to pre-pandemic levels is certainly something to keep an eye on.

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