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ACCEPTANCE

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The Dissertation Advisory Committee and the student's Department Chair, as representatives of the faculty, certify that this dissertation has met all standards of excellence and scholarship as determined by the faculty. The Dean of the College of Education concurs.

Philo Hutcheson, Ph.D.
Committee Chair

Jennifer Esposito, Ph.D.
Committee Member

Michael J. Fulford, Ph.D.
Committee Member

Walter R. Thompson, Ph.D.
Committee Member

Date

William L. Curlette, Ph.D.
Chair, Department of Educational Policy Studies

R. W. Kamphaus, Ph.D.
Dean and Distinguished Research Professor
College of Education

AUTHOR'S STATEMENT

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John Rowland
6200 Golden Maple Court
Hoschton, GA 30548

The director of this dissertation is:

Dr. Philo Hutcheson
Department of Educational Policy Studies
College of Education
Georgia State University
Atlanta, GA 30303 - 3083

VITA

John Rowland

ADDRESS: 6200 Golden Maple Court
Hoschton, GA 30548

EDUCATION:

Ph.D. 2011 Georgia State University
Educational Policy Studies

M. Ed. 1997 Georgia State University
Mathematics Education

B.S. 1991 Georgia State University
Mathematics

PROFESSIONAL EXPERIENCE:

2010-Present Teacher / Head Cross Country and Track Coach
Gwinnett County School System

2009-2010 Data Specialist / Project Manager
Quality of Life Enterprises, Inc.

2009 Assistant Athletic Director / Senior Head Coach
Georgia State University

1993-2009 Director of Women's and Men's Cross Country and Track
Georgia State University

1997-2005 Instructor
Keller Graduate School of Management

1996 Team Leader and Spotter
Atlanta Olympic Broadcasting

1991-1993 Assistant Cross Country Coach / Facilities Manager
Georgia State University

PROFESSIONAL SOCIETIES AND ORGANIZATIONS:

2010-Present Professional Association of Georgia Educators

ABSTRACT

DECISION MAKING IN INTERCOLLEGIATE ATHLETICS: ONE INSTITUTION'S JOURNEY TO MAINTAIN TITLE IX COMPLIANCE

by
John Rowland

The allocation of resources and participation opportunities in intercollegiate athletics has been a debate among researchers for nearly 40 years. Title IX and traditionally male-dominated budgeting practices continue to be opposing forces that shape the financial and gender makeup of university athletic departments. In fact, the need to be Title IX compliant often dominates discussions when structural changes occur in athletic departments. This case study analyzed the decision making process of distributing resources and participation opportunities at Division I University from 1998 to 2007 based on John Rawls' arguments about distributive justice. Division I University administrators focused on the substantiality proportionality clause of the three-part test as the only method to comply with Title IX. The Equity in Athletics Disclosure Act and other gender equity reports completed during certification play an important role in the decision making process. The analysis of the decision making process showed that Title IX was used as a political tool to deflect the controversy of program elimination. This analysis also showed that program elimination was not necessary in order to maintain Title IX compliance. Thus, the decision to eliminate sports was a violation of Rawlsian justice.

DECISION MAKING IN INTERCOLLEGIATE ATHLETICS:
ONE INSTITUTION'S JOURNEY TO MAINTAIN
TITLE IX COMPLIANCE

by
John Rowland

A Dissertation

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In
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Atlanta, GA
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This dissertation is dedicated to all individuals who stand up for justice and fairness... and especially those individuals who speak out against injustice even when it affects them negatively.

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ABBREVIATIONS

JMU	James Madison University
EIA	Equity in Athletics
QU	Quinnipiac University
NCAA	National Collegiate Athletic Association
HEW	Department of Health, Education, and Welfare
OCR	Office of Civil Rights
EADA	Equity in Athletics Disclosure Act
IRB	Institutional Review Board
SACS	Southern Association of Colleges and Schools

CHAPTER 1

THE PROBLEM

Introduction

University administrators continually struggle to allocate athletic resources and participation opportunities in a distributive manner that is just.¹ The rising commercial popularity of college sports, particularly football and men's basketball, contributes to the difficulty of this distribution task. On the one hand, administrators focus resources on the most visible sports to satisfy the demands of avid fans and boosters. These demands have resulted in financial investments to athletic departments that outpace overall university spending.² On the other hand, federal laws mandate that university leaders distribute resources and participation opportunities to a diverse population of students.

Additionally, due to the benefits that students receive from competing in athletics (Pascarella & Smart, 1991; Pascarella et al., 1999; Porto, 2003; Salter, 1996; Samuels, 2003; Suggs, 2005), most administrators feel an obligation to provide a wide range of participation opportunities. When resources are scarce, the competing forces discussed above make distribution decisions a daunting task. How, then, do university administrators make these decisions, and, can they make them fairly?

¹The terms just and justice are used in this study to determine whether distribution decisions made by college administrators are fair. Justice as a form of fairness is defined by John Rawls in *A Theory of Justice* (1971) and *Justice as Fairness: A Restatement* (2001).

²The amount of resources that college athletic departments are spending in relation to total university spending has been studied extensively. See the Knight Foundation report *A Call to Action: Reconnecting College Sports and Higher Education* (2001) and the Presidential Task Force on the Future of Division I Intercollegiate Athletics report *The Second-Century Imperatives – Presidential Leadership and Institutional Accountability* (2006).

Historically, football and men's basketball have received the majority of the resources in college athletics (Curtis & Grant, 2005; Mahony & Pastore, 1998; National Collegiate Athletic Association, 2008). This distribution method awards the majority of the resources to the sports that produce the most revenue. Title IX of the Educational Amendments of 1972 became the first piece of legislation to significantly challenge this type of distribution. This landmark law states that "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance" (Title IX, 1972). After the passage of Title IX, sex discrimination in college athletic departments became illegal. Therefore, the male-dominated budgeting practices that historically focused most of the resources on football and men's basketball began to be challenged. Today, when university leaders discuss making structural changes to athletic departments (i.e., the addition or deletion of sports teams), Title IX compliance is always a factor. The following two cases are examples of the controversy that surrounds athletic department decision making.

The leaders of James Madison University (JMU) and Quinnipiac University are dealing with the consequences of making significant structural changes in their athletic departments. Title IX played a role in these decisions. In 2007, James Madison eliminated ten sports. In a memo dated November 2, 2006, Vice President Charlie King wrote, "I want you to hear directly from me that this decision was made because JMU simply had to make changes to comply with Title IX." President Linwood Rose echoed this sentiment in a *New York Times* article stating,

It was a difficult thing to do but we were out of compliance with the law. Part of our mission statement talks about a community of educated and

enlightened citizens. I don't know how you create a model of citizenship if you are blatantly in violation of the law. (Pennington, 2006, p. 1)

The public statements made by the JMU administration portray the idea that sport elimination is the only solution to the Title IX compliance problem. JMU officials emphatically deny that financial concerns played a role in the decision, an interesting exception because reduction of finances is commonly used as a reason for program elimination.

The response to JMU's decision to eliminate the sports has been harsh and widespread. There were leading articles in *USA Today* and *The New York Times* casting a critical tone on the decision. Jennifer Chapman, a women's cross country and track member and president of the university's student advisory council at the time of the program cuts, condemned JMU's administration for focusing the cuts on men's nonrevenue sports by stating, "Athletic departments have become a business run by accountants, not a place of opportunity run to educate students. What are they saying to young boys?... You better play football or basketball, because if you run track or swim, you don't matter" (Pennington, 2006, p. 2). The Women's Sports Foundation released a report criticizing JMU for politicizing Title IX to defend the cuts. The report highlights that redirecting excessive spending on football and men's basketball would enable JMU to add women's opportunities to satisfy Title IX compliance (Women's Sports Foundation, 2008). JMU was sued by a group called Equity in Athletics (EIA) in response to eliminating the sports teams (Equity in Athletics, 2008). In January 2010, EIA's lawsuit alleging equal protection violations was dismissed in federal court. However, as of the writing of this dissertation, the 4th United States Circuit Court of Appeals is hearing appeal arguments and a ruling is pending (Appeals Court Hears,

2010). The leaders of James Madison University have been fighting the legal challenge to the elimination of those ten sports for over four years.

JMU's leaders made the decision to eliminate sports instead of redistributing resources and opportunities to resolve their Title IX compliance issues. Due to the history of Title IX litigation following program cuts in college athletics, the JMU leaders must have realized that strong opposition was a possibility. If saving money was not a factor in the decision, then JMU could have simply increased women's opportunities. This type of distribution satisfies the intent of Title IX and is certainly a less controversial decision.

Quinnipiac University (QU) officials also made significant structural changes in their athletic department in 2009. In a memo dated March 4, 2009, Vice President Lynn Bushnell announced the elimination of three sports: men's golf, men's outdoor track, and women's volleyball. Although Title IX was not specifically referenced in the memo, Bushnell mentioned on two occasions that providing gender-equitable opportunities were one of several reasons for the cuts. The players and coach of the women's volleyball team immediately filed a Title IX lawsuit against the university. They also requested an injunction that would require the university to reinstate the team until the lawsuit was resolved. Due to the fact that women student-athletes were underrepresented in comparison to the overall student body at QU, the volleyball team believed that QU was guilty of sex discrimination for denying them athletic participation (Cloutier, 2009). During the injunction hearing, Robin Sparks, the head volleyball coach, testified that coaches manipulated roster spots to allow the athletic department to appear gender balanced (Associated Press, 2009). For example, the women on the cross country team were counted as participants in both indoor and outdoor track, while the men cross

country runners were not counted in indoor and outdoor track. QU defended this by stating that it sponsored indoor and outdoor track for woman and not for men. QU's athletic director testified that roster changes did occur in some sports, but not to manipulate gender equity data. Ultimately, Judge Stephen Underhill ordered QU to reinstate the women's volleyball team and prohibited the school from reducing financial support from other women's teams. The manipulation of roster spots gave the impression of impropriety and led to Judge Underhill's decision (*Biediger et al. v. Quinnipiac University*, 2009).

On July 21, 2010, Judge Underhill issued a ruling in favor of the players and coach of the QU women's volleyball team (*Biediger et al. v. Quinnipiac University*, 2010). In his decision, Underhill acknowledged the evidence showed that athletic administrators were requiring coaches to manipulate their rosters in an effort to become Title IX compliant. However, roster manipulation was not a violation of Title IX because this was a practice that was allowed under the regulations of the Office of Civil Rights. It was the quality of the participation opportunities that was the problem. QU was denying its women participation opportunities equal to its men student-athletes. The evidence showed that the indoor and outdoor track opportunities provided to the women were not the same quality of opportunity provided to other sports. In the conclusion of the decision, Underhill states,

Quinnipiac University had violated Title IX and the regulations promulgated pursuant thereto by failing to provide equal opportunities to its female students....It is hereby ordered that...Quinnipiac University shall submit to the court a compliance plan detailing how it will achieve compliance with Title IX and its regulations. That compliance plan shall provide the continuation of the women's volleyball team during the 2010-11 season. (*Biediger et al. v. Quinnipiac University*, 2010, p. 95)

The courts required QU to maintain its women's volleyball team as well as improve the quality and number of participation opportunities for women.

QU's leaders made the decision to eliminate sports instead of redistributing resources and opportunities to resolve their Title IX compliance issues. Unlike JMU, the QU administrators used budget problems as a reason for the changes. Ultimately, the court determined that QU was in violation of Title IX and ordered it to reinstate the volleyball team as well as provide a plan to eliminate discrimination against its women student-athletes. The men's track and golf teams had no legal recourse to protect its participants because the men were overrepresented in the QU athletic department.

The JMU and QU cases draw attention to the difficulty in administrative decision making that leads to structural changes in college athletic departments. An analysis of the cases also highlights issues that are consistent with themes in the literature. First, the decision making process in college athletic departments is influenced by the need to be Title IX compliant. Second, there is a debate on how excessive spending on the most popular sports (i.e., football, men's basketball) contributes to the elimination of nonrevenue sports. Finally, many institutions focus on prong one of the three-part test as the only way to comply with Title IX in order to satisfy the interests and abilities of its student-athletes. These three themes will guide this study.

Statement of the Problem and Research Questions

The distribution of resources and participation opportunities by university leaders in intercollegiate athletics is a controversial topic. The JMU and QU cases described in the introduction highlight the controversy over eliminating sports. Although not as

controversial, the increase of resources and participation opportunities in an athletic department can cause similar problems. The consequences of distribution decisions receive the majority of research and media attention. However, there is an important part of the distribution story that receives minimal attention and will be the focus of this study. Specifically, how did the decision making process evolve? Although this question is broached in the two cases described in the introduction, the question was answered superficially and politically. For example, Lynn Bushnell, Quinnipiac's Vice President, defended the administration's choice of which sports teams were eliminated in her March 4, 2009 memo by stating,

All athletic programs were reviewed within the context of conference, NCAA [National Collegiate Athletic Association], and federal guidelines. The review considered projected cost savings, facility and scheduling issues, gender equity, and programs' competitive aspirations.

In this statement, the evolution of the decision making process is largely ignored.

This study will analyze the decision making process used to distribute athletic resources and participation opportunities at one university. The review of the literature reveals three themes that will guide this research. These themes are the interaction of Title IX compliance and the decision making process, the role that excessive spending on popular sports play in the elimination of nonrevenue sports, and the focus on the proportionality prong of the three-part test to determine whether institutions are satisfying the needs and abilities of its students (this test will be described in the literature review section).

The decision to restructure an athletic department is a laborious and controversial task. There are many factors that influence this decision. The research questions that will guide this case study will focus on the decision making process: *When making structural*

changes in a college athletic department, how did the decision making process evolve?

Secondary research questions are:

1. How did Title IX influence the decision making process?
2. What were the roles of key leaders (i.e., university administrators, athletic administrators, and athletic board members) in the decision making process?
3. What distribution principles were used to make the decisions?

Goals of the Research

University leaders are constantly trying to distribute resources and participation opportunities in a fair manner. Due to the popularity of college sports and the pressures from fans and boosters, athletic department spending is constantly under the microscope. From the Knight Foundation Commission on Intercollegiate Athletics (2001) to the Presidential Task Force on the Future of Division I Intercollegiate Athletics (2006), institutional control over the “arms race” of athletic spending is the focus of university leaders. However, athletic department spending continues to outpace revenues at most institutions resulting in the need for university subsidies to balance athletic budgets (Presidential Task Force on the Future of Division I Intercollegiate Athletics, 2006). When resources become limited, decision making in athletics becomes a difficult task. The legal mandate to provide nondiscriminatory athletic opportunities often comes into conflict with an administrators’ commitment to increase funding to the most popular sports. This interaction complicates the decision making process of distributing athletic resources and participation opportunities.

The goal of this study is to provide detailed account of how the decision making process evolves at one college. This study will also provide a model for decision making that will minimize the negative consequences on the university community. The QU case highlights how uninformed decision making can result in serious negative consequences. The two reasons given for the decision to eliminate sports at QU were to reduce funding and provide equitable participation opportunities. The elimination of men's outdoor track does very little to reduce resources because QU also sponsors men's cross country and indoor track. The outdoor track coaches and student-athletes are the same individuals that make up the cross country and indoor track teams.

Therefore, there are no savings in scholarship, coaching salary, uniform, or facility costs. There are minimal savings for travel expenses because the men and women's track teams travel together at QU. Due to its small number of participants, the elimination of men's golf does little to save money or help in proportionality. The elimination of women's volleyball was the most confusing decision, especially since QU struggles with satisfying proportionality. The decision to eliminate volleyball was the most controversial and led to a lawsuit that highlighted how QU was discriminating against its female students with respect to providing comparable athletic participation activities. I hope this study will aid university leaders in their decision making when faced with financial challenges in collegiate athletics.

By taking a comprehensive look at the decision making process at one university, there is an opportunity to understand how to minimize the negative consequences of distributive decisions. There are many institutions that deal with the same issues when it comes to the distribution of athletic resources and participation opportunities. Although

generalizing beyond the case in this study can be problematic, institutions and individuals in similar situations may benefit from this research.

Definitions of Terms

The terms just and justice are used in this study to determine whether college administrators' distribution decisions are fair. Therefore, these terms will be used interchangeably. Justice as a form of fairness is defined by John Rawls in *A Theory of Justice* (1971) and *Justice as Fairness: A Restatement* (2001). The determination of whether a distribution decision is just or fair is largely based on an administrators attempt to achieve reflective equilibrium (reflective equilibrium will be defined later in the study).

It is not unusual for terms to become so commonplace when debating certain topics that sometimes they can cause confusion. This is certainly the case when debating the interaction between Title IX enforcement and intercollegiate athletics. The term gender equity is used so frequently in the debate that many individuals are unsure what it means. What is meant by the term gender equity?

First, there must be a distinction made between sex and gender. Sex refers to biological differences and gender describes characteristics that are socially constructed. Therefore, while sex should be the same across cultures, the meaning of gender can differ. Eckert (1998) explains the relationship by stating, "Like age, sex is a biological category that serves as a fundamental basis for the differentiation of roles, norms, and expectations in all societies. It is these roles, norms, and expectations that constitute gender, the social construction of sex" (p. 117). The early Title IX debate focused on

whether there was a motivational difference between women and men with respect to competing in athletics. Early opponents of Title IX argued that men should receive more participation opportunities since men were motivated to participate in athletics in greater numbers. Proponents of Title IX argued that sports motivation is an engendered role, norm, and expectation that women have not had the opportunity to develop. Many of these proponents started using the term gender to focus the debate on trying to eliminate the social stigma of women competing in athletics in order to increase motivation. Proponents argued that women's motivation would increase once the participation opportunities existed.

Next, the distinction between equality and equity is important. In the literature, many researchers use the terms equality and equity interchangeably. However, in this study, equality will refer to having the same or similar opportunities with respect to quality and quantity. The term equity will be associated with fairness and justice. Proponents of the current Title IX enforcement are not arguing for the same opportunities. These proponents recognize that diversity exists. Therefore, the same sports do not have to be offered in order to eliminate sex discrimination in college athletics. In fact, Title IX allows for the institutions to sponsor separate sports for each sex. Sex discrimination only exists when there is not equal access to resources and participation opportunities as defined by law.

The term gender equity has evolved over time in the debate of Title IX enforcement. Today, the NCAA refers to gender equity as "an environment in which fair and equitable distributions of overall athletic opportunities, benefits, and resources is available to women and men" (National Collegiate Athletic Association, 2002, p. 3). It is

interesting that gender is not mentioned once in the words of Title IX. However, gender equity is now the term most associated with the landmark law.

CHAPTER 2

TITLE IX AND INTERCOLLEGIATE ATHLETICS

On June 23, 1972, President Nixon signed Title IX of the Educational Amendments into law. Title IX was initially intended to eliminate discrimination against women in the academic domains of educational institutions. However, the elimination of discrimination in the male-dominated athletic institutions soon became the focus of Title IX advocates. In 1972, women received only 15% percent of the participation opportunities and less than 1% of athletic spending (Curtis & Grant, 2005). Comparatively, women were 42% of the total enrollment at institutions of higher learning at this time (U.S. Department of Education, 2002). Prior to the enactment of Title IX, women were victims of sex discrimination by college athletic departments. Today, there is considerable debate not only about who is being discriminated against, but whether the current compliance method is just. These issues contribute to the difficulty in distributing athletic resources and opportunities.

The debate over Title IX is an emotional one. Nearly everyone agrees that Title IX is necessary to eliminate sex discrimination. However, there has been very little agreement on the proper implementation and enforcement of the law; even 30 years after the passage of Title IX, the debate on Title IX enforcement continued. On June 27, 2002, United States Secretary of Education Ron Paige created the Secretary's Commission on Opportunities in Athletics to "collect information, analyze issues, and obtain broad public

input directed at improving the application of current federal standards for measuring equal opportunity for men and women and boys and girls to participate in athletics under Title IX” (United States Department of Education, 2003, p. 2). This commission was created in response to vocal individuals who questioned the federal government’s effectiveness in enforcing and measuring equal opportunity, especially with the distribution of resources and participation opportunities between women and men. *Open to All: Title IX at Thirty* (United States Department of Education, 2003) was released by the commission a year later and highlighted the issues in the current debate. This report focused on three issues: the validity of current Title IX compliance methods and the effect on athletic department decision making, the elimination of sports teams as a method to comply with Title IX, and the excessive spending on men’s revenue producing sports (i.e., football, basketball). The three issues in the Title IX debate discussed by the Secretary’s Commission on Opportunities in Athletics are identical to the themes that emerged when analyzing the JMU and QU cases highlighted in the introduction. These three issues are the reason for the controversy that still exists in college athletics as a result of Title IX enforcement.

The Title IX Saga

When a friend and colleague told Bernice Sandler, “You come on too strong for a woman,” she was unaware that this statement would be the impetus for a campaign that would change the face of intercollegiate athletics (Sandler, 2002). The year was 1969 and Bernice Sandler was a part-time instructor at the University of Maryland. Although highly qualified, she was never considered for seven different job openings within her

department. Sandler was a victim of sex discrimination in an educational institution and her friend's comment reflected that discriminatory behavior. During this time, women were denied the opportunity to participate in certain male-dominated domains at institutions of higher learning. Title VI of the Civil Rights Act prohibited discrimination in federally assisted programs, but sex was not included in its coverage. Title VII of the Civil Rights Act prohibited sex discrimination in employment, but "educational institutions and their educational activities" were excluded (Sandler, 2002; Suggs, 2005). The Fourteenth Amendment of the Constitution, which guarantees "equal protection of the laws," was useless at this time because the Supreme Court had never decided in favor of women in cases relating to discrimination in education (Sandler, 2002). Therefore, no laws prevented sex discrimination in educational institutions. Bernice Sandler had no legal avenue to protect herself from the discriminatory behavior she experienced at Maryland, nor did millions of women who wanted access to competitive collegiate athletics. The fight to eliminate sex discrimination in public educational institutions had just begun.

After two years of legal action that began with a 1970 class action lawsuit that the Women's Equity Action League filed on behalf of Sandler against Maryland and other institutions of higher learning, Title IX of the Education Amendments of 1972 became law. Bernice Sandler and all women now had legal protection from sex discrimination. Nevertheless, gender equity in athletics was far from realized.

Title IX passed without much fanfare as many colleges and universities thought the bill would mainly cover undergraduate admissions (Sandler, 2002; Acosta & Carpenter, 1985). Institutions of higher learning did not understand the scope and

coverage of the law. Sandler (2002) recognized this and stated, “Educational institutions were not aware that the bill would cover athletics....We were beginning to understand that Title IX would open up opportunities for girls and women to participate in sports, although we did not fully understand what that would mean” (p. 9). The attitudes at institutions of higher education were changing with respect to a woman’s right to equal admission and access to previously male-dominated academic domains. The male-dominated athletic departments, however, did not push their university administrators to lobby against the bill because they could not see its coverage of athletics.

In 1972, the passage of Title IX guaranteed women legal protection from discrimination within educational institutions. However, these male-dominated institutions were not ready to give equal opportunity and resources to women in athletics. Upon enactment, educational institutions were given a six-year period in order to work toward compliance and also allow for the federal regulations to be written (Carpenter & Acosta, 2005). It took three years for the Department of Health, Education, and Welfare (HEW) to interpret Title IX and provide its initial regulations. The regulations of 1975 were an omnibus attempt to provide guidance to educational institutions on how to eliminate sex discrimination. Although the law applies to all aspects of educational institutions that receive federal funding, the small section on athletics in the regulations generated the most debate. Over 90% of the more than 10,000 comments during the draft regulations review process applied directly to athletics (Carpenter & Acosta, 2005). The importance of athletics in American society was echoed by Casper Weinberger during Congressional hearings when he stated, albeit probably with sarcasm, “I had not realized

until the comment period that athletics is the single most important thing in the United States” (Sigelman & Wahlbeck, 1999, p. 1).

The regulations of 1975 articulate what athletic departments are required to do in order to eliminate sex discrimination. There is a section of the regulations which mandates that each institution designate an employee whose responsibility includes communicating with the university community about the proper procedure for filing and investigating any in-house complaints. Additionally, the regulations require institutions to provide comparable facilities to each sex, but do not specify how to measure comparable facilities. The regulations also require institutions to provide reasonable opportunities for athletic scholarships for members of each sex that is in proportion to the number of students in their intercollegiate athletic department. The vagueness of reasonable opportunities and the lack of direction on what was considered an appropriate proportional breakdown between genders caused confusion. The groundbreaking section of the regulations allows institutions to sponsor separate teams for each sex provided that equal opportunity is achieved. This section is different from previous civil rights legislation which does not allow for separation of the sexes in other areas. This section also parallels the Javits Amendment and acknowledges that unequal spending alone does not constitute sex discrimination.

The Javits Amendment allows for differential spending between men’s and women’s sports and states that athletic departments are allowed “reasonable provisions considering the nature of particular sports” (Salter, 1996, p. 52). For example, the overall uniform costs of football players may exceed that of any other female sport due to the differences in cost of the equipment and not the result of sex discrimination. Although

athletics was a focus of the regulations, the lack of measurement components for comparable facilities, reasonable opportunities, and equal opportunity resulted in little progress for women in intercollegiate athletics.

In 1978, the six-year mandatory compliance date passed and women had made minimal progress in gaining equitable treatment in athletics. The HEW had received over 100 complaints of sex discrimination against more than 50 institutions of higher learning (Carpenter & Acosta, 2005). HEW investigators began to realize the confusion that was caused by the vagueness of the regulations. Therefore, in 1979, the HEW provided policy interpretations that clarified its earlier regulations. *A Policy Interpretation: Title IX and Intercollegiate Athletics* was to “explain the regulations so as to provide a framework within which the complaints can be resolved, and to provide institutions of higher education with additional guidance on the requirements for compliance with Title IX in intercollegiate athletic programs” (Office for Civil Rights, 1979). Specifically, the interpretations clarified the meaning of “equal opportunity” and be separated into the following three categories: (a) Athletic Financial Assistance (Scholarships); (b) Equivalence in Other Athletic Benefits and Opportunities; and (c) Effective Accommodation of Student Interests and Abilities.

Category one simply requires that institutions provide financial assistance for members of each sex in proportion to their participation ratio within the intercollegiate athletic department. A participant is defined as an individual who receives coaching or financial support from the institution, participates in organized practice, or is listed on a National Collegiate Athletic Association (NCAA) eligibility or squad list. The second section considers benefits that are financially measurable, which include travel and per

diem expenses, assignment and compensation of coaches and tutors, and equipment and supplies, as well as those benefits that are not financially measurable. The benefits that are difficult to measure financially are the scheduling of practice and game times, assignment of locker rooms, practice and competition facilities, provision of medical and training services, provision of housing and dining services, and publicity. The final section requires an institution to effectively accommodate the interest and abilities of the underrepresented sex. Athletic departments can effectively accommodate the interest and abilities of men and women in one of the following ways:

- (1) Where intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments (substantial proportionality prong or prong one); or
- (2) Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex (prong two); or
- (3) Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interest and abilities of the members of that sex have been fully accommodated by the present program (prong three). (Office for Civil Rights, 1979)

This section of the regulation has become known as the three-part test and initially generated the majority of the litigation that surrounded this policy interpretation. This is also the three-part test discussed in the introduction of this dissertation.

After the implementation of the 1979 policy interpretation, women and girls slowly began to make headway in gaining access to the male-dominated athletic institutions. However, the 1980s turned out to be a tumultuous decade for gender equity. In *Grove City College vs. Bell* (1984), the Supreme Court determined that the term “program” referred to only the subunits of the university that actually received federal

dollars. Since most athletic departments did not receive this type of funding directly, they were not covered under Title IX. This decision was a tremendous blow to the campaign to eliminate sex discrimination in athletics. As Carpenter and Acosta (2005) state,

Within weeks of the decision, scholarships for female athletes were canceled at several colleges across the nation, women's teams were slated for termination at others, OCR [in 1980, the Office of Civil Rights (OCR) replaced the HEW in investigating Title IX complaints] complaints were closed, and lawsuits were dismissed. (p. 121)

It took four years for Congress to pass legislation that would overturn the *Grove City* decision. In 1988, the Civil Rights Restoration Act was enacted over the veto of President Ronald Reagan and it identified "program" to encompass the entire institution rather than the subunit. The damage had been done with the *Grove City* case, but the Civil Rights Restoration Act would start the process of eliminating sex discrimination in college athletics again.

The 1980s ended with the issuance of the *Title IX Athletics Investigators Manual* (1990) that was used to investigate complaints (Bonnette & Daniel, 1990). The manual used several statistical procedures for determining compliance, which led to a focus on the lack of quantitative data in the Title IX debate. In 1991, the NCAA began surveying its member institutions regarding differences in expenditures in women's and men's athletic programs and the disparity in spending and participation between women and men shocked Title IX proponents (National Collegiate Athletic Association, 2002). The results of these early surveys caused these proponents to push for more transparency in the distribution of athletic resources and participation opportunities. It also shifted the focus of Title IX compliance towards substantial proportionality. It took only three years for Congress to agree that more data were needed. In 1994, Congress passed the Equity in

Athletic Disclosure Act (EADA). This required all coeducational institutions of higher education that receive federal student financial aid and sponsor intercollegiate athletics to report specific information about these programs. This law will be described in detail later in this chapter. The passage of the EADA forced university leaders to pay close attention to how they make distribution decisions.

Historically, the quantitative measures have painted a dismal picture for women in college athletics. From 1972 to 1982, women went from 29,977 (15% of athletic population) participation opportunities to 74,239 (30% of the athletic population) opportunities at NCAA institutions (United States Department of Education, 2003; National Collegiate Athletic Association, 2004). Women were 42% of the total enrollment in higher education in 1971 (3,741,640) and 51% of the total enrollment in 1981 (6,394,396) (United States Department of Education, 2002). In the first decade of Title IX, women student-athletes made minimal gains with respect to the overall enrollment. More recently, the picture brightened but did not show equity. In 2008, women were 43% (180,374) of the athletic population compared to 57 % (9,299,115) of the total college enrollment (United States Department of Education, 2010; United States Government Accountability Office, 2007; National Collegiate Athletic Association, 2010). The financial picture was less promising after the passage of Title IX. In 1972, women received less than 1% of what men received at Division I institutions for athletic spending. By 1982, women were receiving slightly over 10% of the total athletic spending at Division I institutions (\$502,000 versus \$4,308,000) (Curtis & Grant, 2005). In 2005, women received 32% of the recruiting budgets, 38% of the operating budgets, and 44% of the scholarship dollars at institutions of higher learning (Women Sports

Foundation, 2008). Title IX proponents use the proportional imbalances described above as proof that sex discrimination still exists in college athletic departments.

Women have continued to see improvements in access to resources and participating opportunities over the last 10 years as a result of Title IX. However, the current debate has shifted. The tough economic times have resulted in cuts to women and men's sports teams. The Secretary's Commission for Opportunity in Athletics discussed in the introduction of this chapter is a response to the new debate. The debate has shifted to whether the current Title IX enforcement is just. Hence, the Title IX debate is a long way from being settled.

The story of Bernice Sandler highlights the struggle that women have when fighting for access to institutions of higher learning. Sandler was fighting sex discrimination in educational institutions and had little idea that her campaign would influence intercollegiate athletics. Since the enactment of Title IX, women's athletic opportunities have improved. However, there is still a debate on whether discrimination exists in college athletic departments. The Title IX mandate requires institutions to distribute resources and participation opportunities in a manner that is nondiscriminatory. The 1979 policy interpretation clarifies this obligation, but in times of economic difficulty, how do athletic administrators distribute athletic resources and participation opportunities in a nondiscriminatory manner while simultaneously excessively funding the most popular sports?

Equity in Athletics Disclosure Act

Although great strides were made to eliminate sex discrimination beginning with the enactment of the Civil Rights Restoration Act (1988) through the early 1990s, the

lack of organized statistical data on college athletic spending and participation made it difficult to determine equitable treatment between women and men. The investigators manual that the Office for Civil Rights (OCR) used as a guide to evaluate complaints relied heavily on data analysis. However, during the investigation of complaints, the data were collected, organized, and analyzed simultaneously. This resulted in administrators being surprised about Title IX compliance violations. Additionally, the 1979 regulations allowed for athletic scholarships and participation to be provided to student-athletes in proportion to the gender makeup of the athletic department and the university respectively. Before 1990, there was essentially no tool to provide data in an organized and consistent manner.

Title IX proponents believed that many institutions had only made superficial gender equity improvements by the early 1990s. By legally forcing college athletic departments to provide financial and participation data, women's advocates hoped that distribution changes would occur in a response to public pressure. In fact, the initial data from the 1991 NCAA surveys confirmed that most institutions had made minimal improvements with respect to proportionality. Additionally, the surveys of the early 1990s had a low response rate and were ignored by many institutions that were believed to have the greatest inequity (National Collegiate Athletic Association, 2002). In 1994, the EADA was passed to provide transparency for how athletic resources and participation opportunities are distributed between women and men. This act requires all federally funded educational institutions to report athletic financial and participation data separated by sex.

The creation of the EADA survey was a collaborative effort between the NCAA research and federal relations staff, members of the Committee on Women's Athletics, and the Office of Civil Rights. These groups redesigned the instrument that was created in 1991 to ensure that accurate and appropriate data were being collected. In June of 1996, the NCAA sent out the EADA form with a cover letter indicating that its completion would satisfy the requirements of the EADA pursuant to the Higher Education Act and the NCAA gender-equity survey (National Collegiate Athletic Association, 2002).

Currently, the EADA report is the most comprehensive public survey that provides data on the distribution of resources and participation opportunities in college athletic departments. This report is published online for each institution in an aggregate format on a yearly basis. The EADA report will be major part of the data analysis process in this study.

Title IX and College Football

Football is the most popular sport in college athletics. The need to satisfy the demands of fans and boosters can cause university administrators to make distribution decisions that result in a tremendous amount of controversy. Researchers have been writing for decades about the negative impact that football has on the academic integrity of institutions of higher learning (Kliever, 1990; Knight Foundation Commission, 2001; Shulman & Bowen, 2001; Sperber, 2000). Fulford (2008) criticizes the administrators at the University of Georgia for sacrificing academic integrity to cater to their football team, even at the detriment of students and professors. Fulford found that university leaders at

the University of Georgia were unapologetic for their handling of the athletic department, an attitude that many believed led to the resignation of President Fred Davison.

Presidents are in the most powerful position to challenge the excessive spending on football, but many shy away from confronting the issue due to political pressures from boosters. It appears that many presidents act as Duderstadt (2000) suggests, that “true reform of intercollegiate athletics cannot be driven from within the enterprise....it may require action from beyond the campus and the current college sports establishment” (p. 260). If the most powerful educational leader at an institution of higher learning is unwilling to make decisions to curtail spending in major college sports, then college football will continue to impact the entire university community.

The popularity of college football also influenced the evolution of Title IX. From the beginning, Title IX was seen as a threat to college football. On May 20, 1974, Senator John Tower introduced an amendment to exempt revenue-producing sports when determining Title IX compliance. Eventually, this amendment was rejected for the sake of the Javits Amendment. The purpose of the Javits Amendment was to allow for differential spending between men and women’s teams provided educational administrators could show any differences to be nondiscriminatory.

The interaction between Title IX enforcement and the support of college football also makes decision making in college athletics difficult. In 1996, the Office of Civil Rights issued a clarification letter to institutions of higher learning that allowed them to use the proportionality prong as a “safe harbor” to accommodate the interests and abilities of its students. Beveridge (1996) highlights that there is no women’s sport that compares to the massive proportions of football. The majority of college football

programs carry over 60 players and have expenditures in the millions of dollars. Athletic departments with football programs have to add multiple women's sports to make sure they are complying with Title IX. However, during tough economic times, university leaders have to decide where to cut back. The popularity of college football generally protects it from cuts and leads to the disproportional reduction of resources and participation opportunities in men's nonrevenue sports. Recently, women's nonrevenue sports have also been reduced during difficult economic times as the QU case study shows.

Opponents of recent Title IX enforcement argue that opportunities for men are being eliminated at a disproportionate rate than women as a result of athletic departments using prong one of the three-part test that measures interest accommodation (McBride, Worcester, & Tennyson, 1999; Shelton, 2000). In addition to prong one being classified as a "safe harbor," the Office of Civil Rights 1996 clarification letter also defends an institution's choice to eliminate or cap men's teams to comply with the proportionality prong of the three-part test. Shelton (2000) states that colleges and universities are using the "Secretary's now overt invitation to eliminate male athletic opportunities as a means of achieving Title IX compliance" and "men's athletic teams in the so-called nonrevenue or Olympic sports were eliminated at an alarming rate" (p. 3). McBride et al. (1999) quantifies this by showing that 471 women's programs were added and 115 men's programs were eliminated at the Division I level between 1978 and 1996. Sabo (1998) found similar results in his study. The elimination or capping of men's teams is one method that athletic administrators use to become Title IX compliant and has been endorsed by the United States Department of Education. This method is also the cause of

many lawsuits which challenge the legitimacy of the substantial proportionality clause of the three-part test (Beveridge, 1996; Carpenter & Acosta, 2005; Shelton, 2000).

Proponents of current Title IX enforcement argue that excessive spending on football and men's basketball forces athletic departments to eliminate men's nonrevenue sports to remain compliant with Title IX (Curtis & Grant, 2005; Marburger & Hogshead-Marker, 2003; Sigelman & Wahlbeck, 1999). The revenue producing sports typically receive the highest coaching salaries, the best facilities, the majority of the support staff's time, and lavish travel arrangements. In an effort to rebuke the notion that Title IX enforcement leads to the elimination of men's sports, Marburger and Hogshead-Marker (2003) argue that men's opportunities are only being decreased at the Division I level. This is a puzzling finding because major Division I institutions have the revenues to subsidize the nonrevenue sports. There is actually an increase of participating opportunities at the Division II and Division III levels. Therefore, Marburger and Hogshead-Marker (2003) concluded,

If the analysis provided in this study is correct, weakening the proportionality component of Title IX will not spare men's nonrevenue sports at the Division I level. Rather it will only serve to further accelerate the arms race, with men's and women's nonrevenue sports experiencing equivalent budgetary casualties. (p. 93)

Finally, Samuels (2003) is concerned that the current debate on whether Title IX enforcement leads to the elimination of men's teams is misdirecting attention from the most important issue: the continued improvement of women's opportunities. This was ultimately the intent of Title IX legislation.

Administrators at most Division I institutions struggle to balance the pressures of supporting football, the need to be fiscally responsible, and Title IX compliance. These

three forces dominate the debate on decision making at major universities. The JMU case highlighted in the introduction is an example of this struggle. JMU eliminated ten sports in an attempt to become Title IX compliant, yet continue to pour resources into football.

The Politics of Title IX Compliance

In 1972, Bernice Sandler and the other individuals who were fighting for women's rights understood that an important part of the struggle to eliminate sex discrimination in educational institutions would be fought through the legal system. After nearly 40 years, the legal system continues to be the arena that determines whether sex discrimination still exists in college athletics. The political commentator Will (2007) recognized the proliferation of Title IX legal cases by stating, "Title IX has given rise to a huge 'gender equity' industry of lawyers, sensitivity-trainers and consciousness-raisers" (p.347). This statement was in an opinion piece that criticized federal Title IX regulations. Will believes that Title IX has become a political tool for particular groups. These groups push an agenda that has resulted in the creation of a new market: The Title IX market. The legal system and changing federal regulations have also created an environment that pushes decision makers at institutions of higher learning to make structural changes to their athletic departments in order to comply with prong one of the three-part test. These structural changes in many instances result in eliminating participation opportunities for the overrepresented sex. As in the QU and JMU cases, the deletion of sports teams in tough economic times in many situations leads to legal challenges.

There was little disagreement among many scholars and advocates of gender equity that discrimination against women existed in athletic departments in the 1970s. Title IX passed with tremendous support. Yet, the goal of finding a consensus on how to implement and enforce the law remains controversial. The 1975 federal regulations and 1979 policy interpretation were an attempt to form a consensus on a fair method to enforce Title IX in college athletics. The most controversial aspect of Title IX enforcement was to determine if institutions were accommodating the interest and abilities of its students. The dilemma for federal regulators was this: How to give educational leaders the flexibility to structure their athletic departments as they see fit and at the same time guarantee equitable opportunity. The answer was the three-part test. Proponents of the test contend that it allows institutions the opportunity to be compliant in three distinctively different ways. Opponents argue that prong one, the substantial proportionality prong, is the only realistic way for most institutions to guarantee compliance. University administrators argue that the OCR and the federal courts interpretation of the three-part test has been a moving target over the last two decades. As readers of this dissertation will see, the formation of a consensus on a fair method to accommodate the athletic interest and abilities of students is far from realized.

The focus on the substantial proportionality prong of the three-part test as a compliance method was precipitated by a collection of events in the early 1990s. First, the 1991 NCAA survey showed a large disparity in athletic participation and spending between women and men among its member institutions. The study found that men received 70 % of the participation opportunities and scholarship budget, 77 % of the operating budgets, and 83 % of the recruiting budget despite only making up one half of

the college population (National Collegiate Athletic Association, 2002, 2008a). Next, the Supreme Court ruling in February of 1992, *Franklin v. Gwinnett County Public Schools*, made monetary damages available to Title IX plaintiffs for the first time. In the year following *Franklin*, Auburn University, Colgate University, Colorado State University, The University of Texas at Austin, and the entire California State University System fought lawsuits that alleged sex discrimination (Gavora, 2002). The arguments in these cases focused on the athletic population being disproportionate to the student body with respect to sex. The plaintiffs were successful in securing some form of injunctive or financial remedy in every case. Gavora (2002) states,

[after *Franklin*] Lawsuits alleging discrimination on the basis of sex exploded in colleges and universities. Eager trial lawyers and women's groups scoured the country for aggrieved female athletes, and found them – or manufactured them...In [most of] these cases, female athletes charged that statistics – not any invidious policy or hostile act on the part of the schools – proved they were victims of illegal discrimination. (p.25-26)

Finally, the election of President Bill Clinton and his appointment of Norma Cantu as the head of the OCR would lead to a new direction in Title IX enforcement. Cantu promised to end the reactive approach to civil rights enforcement that highlighted the Reagan and Bush administrations and start a proactive enforcement plan (Gavora, 2002). Gavora (2002) quantifies this new approach by stating,

In the first nineteen months of Cantu's tenure, OCR began 240 reviews of schools from which no civil rights complaints had been filed. In addition, she instructed her ten regional officers to double the number of complaints they investigated – in effect setting a goal for Title IX actions. (p.25)

These events intensified the controversy that has surrounded the substantial proportionality prong of the three-part test since its inception.

Throughout the early 1990s, Cantu and the OCR felt political pressure from university decision makers regarding confusion surrounding the three-part test. In 2010, the Office for Civil Rights released *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* in order to “respond to requests for specific guidance about existing standards that have guided the enforcement of Title IX in the area of intercollegiate athletics” (p.1). The clarification gives a detailed explanation of how institutions can satisfy each part of the test followed by several case studies. In her “Dear Colleague” letter that precedes the clarification, Cantu lauds the flexibility of the three-part test and responds to controversies raised by opponents of the test. Cantu’s tone also seems to admonish the opponents of the test. In a move that increased the controversy surrounding the three-part test, the OCR designated the proportionality prong of the test as a “safe harbor” that would guarantee institutional compliance. Opponents believed the focus on prong one as a safe harbor established arbitrary quotas for participation numbers (McBride et al., 1999; Sabo, 1998; Shelton, 2000). For example, institutions would be automatically compliant if they could show the underrepresented sex in its athletic department was within a few percentage points of the overall student body. The other two parts of the test were given no quantifiable measures for compliance that could be used as a safe harbor. Next, as stated earlier, the letter defends an institution’s choice to eliminate or cap men’s teams to comply with the proportionality prong. Opponents argued that this gave university decision makers carte blanche authority to eliminate men’s opportunities (Beveridge, 1996; Shelton, 2000). Finally, Cantu reaffirmed the OCR’s commitment to the 1979 policy interpretation and, specifically, the three-part test due to its “bipartisan support of Congress” and its “support of every court that has addressed issues of Title IX

athletics.” The 1996 clarification reassured university leaders that the three-part test gave them choice in how they structured their athletic departments. It would not, however, deter opponents of the test.

The election of President George W. Bush would bring another examination of the three-part test. During the late 1990s and early 2000s, men’s minor sports were being eliminated at alarming rates and the substantial proportionality prong was to blame (McBride et al., 1999; Sabo, 1998). In 2002, Secretary of Education Rod Paige created the Secretary’s Commission on Opportunities in Athletics to look for ways to improve the application of the current compliance standards for measuring equal participation in athletics. Following the publication of *Open to All: Title IX at Thirty*, the OCR released another “Dear Colleague” letter entitled *Further Clarification of Intercollegiate Athletics Policy Regarding Title IX Compliance* (Office for Civil, 2003).

In the letter, the OCR reassured university decision makers that all three prongs of the test were sufficient ways to comply with Title IX, even though the substantial proportionality prong was the only part described as a safe harbor. The OCR vowed to start a campaign to educate policy makers on the flexibility of the three-part test and to give examples of how schools can comply. Finally, the letter stated that the elimination of sports teams is a disfavored practice and not in the spirit of Title IX. There are distinct differences in the way the 1996 and 2003 Clarification letters are written. The 1996 letter tends to be gender specific and the 2003 is gender neutral. For example, women are the underrepresented sex in every case study given in the 1996 letter. Additionally, men are specifically identified in the 1996 letter when discussing the elimination or capping of

sports teams. The 2003 letter does not mention sex when discussing this practice. These differences shed a light on the OCR's philosophy behind enforcing Title IX compliance.

In 2005, the OCR responded to the controversy surrounding prong three of the three-part test by releasing another "Dear Colleague" letter. Prong three requires an institution to demonstrate that the underrepresented sex has been fully accommodated if there is not a plan to expand opportunities for that group. The method for determining full accommodation is typically accomplished partially through the use of survey tools. In *Additional Clarification of Intercollegiate Athletics Policy: Three-Part Test – Part Three* (Office for Civil, 2005), the OCR provided a model survey for university leaders to use in order to assess student interest in a particular area. The letter states, "Based on the analysis of the OCR cases and other information, the User's Guide provides a web-based prototype survey that, if administered consistent with the recommendations in the User's Guide, institutions can rely on as an acceptable method to measure students' interest in participating in sports." The criticism of this letter was immediate.

The NCAA Executive Council passed a resolution that urged schools not to use the survey. Many opponents of this method of compliance argued that non-compliance of an online survey should not be considered evidence of non-interest. Therefore, the survey received minimal support from university leaders. In 2010, the OCR released *Intercollegiate Athletics Policy Clarification: The Three-Part Test – Part Three*, which withdrew the 2005 letter and all of its documents. Although the three-part test allows for flexibility in complying with Title IX, federal regulators continue to disagree on how to provide quantifiable examples using prongs two and three. It is not surprising that

university decision makers are confused about the specifics of how to accommodate the interests and abilities of their students.

University decision makers feel legal pressure from groups other than the federal government when it comes to Title IX compliance. In 2007, the National Women's Law Center released *Breaking Down Barriers: A Legal Guide to Title IX and Athletic Opportunities* in a effort to challenge athletics discrimination. This manual provides a step-by-step guide about how to determine whether an institution is Title IX compliant and how to proceed with legal action for those who believe discrimination exists. In the same year, the National Coalition for Women and Girls in Education produced *Title IX Athletics Policies: Issues and Data for Education Decision Makers* with the same goal in mind. Gavora (2002) and Will (2007) argue that this type of Title IX enforcement pressures attributes to the destructive "gender equity" industry. University decision makers know that any decision to eliminate participation opportunities will have a good chance of facing legal challenge.

The political history of Title IX is a long and interesting study and the three-part test is at the center of the debate. The political fight between the passage of the Civil Rights Restoration Act (1987) and President Reagan, the push for stronger Title IX compliance from the OCR during the Clinton administration, the creation of the Secretary's Commission by Ron Paige during the second Bush administration, and the recent denouncement of the survey provided by the OCR in 2005 that has recently occurred in the Obama administration seem to show that Title IX enforcement is being used in a partisan manner. This alone is a major cause for confusion among university leaders about how to comply with Title IX.

University leaders have a difficult task when deciding how to restructure their athletic departments. The NCAA recognizes this difficulty and assists its member institutions by providing educational seminars and legal guides. The 296-page document entitled *Gender Equity in Intercollegiate Athletics: A Practical Guide for Colleges and Universities – 2008* provides its members with a resource to “convey the complex and evolving landscape of gender equity law” (National Collegiate Athletic Association, 2008b, p. 6). It seems that every group that writes about gender equity compliance acknowledges its complexity. However, there is still no consensus on a fair method to enforce Title IX. The successful university decision maker must find a way to balance the politics of Title IX compliance and the pressures of their constituents.

Title IX is the landmark law that made sex discrimination illegal in federally funded educational institutions. Athletic departments must provide equitable resources and participation opportunities between women and men. Today, there is considerable debate as to whether women are still victims of sex discrimination. In fact, some educators argue that current Title IX enforcement actually discriminates against men because of federal regulations that focus on the proportionality prong of the three-part test. The EADA report is the most extensive data collection tool which allows the public an opportunity to determine the extent to which institutions of higher learning are providing equitable athletic opportunities. The need for athletic departments to become financially responsible, to support revenue producing sports to the satisfaction of fans and boosters, and to become Title IX compliant make distribution decisions a daunting task. This chapter has highlighted many of the factors that influence decision making.

University leaders can benefit from this study of the decision making process at one athletic department.

CHAPTER 3

DISTRIBUTIVE JUSTICE AND INTERCOLLEGIATE ATHLETICS

The concept of distributive justice is central to the decision making process in college athletics because when university administrators are distributing athletic resources and participation opportunities, their choices are influenced by some type of distribution belief. How do these administrators justify the spending of excessive funds on flat screen televisions in the weight room, large video boards in stadiums, and off-campus housing during home games for the men's football team? The justifications that are generally given include: the expenses are needed to remain competitive in the recruiting process, the football team generates the most revenue and should be provided the most expenses, and the improvements will benefit other teams and the university community (Marburger & Hogshed-Marker, 2003; McBride et al., 1999; Sabo, 1998). These three responses presuppose some type of distributive belief system. However, decisions in college athletics are not made as a result of distributive beliefs alone. The political pressures from fans and boosters sometimes force administrators to make decisions contrary to their beliefs. Thus, administrators are continually balancing the political forces of college athletics and their own belief systems when making distribution decisions.

Distributive justice is a complex concept. Deutsch (1975) states, "The concept of distributive justice is concerned with the distribution of the conditions and goods which

affect individual well-being. I use ‘well being’ broadly to include its psychological, physiological, economic, and social aspects” (p.137). This broad definition of distributive justice focuses on the individual. In fact, the modern day concept of distributive justice guarantees that individuals who are less fortunate are provided certain rights and protections. I argue that Title IX is a consequence of the modern day notion of distributive justice because its original intent was to eradicate historical inequalities between the sexes in educational institutions. As described in chapter two, Title IX has dramatically influenced the decisions of administrators in college athletics. Therefore, the histories of the theory of distributive justice and Title IX are linked to decision making in college athletics. In this chapter, I start by discussing the writings of John Rawls, who is attributed with developing the modern version of the theory of justice. I will then focus on the work of Morton Deutsch and how his concept of distributive justice is used to understand decision making in college athletics. Finally, I present literature that describes what constitutes a just distribution decision.

Many researchers start with the writings of Aristotle when documenting the history of the concept of distributive justice (Fleischacker, 2004; Roemer, 1996). The Aristotelian sense of distributive justice rewarded individuals on the basis of merit. In Aristotle’s meritocracy, the distribution of conditions and goods based on need made little sense. Fleischacker (2004) distinguishes between the ancient and modern forms of distributive justice. He believes the former had to do solely with distribution according to merit, while the latter demands a distribution independent of merit. The modern form of distributive justice recognizes that social inequities exist independent of merit and rely on state intervention to rectify this problem. The current debate on distributive justice theory

has been focused on the tension between the protection of individual liberty and the achievement of equality of result. Therefore, in an economic sense, when resources are limited, how do we fairly provide the resources needed to reward those individuals who produce services that improve society, while at the same time providing for those who are less fortunate? The task of modern distributive justice theorists is to answer this question. Most researchers believe that Rawls provides the most thorough and rigorous look at the theory of justice. Therefore, I will start with him.

John Rawls and Distributive Justice

Rawls (1971) opens his groundbreaking book *A Theory of Justice* by stating,

Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by the greater good shared by others. It does not allow that the sacrifices imposed on a few outweighed by the larger sum of advantages by many. (p. 3)

This introduction highlights the importance of the individual when determining whether a particular situation is just. For Rawls, the needs of the individual outweigh the needs of any particular group. Thus, the most difficult dilemma occurs when there is conflict between the needs of different individuals. This dilemma is solved with Rawls' first principle of distributive justice, a principle to be explained later. It is also the focus on the individual that allows Rawls to derive his theory of justice.

The development of Rawls' theory occurs as a result of a thought experiment. In this experiment, Rawls allows the individual to choose the fundamental rules to govern

society by looking out for one's own best interest. There is one interesting caveat. The individual must develop these rules independent of any knowledge that might bias his or her moral judgment. That is, the individual will not have access to knowledge gained by family background, race, sex, religious affiliation, economic status, nationality, or any other personal characteristic that might affect his or her decision. Rawls calls this situation the original position. In the original position, the individual is specifically instructed not to be concerned with society as a whole, but there must be a strict adherence to looking out for one's own best interest.

There is one final stipulation about making decisions in this original position. Although the individual understands how society works, he or she will have no knowledge of any prior social capital while in the original position. Social capital means any social circumstance that distinguishes individuals from one another. For example, when making a distribution decision regarding athletic resources and participation opportunities, the individual will understand the politics of situations surrounding the decisions, but will not know the consequences of the decision with respect to themselves once they leave the original position. Once the individual steps outside of what Rawls calls the veil of ignorance, he or she must live with the agreed upon distributive decisions. Therefore, Rawls argues that individuals will not choose an unjust distribution decision because of its unknown affect. Now that I have given a brief description of the mechanism for choosing the rules of society, I will discuss the two principles that Rawls believes will result from this thought experiment.

The two principles of justice attempt to solve the problem of how to balance the tension between individual liberty and equality of result. Rawls attempts to develop his

theory to maximize individual freedom while allowing government intervention to achieve the highest possible level of equality of result. The first principle of justice reads, “Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others” (Rawls, 1971, p.60). Liberty is the freedom in which each individual is free from coercion from other individuals or the government. The basic liberties of all citizens are political liberty, which included the right to vote and the freedom of speech and assembly; freedom to hold personal property; freedom of thought; and freedom from unlawful search and seizure. According to the first principle, these liberties are required to be equal for all citizens regardless of any social differences.

The second principle of justice reads, “Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all” (Rawls, 1971, p. 60). This principle is regarded as Rawls’ unique contribution to political philosophy and lays out the framework for a just distribution, often referred to as distributive justice (Freeman, 2007; Graves, 1986). This principle is separated into two parts. The first is known as the difference principle. Rawls (1971) states that “the difference principle is a strongly egalitarian conception in the sense that unless there is a distribution that makes both persons better off, an equal distribution is to be preferred” (p. 76). Thus, the difference principle allows for inequalities to exist in a just society only when the needs of the least advantage members are met. For example, in college athletics, excessive spending on football may be viewed as a just distribution method if all sports have greater access to resources as a result of football revenues. However, during tough economic times, if excessive spending on football coincides with the elimination of other sports teams, then

this difference may result in an injustice. The second part of this principle guarantees fair equality of opportunity. It is this part of the theory of justice where Rawls argues that every factor that contributes to inequality should be rectified by state action. Thus, the state is mandated to eliminate differences between individuals that result from social factors.

It is important to note that Rawls' principles of justice do not operate in isolation. In fact, Rawls demands that the first principle takes priority over the second. That is, individual liberty takes precedent over equality of result. Therefore, when there is conflict between the needs of different individuals, the preservation of individual liberty is necessary for justice to be served.

There are many applications between Rawls' distributive justice principles and the themes that are guiding this study. First, Title IX enforcement is the government's attempt to eliminate sex discrimination in educational institutions that have resulted from social injustice. Part two of Rawls' second principle of justice mandates that factors that contribute to social inequality be minimized by state action. Next, the Javits Amendment recognizes that unequal spending alone does not constitute discrimination. Similarly, the difference principle allows for inequality as long as the needs of the least advantaged members are met. Finally, the debate on the legality of the proportionality prong of the three-part test is an interesting application of Rawls' first principle. Opponents of Title IX enforcement argue that the proportionality prong forces a quota system in college athletics, which allows for the elimination of men's nonrevenue sports (Shelton, 2000). This is in violation of Rawls' first principle. Thus, according to Rawls, the proportionality prong of Title IX enforcement might be viewed as an unjust law.

Morton Deutsch and Distributive Justice

Historically, when dealing with justice, social psychology research has mainly been concerned with issues related to equity. Equity theory, which distributes resources based on an individual's contribution, was a main focus of social science literature in the 1960s and early 1970s (Adams, 1963; Deutsch, 1975; Walster, Berscheid, & Walster, 1973). The concept of distributive justice has always been a part of equity theory. In fact, according to Adams (1963) and Deutsch (1985), distributive justice entered the modern social psychology literature in Homans' (1961) publication of *Social Behavior: Its Elementary Forms*. The development of distributive justice theory as an independent body of work soon followed the development of equity theory.

Deutsch (1975; 1985) extends the study of distributive justice from the theoretical concept developed by Rawls. The focus on equity alone as a distribution decision was problematic for Deutsch, who believed there were other values that operate in a system of justice. He states, "This equity principle, over the long run, is likely to be dysfunctional for groups, economically as well as socially" (Deutsch, 1985, p. 41). In his research, Deutsch identified three main principles of distributive justice: (a) equity or contribution, (b) equality, and (c) need. Equity looks at an individual or group's contributions to an organization and distributes a greater portion of resources with respect to who makes a larger contribution (or makes budget cuts to those who are perceived to contribute the least). When equality is used as a distributive justice principle, the individuals or groups within the organization are rewarded the same. Finally, the distribution of resources

based on need means that the individuals or groups with the least would receive the most when additional resources are available.

Deutsch (1985) found that the type of social relationship dictates which of the three distribution principles that individuals will use in the decision making process. For example, in a social relationship where economic productivity is the primary goal, equity will dominate the decision making process. Similarly, equality will dominate decision making in social relationships that strive to foster or maintain enjoyment. Finally, when fostering personal development and welfare are the goals of the social relationship, the need principle will dominate decision making. It is important to note that these principles are not used in isolation. Deutsch (1985) recognizes this and states,

Most actual groups have more than one orientation, and insofar as they do, they will experience conflict between them unless they can segregate the contexts and situations in which the different orientations come into play or unless they can make one orientation dominant over the other. (p. 44)

This statement gives context to the fact that distribution decisions are often influenced by the social situation in which they occur. This would also explain the situation where athletic administrators distribute excessive resources to popular sports at the expense of other sports, even though they may believe it to be unfair.

The interaction between competition and cooperation in social relationships affects the type of distribution principles used in decision making. Deutsch develops his distributive justice theory around the effects of competition and cooperation on group decision making. In multiple studies, Deutsch (1985) found that there was a tendency to employ the equity principle of distribution in competitive environments, whereas equality or need based principles were used in cooperative environments. Additionally, the

principles of equality and need were used in situations where individuals were familiar with one another, whereas equity was used in impersonal situations.

Deutsch provides a concept of distributive justice that assists researchers in their effort to understand decision making in college athletics. Due to the economic productivity of major college athletics, the literature suggests that equity or contribution would dominate distribution decisions. However, Title IX mandates the distribution of resources and participation opportunities in a manner that is sometimes contrary to principles of distribution based on contribution. These two conditions suggest that the goal of athletic administrators should be to balance the distribution principles of equity, equality, and need in a manner that minimizes the negative consequences on the university community.

Distributive Justice and Intercollegiate Athletics

Deutsch has directly influenced a recent body of research that investigates the use of distribution principles in college athletics. Hums and Chelladurai (1994) were early researchers to use the distributive principles of Deutsch to study intercollegiate athletic spending practices. Their study examined the perceptions of NCAA coaches and athletic administrators with respect to the justness of certain distribution principles. These authors extend the research of Deutsch (1975, 1985) and made it specific to intercollegiate athletics. The three distribution principles of equity, equality, and need were used in this study. The principle of equity or contribution was broken into four categories: Contribution in terms of (a) productivity, (b) effort, (c) ability, and (d) spectator appeal. The equality principle was broken down into equality of treatment, equality of

opportunity, and equality of results. The need principle had no subgroups. Therefore, a total of eight principles of distributive justice were used in this study. Additionally, Hums and Chelladurai identified three critical resources within intercollegiate athletics: money, facilities, and support services. Finally, the authors investigated both the situations where sports teams are allocated rewards (distribution) and the situation where resources were withdrawn (retribution).

In order to investigate coaches and administrators' beliefs about distributive principles, Hums and Chelladurai created a survey that presented scenarios of allocation situations. The participants were asked to rate the fairness of each scenario in each of the distributive situations. In all, there were 48 distinct distributive situations: eight distribution principles (i.e., equality of treatment) \times three types of resources (money, facilities, and support services) \times two forms of allocation (distribution versus retribution). For example, the participants were provided a distribution scenario (i.e., a lump sum of money that is left over from the football programs' bowl game must be spent) followed by statements that describe each of the distributive situations. The administrators were instructed to rate the fairness ("Very Unfair" to "Very Fair") of the statements and the perception of how likely ("Very Unlikely" to "Very Likely") they would use each individual principle. There were also scenarios that involved retribution (i.e., a decrease in university enrollment results in budget cuts) and the administrators were asked to rate the fairness and likelihood for each distribution situation to occur.

In their analysis, Hums and Chelladurai (1994) found that coaches and administrators did not differ in their views of what distributive principles are just. Equality of treatment, equality of results, and need were all viewed as just, while the four

principles of contribution were viewed as unjust. However, there were several differences in gender. Females tended to rate equality principles more just than males, while males rated all of the four contribution principles more just than females.

In an effort to verify whether the distribution practices of administrators mirror the distribution beliefs found in the Hums and Chelladurai study, Mahony and Pastore (1998) examined NCAA revenues and expenses from 1973 to 1993. They found that contribution based on revenue production and spectator appeal appeared to be the distribution principles most used by administrators. Mahony and Pastore (1998) concluded that there seemed to be a three-step strategy to distribute athletic resources and participation opportunities in college athletics. They state,

First, men's revenue sports continue to receive the largest portion of the resources and essentially are given the financial support they seek....Second, women's sports teams are given just enough money to satisfy the legal requirements that the athletic departments make progress toward Title IX compliance....Third, men's nonrevenue sports teams will then receive the remainder after the first two steps are accomplished. (p. 151)

The results of these studies show the disconnection between the distribution beliefs and practices of college leaders.

The contradictory findings between the Hums and Chelladurai and Mahony and Pastore studies have resulted in a group of studies that seek to understand this inconsistency. Mahony, Hums, and Riemer (2002) replicated and extended the Hums and Chelladurai (1994) study and concluded that the need-based principle was still considered to be most fair by athletic administrators, while there was less support for equality from the earlier research. They also found differences between Division I and Division III administrators with respect to distribution principles. Division I administrators were more

likely to rate equity based principles as fair, while Division III administrators evaluated equality as a fair distribution principle. Mahony et al. concluded their study by stating that further research is required to investigate how administrators are defining need and how they are using this subjective criterion to make distribution decisions. Three years later, Mahony, Hums, and Riemer (2005) found that athletic administrators believed programs need more resources when they “lack resources, have high program costs, or lack adequate resources to be competitively successful” (p. 170). When defining need in this manner, the study found that football was believed to have the greatest need at all NCAA levels, and male sports were generally thought to have greater needs than female sports. Finally, Patrick and Mahony (2008) examined the fairness of the need subprinciples found in the Mahony et al. (2005) study. The need principle based on lack of resources was found to be most fair by athletic administrators. Although there is literature on the way administrators view distribution decisions in college athletics, this literature should be studied with caution because the same data collection survey is used in all of the studies, which could lead to validity and reliability issues across all studies.

The Politics of Distributive Justice

The distribution decisions of university administrators are influenced by political pressures from various constituencies. These constituencies include fans and boosters expecting success in the revenue producing sports, political groups pushing Title IX compliance, and other groups wanting to protect the nonrevenue producing sports from elimination. Additionally, university administrators have their own distribution beliefs that influence decision making. As the literature suggests in this chapter, political

pressures force administrators to make decisions that are sometimes contrary to their beliefs (Hums & Chellandurai, 1994; Mahony & Pastore, 1998). How is a just distribution decision defined? Who are the decision makers at institutions of higher learning that make these decisions? This section answers these two questions.

Sandel (2007) distinguishes between two different types of disagreements about justice. He states, “There are disagreements about what the principles of justice should be and disagreements about how these principles should be applied. Many of our disagreements about justice, it might be argued, are of the second kind” (p. 370). This certainly applies to Title IX compliance. There is general agreement that sex discrimination in college athletics is a violation of our basic civil rights. However, there are many who disagree on procedures to eliminate that discrimination. The three-part test, for example, is currently the controversial tool used to measure if institutions are discriminating on the basis of sex with respect to participation opportunities.

University administrators must decide which of the three ways they will use to comply with the law. If football and men’s basketball are viewed as the most important sports to the university and are thought to require additional resources, then administrators are more likely to eliminate nonrevenue producing sports as a way to comply with Title IX during difficult financial times. University leaders that believe substantial proportionality is a fair method for guaranteeing equity between the sexes are more likely to reduce participation opportunities for the overrepresented sex when finances are strained. In each of these cases, there is a sense that sex discrimination has been eliminated because the institution is in compliance with the three-part test. The cases also provide an example of how an administrators’ belief system results in the reduction of participation

opportunities to legally eliminate discrimination rather than improving opportunities of the underrepresented sex. There are some who believe that the administrators in these examples are actually causing another injustice by eliminating existing participation opportunities in order to become substantially proportionate (McBride, Worcester & Tennyson, 1999; Shelton, 2000). Thus, if eliminating participation opportunities for the overrepresented sex is viewed as an injustice, then administrators' beliefs and judgments are in conflict.

Rawls has a unique way of dealing with this type of conflict. He believes that justice can only be achieved at the point where we bring our beliefs and judgments to a state of reflective equilibrium. Rawls explains, "It is an equilibrium because at last our principles and judgments coincide; and it is reflective since we know to what principles our judgments conform and the premises of their derivation" (Rawls, 1971, p. 20). Rawls was actually using the reflective equilibrium argument to defend his difference principle (Sandel, 2007, 2009). However, we can extend this argument to decide if particular decisions are just. As Sandel (2007) states, "If we can reason about controversial principles of distributive justice by seeking a reflective equilibrium, why can we not reason in the same way about [the principles of Title IX]" (p. 372). The goal of administrators should be to attain a state of equilibrium when making decisions to comply with Title IX in order to be just.

In practice, the expectation that university leaders will strive for a state of reflective equilibrium may be unrealistic. It is not uncommon for those in leadership positions to exert their power and make decisions to achieve their own goals. Rawls (2001) recognizes this by stating, "Those who suppose their judgments are always

consistent are unreflective and dogmatic; not uncommonly they are ideologues and zealots” (p. 30). This statement acknowledges that some leaders will be unresponsive to compromise due to their attitudes toward decision making. Rawls argues that one can determine whether a decision is just based on a process of reflection. He presents two categories of reflective equilibrium: narrow and wide. Narrow reflective equilibrium is a conception of justice that makes the fewest revisions in one’s initial judgments. Wide reflective equilibrium is reached “when someone has carefully considered alternative conceptions of justice and the force of various arguments for them” (Rawls, 2001, p. 31). Thus, administrators must achieve wide reflective equilibrium in order for their decision to be just. Otherwise, according to Rawls, their decision will be viewed as unjust.

There are times when university decision makers are influenced by political pressure from inside their own organization when making distribution decisions. University administrators, athletic administrators, and members of the athletic board are the three groups that are typically involved in decision making. The relationship and interaction between these three groups depend on how athletics is structured within the university. In this study, Division I University’s athletic directors reported either to the senior vice president or the president. The level of involvement from these groups in the decision making process depends on the degree to which the decision may affect the institution. For example, athletic administrators make decisions on minor budget changes with approval from the athletic board and the university president. However, the decision to eliminate a sports team generally requires involvement from administrators outside the athletic department due to the possibility of a legal controversy. It is not surprising that members of these groups might disagree on controversial decisions.

The university president is the most powerful university administrator involved in the decision making process (Cohen & March, 1986). Presidents are in a precarious position when dealing with athletic departments. The consequences of poor decision making can negatively impact their career and disrupt the university community. Duderstadt (2000), the former president at the University of Michigan, warns that “a modern university president ignores intercollegiate athletics at his or her own peril” (p. 234). This warning highlights the strength and popularity of athletics at many institutions. The negative publicity from a controversy in the athletic department will often dwarf a similar controversy that occurs in an academic department. The relationship between the president of a university and the athletic director, coach, or player is different from the relationship with academics. Flawn (1990), the former president of the University of Texas, recognizes this uneasy relationship and explains it by stating,

[We] are in very different businesses and have different goals and objectives. The president must be concerned about the integrity of the institution and the ethical standards it espouses....The [athletic department member] whose only objective is winning can easily damage both. (p. 154)

This quote highlights the political pressures that a president deals with when balancing the goals of athletics and other areas of the university. Due to the popularity of intercollegiate sports, I believe presidents must heed the call of the influential Knight Foundation Commission on Intercollegiate Athletics (2001) and the Presidential Task Force on the Future of Division I Intercollegiate Athletics (2006) and take control of athletic department decision making and spending.

Athletic administrators are the most involved decision makers on a day-to-day basis in college athletics. Other than the president, the athletic director has the most

difficult task when dealing with political pressures associated with structural changes in athletics. In his critique of college athletics, Gerdy (2006) gives an exhaustive list of constituencies that athletic directors placate when supervising the operations of their departments. He states,

Faculty demand academic accountability, academic administrators demand fiscal responsibility, media demand transparency, athletes demand attention, coaches demand resources and emotional support, the NCAA demands rules compliance, television executives and corporate sponsors demand access, alumni and fans demand wins, and citizens of a state demand part ownership of their state university's team. (p. 221)

Athletic directors must manage these groups effectively during the decision making process in order to minimize the negative consequences on the university.

The majority of college athletic departments are supported by an athletic board of trustees. These trustees are alumni or alumnae, business leaders in the community, and other individuals interested in promoting and improving the success of the sports teams. This promotion is typically through personal financial contributions or the solicitation of contributions from other sources. It is not uncommon for athletic board members to become involved in the operations of the athletic department even though they are mainly an advisory organization. The athletic board chair is the most involved member with respect to decision making. The chair is responsible for conducting the ongoing business of the athletic board between meetings, being the spokesperson for the board, and acting as a liaison between the board and the university. In this study, the Division I University athletic department is supported by a board of trustees. The bylaws of this organization state,

The object and purpose of [the athletic board] is not pecuniary gain or profit, but to support the athletics program of [the university] and to provide other assistance to the operation of the athletics program so that

[the university's] athletic program can be adequately funded....In this role, the purpose of the Board shall be to promote the mission of [the athletic department] by:

- (1) providing leadership in development activities designed to produce operating revenues and endowment including annual fundraising projects, capital campaigns congruent with a master plan, identification, and cultivation of prospective donors, annual and planned giving;
- (2) serving as advocates of [the university's] special causes and needs particularly with regard to the University administration, surrounding communities, the state legislature and corporate America; and
- (3) assisting the Athletics Director and staff in developing policies, and strategic and long range plans. (Division I University, 2003, p. 1)

As described in the bylaws, the purpose of this organization is political in nature. Board members are the athletic department's liaisons to university administrators, state politicians, and leaders of corporations. They also assist in strategic planning. It is not surprising that board members were involved in the decision making process in this study.

This study of the concept of distributive justice will allow researchers to understand the decision making process of university leaders at one institution. This decision making process is influenced by the need to be Title IX compliant. The passage of Title IX was the state's attempt to minimize the historical inequities that have resulted in male-dominated control in college athletics. The Secretary's Commission on Opportunities in Athletics spent time investigating why institutions were eliminating sports teams to comply with Title IX (United States Department of Education, 2003). The original intent of Title IX was to eliminate sex discrimination by improving the opportunities of the underrepresented sex. Therefore, if women are underrepresented, then adding participation opportunities for women is a just decision. However, due to limited resources, athletic administrators are choosing to eliminate participation

opportunities in an effort to comply with prong one (the substantial proportionality prong) of the three-part test. Although many administrators believe this to be an unfair method for complying with Title IX, the lack of resources and the need to lavishly spend on the most popular sports make eliminating sports seem like their only distributive option. The university president, athletic director, and athletic board chair are the three most influential individuals in the decision making process. This study may be able to assist these administrators to understand their decisions and to minimize the effect on the university community.

CHAPTER 4

METHODOLOGY / METHODS

The evolution of the decision making process in college athletics is a set of complex social phenomena. It involves the interaction of multiple individuals over an extended period of time, the analysis of procedural and statistical documents, and the navigation of the political environment at institutions of higher learning. This process cannot be thoroughly explained with the use of a single method of survey research, experiment, or archival analysis. Therefore, an omnibus research approach is needed to properly understand this type of phenomena.

In this study, the case study research design was used to investigate the evolution of the decision making process in one college athletic department. Merriam (1998) states, “A case study design is employed to give an in-depth understanding of the situation and meaning for those involved. The interest is in process rather than the outcome, in context rather than a specific variable, in discovery rather than confirmation” (p. 19). University leaders are bombarded with information when deciding how to distribute athletic resources and participation opportunities. Their experiences are an important part of the context of decision making. Additionally, the decisions of university leaders are often documented in memoranda, reports, and other documents. The analysis of the connection between the experiences of university administrators and the written evidence that

documents their decision making is where this study will flourish. The characteristics of this study mirror Merriam's description of case study research.

Defining the Case Study

Case study research is different from other qualitative methods due to its exploration of a bounded system. A bounded system can be an individual, program, event, group, intervention, or community. Specifically, the case is a single entity, which can be distinguished by concrete boundaries (Merriam, 1998). This case study focused on the athletic department decision makers at Division I University from the 1997-98 academic year to the end of the 2007-08 year. The original sample of decision makers included members of the university administration (president and vice-presidents), athletic department administrators, and individuals who held the position of athletic board chairperson. The individuals who held these positions were directly involved in the decisions to add or eliminate sports. Unfortunately, there were no university administrators who agreed to participate in this study. Therefore, the participants in this study were limited to athletic administrators and the athletic board chairs.

Division I University is a large, public institution with an athletic department that competes at the NCAA level. Over this ten-year period, Division I University administrators dealt with many issues common to college athletic departments. These issues included: the addition and deletion of sports teams, the increase and decrease of resources, athletic administration turnover, and Title IX compliance. The time period was selected because this includes a 10-year certification cycle that is documented and required by the Southern Association of Colleges and Schools (SACS) and the NCAA.

There were also major structural changes such as the deletion and addition of sports teams that surround the beginning and ending of this time period. Therefore, this case study focuses on Division I University administrators' decisions to restructure the athletic department over a 10-year time period.

The units of analysis for this study were the four administrators who were interviewed and the written documentation that influenced their decisions (the written documents will be explained later in this chapter). Yin (2003) argues that defining the unit of analysis has historically plagued investigators, but is necessary to guide the case study. This study was an embedded single-case design. It was a single-case design due to the interaction at a single bounded site, Division I University. The multiple units of analysis result in the embedded nature of this study.

This case study used both qualitative and quantitative data sources. The following sources of evidence to conduct my study were used: interviews, written documents, and archival records. The use of multiple sources of information is essential for completing a quality case study. Specifically, Yin (2003) states that "one of the most important sources of case study research is the interview" (p. 89). I attempted to interview seven individuals for this study, four university leaders from inside and three from outside the athletic department. I also participated in two self interviews. The first occurred before the data collection process started and the second occurred after the first stage of data analysis. The collection of interview data is explained in more detail later in this chapter. The interviews took place at a site that was most convenient for the participants. The participants were given the opportunity to read the transcripts of their interview for an opportunity to clarify any confusing responses. Confidentiality is important to protect the

identity of the participants. Pseudonyms were assigned to each participant and used on all written transcripts. The interview data were secured and all audio tapes were destroyed after being transcribed. Finally, Institutional Review Board (IRB) approval was obtained before beginning this study. Documents and archival records were the remaining sources of evidence in this study and will also be discussed later in this chapter.

Selection of Interviewees

As stated earlier, the interview is considered one of the most important data sources in case study research. After the units of analysis were selected, I had to decide on whom to interview. The purpose of this study was to investigate the evolution of the decision making process in college athletics. Division I University was selected as the site for this case study. Therefore, I selected individuals that were involved in the decision making process at Division I University during the years of this study. Merriam (1998) refers to this as purposeful sampling. She states that “purposeful sampling is based on the assumption that the investigator wants to discover, understand, and gain insight and therefore must select a sample from which the most can be learned” (p. 61). The individuals selected had different roles in the decision making process and provided their unique perspectives.

I requested interviews from the university president, two athletic board members, and four athletic department administrators. Division I University had one president during the time period of this case study. Although I mailed a letter to the presidents’ personal residence requesting participation, I did not receive a response. I contacted two athletic board members who held the position of Chair and each agreed to an interview.

Finally, I requested interviews from four athletic administrators: three athletic directors and one associate athletic director. The three athletic directors' employment covered the entire 10-year span of the study. Interviews were conducted with the associate athletic director and the athletic director who was employed at the beginning of the 10-year time period. Although I contacted the other athletic directors by mail requesting participation, I did not receive a response. Collectively, I conducted interviews with one female and three male participants. There were two individuals that worked inside the athletic department, one individual who operated outside the athletic department, and one individual who held positions inside and outside the athletic department. Consent forms were signed by all participants, which outlined the risks associated with the study. Interviewees were all actively involved in the structural changes that occurred at Division I University during the 10-year time period of this study. I have listed the interviewees by pseudonym and position held below.

Table 1

Pseudonym Chart

<u>Interviewee</u>	<u>Position Held</u>
Alpha	Athletic Director; Board Chairperson
Beta	Athletic Director
Delta	Associate Athletic Director
Sigma	Board Chairperson

Secondary Analysis

The analysis of survey data is an important part of case study research. Researchers have to decide whether to create their own survey instruments and/or use existing survey data. In this study, my attention was focused on the secondary analysis of survey data. In his groundbreaking work on secondary analysis, Hyman (1972) opens his book by stating, “Secondary analysis of survey data...(is) the extraction of knowledge on topics other than those which were the focus of the original surveys” (p. 1). This study investigated the evolution of the decision making process in one college athletic department. Therefore, the survey data assisted in determining whether the distribution behaviors of university administrators actually coincided with their beliefs. The secondary analysis of primary documents presented a clear picture of distribution behaviors during the 10-year period of this study.

There are three major sources of data that will be used in this study: The Equity in Athletic Disclosure Act Reports (1998-2008) from Division I University, the self-study reports conducted throughout the study time period, and archival documents. The EADA report is the most comprehensive data collection survey that separates the distribution of spending and participation opportunities by sex. This report was described in detail in chapter two. Specifically, the EADA report used by the NCAA is summarized to provide a national comparison of figures and trends separated by division (Divisions I-A, I-AA, I-AAA, II, and III). University athletic departments are required to conduct a self study every 10 years. Title IX compliance is an important part of the self study. Therefore, many institutions conduct a gender equity study during the self study. Gender equity studies are important documents when trying to assess Title IX compliance. Babbie

(2001) supports the importance of reworking existing data for a new purpose by stating that “secondary analysis is a form of research in which the data collected and processed by one researcher are reanalyzed-often for a different purpose-by another” (p. 269). The secondary analysis of these surveys allowed for information in real time to be revealed that may have been different from the intent of the survey. Finally, written documents and archival records were helpful in verifying information gained in the interviews. Emails, memorandums, public speeches, and newspaper articles were analyzed in order to compare and confirm information gained from the interview data. These documents also provided insight into athletic department decision making that were not discussed in the interviews.

There are many benefits to conducting secondary analysis on the survey reports in this study. Hyman (1972) promotes secondary analysis by stating that “there are times and places where tensions are so high that the intrusion of a new survey may aggravate the situation...” (p. 8). Trying to persuade Division I University administrators to complete another survey was repetitive and was likely to be viewed as aggravating, which makes cooperation difficult. These administrators were protective of data that highlights their distributive practices due to the controversy that often results from the deletions of sports teams. The use of secondary analysis as an alternative to using primary survey instruments has been documented extensively and also saves an enormous amount of time and money (Babbie, 1991; Dale, Arber, & Procter, 1988; Hyman, 1972; Kiecolt & Nathan, 1985). Finally, social scientists have always used the prior tools of researchers. Hyman (1972) recognizes this and parallels Newton’s acclamation that his own achievements were a result of “standing on the shoulders of

giants” with the statement that today’s researchers have endless opportunities of achievement as they stand “atop a giant mountain of data” (p. 2). I have attempted to stand on the shoulders of previous researchers and the mountain of data from these reports to shed a new light on the evolution of athletic department decision making.

The limitations of secondary analysis are intrinsic to the survey research method. The surveys used in this study are not only self-reported, but also funded by the institution. As was the case with Quinnipiac University, the reports can provide misleading information without the knowledge of those who are responsible for producing the reports. In fact, it is my experience as a researcher and college administrator that these reports often contain inaccurate information. Therefore, in order to maintain rigor, the analysis of secondary data should be completed in conjunction with interviews. The interview allows the participant to clarify inconsistencies in the surveys.

Data Analysis

This study focused on the evolution of the decision making process when college administrators choose to make structural changes in athletics. Thus, the interviews of key decision makers at Division I University became an important part of the research. The literature review revealed the following three themes that influenced decision making in college athletics: Title IX compliance is included in most discussions about structural changes in athletic departments, excessive spending on popular sports play an important role in the elimination of nonrevenue sports, and decision makers focus on the proportionality prong of the three-part test to determine whether their institutions are satisfying the needs and abilities of its students. Although these themes seemed to be

dominant throughout the literature, I analyzed the interview data in this study to determine if these as well as other themes were present in the interviews.

I began the analysis by reading through the interview transcripts and making comments in the margins. These comments highlighted topics or terms that focused on the decision making process. This first level of coding allowed me to determine what the participants were talking about when they discussed the decision making process. It also allowed me to reduce the large amount of transcript data into a manageable classification or coding scheme (Patton, 2002). After the initial readings of the transcripts, I made a list of the terms or phrases that were discussed on more than one occasion in a single interview. This first list included a large amount of information. Therefore, it was necessary to narrow the focus to topics that were viewed to have substantive significance (Patton, 2002). Patton (2002) explains that researchers must rely on their own “intelligence, experience, and judgment” to discern whether an observation or pattern is significant (p. 467). My experiences as a college coach and administrator helped in identifying which topics played a significant role in athletic decision making.

I used three methodological approaches to narrow the focus of the topics and determine substantial significance. First, I conducted subsequent readings of the transcripts to identify structural changes at Division I University. These structural changes were listed chronologically. The topics identified in the first-level of coding were then organized by participant within each structural change (Miles & Huberman, 1994). For example, Beta stated that “funding became an issue” when discussing the elimination of wrestling. Therefore, the code “money” was listed under Beta within the elimination of wrestling structural change period. Second, I conducted text searches in

NUD*IST6, a software program that allows for the analysis of qualitative data. The text searches identified where each topic was discussed in the interview transcripts in an organized manner. For example, NUD*IST6 identified every occurrence of the terms funding, financial, and money in the interview data. This allowed me to easily determine when the terms were being discussed specifically in relation to structural changes at Division I University. Finally, NUD*IST6 also allowed me to “quantify” the number of times that a particular topic was discussed. This was helpful in determining when the recoding process had “run its course,” commonly referred to as saturation (Miles & Huberman, 1994). Third, Patton (2002) argues that a reviewer’s response to the codes should be considered. I discussed my analysis with someone familiar with the athletic department at Division I University in an effort to validate my coding scheme. Patton (2002) states that a researcher obtains “consensual validation” when there is mutual agreement about significant findings in the analysis.

The first level of analysis resulted in five codes that were considered substantially significant. Title IX, money, elimination, and fairness were topics discussed in the literature that directly influence decision making in college athletics. The code “reports” was discussed by every participant when describing the decision to make structural changes at Division I University. However, the influence of the code “reports” in athletic department decision making is not prevalent in the literature. These five codes were structured within each of the three periods of structural change: the elimination of wrestling – 1998, the addition and improvement of women’s track and field – 1999 – 2005, and the addition of football and the elimination of men’s indoor track – after 2005. The codes were also organized under the four participants: Alpha, Beta, Delta, and

Sigma. This organizational strategy or matrix (Miles & Huberman, 1994) allowed me to determine the context and depth of each code in the transcript data within the three periods of structural change.

The second major step in analyzing the data was to determine how decision makers viewed the codes in the decision making process. For example, Beta talked about how funding issues (coded: money) attributed to the decision to eliminate wrestling. Did other participants believe that financial issues played a role in the decision? If not, were there other reasons for the elimination of wrestling? In order to investigate these types of questions, I started grouping sets of information into clusters, which is referred to as pattern coding. Miles & Huberman (1994) state, “Pattern coding is a way of grouping smaller number of sets, themes, or constructs. . . . [Pattern codes] pull together a lot of material into more meaningful and parsimonious units of analysis” (p. 69). This organizational strategy enabled me to ask if the other participants agreed that financial issues led to the elimination of wrestling or whether there may have been other issues that contributed to this decision. This step was repeated with selective codes within each period of structural change in order to understand if participants agreed or disagreed on the reasons for structural change.

Pattern coding was important in the analysis stage because it allowed me to assign quantitative data sources to a particular cluster of codes. For example, if several participants discussed that funding issues were related to the elimination of wrestling, then I investigated the finances of Division I University’s athletic department through the EADA reports to determine the extent of any financial problems. Similarly, when administrators stated that “gender equity” (coded: Title IX) was one reason for the

elimination of men's indoor track, it allowed me to attach the *Gender Equity Report - 2008* and other equity reports to this cluster to determine if Title IX compliance issues actually existed during this time. Miles & Huberman (1994) argue that one purpose of pattern coding is to "try out" the coding on the next set of documents "to see if they fit" (p. 70). The process of pattern coding in this study allowed me to connect the qualitative and quantitative data sources to verify the justification for the structural change at Division I University.

At this point in the analysis process, I decided to display my coding visually. Miles & Huberman (1994) state that a visual format is needed to present information systematically in order for the researcher to draw valid conclusions. The process of pattern coding reduced the original codes into groups. However, the groups needed to be organized in order to start drawing conclusions. I chose to display my coding using a time-ordered matrix (Miles & Huberman, 1994). The columns of my time-ordered matrix were arranged chronologically by the three periods of structural change described earlier. The rows listed each participant as well as the participants' responses to a particular code. For example, Sigma verified Beta's statement that funding issues played a role in the decision to eliminate wrestling, but elaborated on how the university administration had committed a considerable sum of money to improve men's basketball a year earlier. The rows allowed for Sigma's positive and negative responses to the code "money" to be displayed visually within the elimination of the wrestling time period. The time-ordered matrix showed that the financial issues that led to the elimination of wrestling were preceded by a financial commitment to another sport. The timing of the decisions to invest in men's basketball and the elimination of wrestling a year later was displayed in

the time-ordered matrix, which led to an additional investigation of interview data and documents to verify a possibility of causality.

The organization of the written report in this dissertation was influenced by the process of data analysis. Miles and Huberman (1994) state, “A good case history, by definition, must trace the flow of events over time” (p. 301). I organized the analysis of evidence chapter chronologically in order to describe how the interactions between individuals and events contributed to the structural changes in the Division I University athletic department. Within each of the three structural periods, I discussed how the five codes influenced the decision making process as described by the participants. There were two recurring regularities present in discussions by every participant within each of the structural periods (Patton, 2002). Therefore, I decided to discuss these regularities or themes separately. First, the substantial proportionality prong of the three-part test dominated administrators’ discussions when deciding how to satisfy Title IX compliance. This resulted in administrators “playing the numbers game” when trying to comply with Title IX. Secondly, gender equity reports also played a role in the decision making process when structural changes occurred at Division I University.

The Self Interview and Institutional Review Board Approval

Due to my professional experiences, it was suggested that a self interview be conducted to gain insight into my feelings about Title IX and decision making in college athletics. I was employed in college athletics for 18 years as an assistant coach, head coach, and assistant athletic director. During my employment, I was in a position to directly observe and interact with university administrators, athletic administrators, and

athletic board members in the decision making process. I served on search committees for new employees, committees on diversity, and committees involved in SACS certification. I also chaired an advisory committee whose responsibility was to be a sounding board during the decision making process. Title IX compliance was a topic of conversation in the majority of meetings when structural changes were discussed.

I decided to participate in two self interviews. The initial interview was conducted before collecting the qualitative data for this study. The second interview was conducted after all data collection was complete. I had two different individuals that acted as the interviewers. The first interviewer was not familiar with any specifics about my employment in college athletics and the second interviewer had intimate knowledge of my employment history. I have strong feelings about how institutions should comply with Title IX; the self interviews were conducted to clarify those feelings and to determine if any changes occurred during the study.

Title IX compliance is a controversial issue and gaining IRB approval for this study was challenging as a result. There were several changes in the study protocol required by IRB that altered data collection. In the first request for protocol modification, the reviewer required that the identities of all interview participants remain anonymous. I was originally giving the participants a choice. After making this change, the second reviewer required that written department head approval would be necessary for current employees to participate. How was I going to keep the identity of my interviewees confidential if supervisor approval was going to be necessary for participation? I decided to interview only former employees in order to minimize the potential risk to the participants. This did not limit access to the decision makers during the study time period

because the president, athletic directors, and athletic board chairpersons had left their respective positions at the time of data collection. Due to the small sample size of interviewees, the second reviewer was also concerned that the use of pseudonyms alone would not guarantee the confidentiality of the participants. The reviewer states that “just using pseudonyms but indicating titles or enough particulars about the responsibility of an individual could still give away someone’s identity.” There are two ways that this problem was addressed. The first was simply to give the institution a pseudonym. The second way was to make accommodations in the written results. Therefore, there will be situations where the title of the participant in the analysis chapter will not be revealed if there is a chance that this could compromise the participant’s identity in any way.

This study investigates the evolution of the decision making process in the department of intercollegiate athletics at Division I University. Case study research design was used to conduct this study. Interviews, observations, and document analysis were used as data sources to conduct this study. The interaction between decision makers inside and outside the athletic department are an important part of the decision making process. Therefore, members of each of these groups were interviewed. Collectively, this study investigates Division I University’s journey to maintain Title IX compliance during a 10-year period of time.

CHAPTER 5

ANALYSIS OF THE EVIDENCE

The purpose of this study was to examine the decision making process used by Division I University administrators in their effort to maintain Title IX compliance. In order to understand the decision making process, this chapter is separated into two sections. The first section investigates structural changes to the athletic department chronologically. Division I University administrators made decisions to add or delete sports teams in an effort to maintain Title IX compliance throughout the time period of this study. The following questions guided the analysis of the decision making process:

1. What events precipitated the need to make structural changes?
2. What type of research was conducted in order to make the decision?
3. Who was involved in the decision making process?
4. What were the consequences of the distribution decision?

During the chronological exploration, two themes emerged that were consistent in the decision making process regardless of when structural changes occurred. The second section of this chapter expands on the two themes that influenced decision making at Division I University: the substantial proportionality prong of the three-part test dominated administrators discussions when determining how to comply with Title IX compliance and the EADA reports and other reports surrounding certification played an important role in the decision making process.

Decision Making and Title IX before 1998

Division I University's athletic department began a slow transformation after the passage of Title IX in 1972. Prior to this, men's athletics had been completely established and scholarships and operational dollars were offered in six sports. However, the creation of women's athletics soon became a priority for university administrators. According to the first women's coach at Division I University, the university president at that time was "very aware and astute of current laws" and administrators had stated that "[Division I University] was mandated to sponsor women's athletics" (personal communication). This was the start of Title IX's influence on decision making at Division I University.

In the 1974-75 school year, basketball, volleyball, and tennis were the inaugural women's sports, followed a year later by cross country. There was no student-based athletic fee to support athletics until the early 1990s so both the men's and the new women's programs were funded through the general student activity fees. The women's athletic program was started on a "shoe string" budget and student athletes on scholarship were required to play both basketball and volleyball in those early years (personal communication). However, this was not uncommon as many male athletes competed in multiple sports. When responding to why Division I University chose the 1974-75 school year to start women's athletics, the first women's head coach states, "[University administrators] had been to several NCAA seminars and so [they] knew what the trends were...there was a lot of Title IX action going on at the time" (personal communication). The coach completes the conversation on the reasons for starting women's sports by adding, "It was the fair thing...the right thing to do" (personal communication). It was a

few years after John Rawls had released his seminal work on the theory of justice and this coach was concerned with the issue of fairness when thinking about providing college athletic opportunities for women.

Women continued to see improvement in participating opportunities after the initial teams were added. Women's softball and men's and women's swimming were added in the early 1980s. This brought the total number of women's sports to six compared to seven for men. There were internal pressures to continue to improve opportunities for women. For example, the senior women's administrator during this time sent a memo to discuss ways to fund the new women's sports (personal communication, July 1984), although there seemed to be little outside political pressures during the 1980s to improve women's athletic opportunities at Division I University. This is not surprising due to the *Grove City College v. Bell (1984)* Supreme Court case and the lack of standardized data collection on spending and participation.

However, Division I University administrators were committed to improving women's athletics. "We were very much interested in the evolution of women's sports and the success of women's sports," recalled Alpha, the athletic director at that time (personal communication, March 11, 2010). The fact that six women's sports were offered by 1985 reflected that strong commitment. Yet, it was not the quantity of the opportunities that was the problem. It was the quality of the participation opportunities. Division I University relied on a portion of the student activity fees to function and that financial commitment was unable to sustain the sports teams at a competitive level. The athletic director states, "We were strapped for money....You try to do the best you can and make hard administrative decisions" (Alpha, personal communication, March 11,

2010). The hard decisions that the administrator was referring to was the elimination of men's and women's swimming and baseball. This was the first controversial structural change since the inception of the first women's program.

Men's and women's swimming and baseball were the first sports at Division I University to be eliminated after the passage of Title IX and economic issues played a significant role in the decisions. Alpha explains the decision making process by stating,

It was purely budgetary first of all. We didn't have tiered sports at that time....Baseball was a very expensive sport to support because of the fields. [Swimming] was one of the newer programs. Therefore, we decided to cut [swimming]. There was a lot of internal discussion and a lot of soul searching. We talked to [the university administration] and so we made a recommendation to the [athletic] board....The board agreed that we needed to do something.... Baseball had such a strong tradition at [Division I University] that we wanted to leave an easy opening to bring it back....It was just a cost factor. (personal communication, March 11, 2010)

Swimming was eliminated only a few years after it had been added for two reasons: it was the newest sport and the conference that Division I University was a member of did not sponsor a swimming championship. Baseball was discontinued simply for the amount of money it took to be competitive in that sport. The athletic director also mentioned the concept of a tiered sports system. This is a comparison to recent organizational strategies that prioritizes sports in an effort to guide decision making at Division I University after 2005. Title IX was not mentioned in the initial explanation of the process for eliminating baseball and swimming. However, when concluding the discussion on these decisions, the athletic director emphatically denies that Title IX had any role in the thought process. Alpha reiterates, "We were just so strapped for cash. We were trying to keep our heads above water. We were trying to keep the athletic programs alive. Those were all factors that were the utmost concern. Title IX was probably discussed, but it was not a major

concern” (personal communication, March 11, 2010). Fiscal responsibility was the primary reason for the decision to restructure athletics at Division I University in the late 1980s. And although Title IX was a major reason for the addition of the inaugural women’s sports, it played no role in the elimination of baseball and swimming.

Division I University administrators faced little outside political pressures during the 1980s to become Title IX compliant. However, in the early 1990s, there were three major external issues that had a tremendous influence on structural changes in athletics. First, the NCAA increased the minimum numbers of sports teams required for membership in its largest classification to 14. In response to this, administrators added women’s soccer, women’s golf, men’s wrestling, and reinstated men’s baseball to bring the total number of sports sponsored to 14. Next, the Southern Association of Colleges and Schools changed its criteria for accreditation. In a memo dated May 19, 1992, SACS informed college presidents that in connection with accreditation each institution would be required to “provide administrative, academic, and fiscal oversight for its intercollegiate athletics program” (personal communication).

This forced institutions to complete a self-study of their intercollegiate athletics program when completing the accreditation process. Finally, at the 1993 athletic conference meetings, presidents and athletic directors received two warnings about Title IX compliance: to have legal representation present if they were ever questioned about proportionality and to only eliminate men’s sports in an effort to achieve proportionality (personal communication, 1993). These three external pressures caused Division I University administrators to begin a process of self study that highlighted Title IX compliance problems in athletics at the institution.

The Elimination of Wrestling and Athletic Board Involvement: Decision Making 1997-98

Division I University administrators started the 1997 school year planning to undertake a tremendous amount of self-study. The institution was scheduled to go through a SACS reaccreditation process that would be completed the following school year. During this process, administrators were also required to complete a self-study of the athletic department that highlighted several gender equity issues. Additionally, this was the first time administrators completed the EADA report required by the OCR. Individuals from many different areas of the university were involved in completing these tasks. Sigma, the athletic board chairperson at the time of reaccreditation, reflected on the importance of the process by stating, “I remember that [Division I University] had a major [project]. We had to be accredited by SACS. That was a university wide thing. All of the board people were asked to be involved in research committees and do reports during this time” (personal communication, April 22, 2010). The completion of the self-study was the first time that a written gender equity report forced Division I University administrators to deal with Title IX compliance issues since the initial women’s programs were started.

“It probably came up in one of the gender equity reports,” recalled Beta (personal communication, April 2, 2010), when asked the first time administrators realized that the institution might have Title IX compliance issues. Beta, the athletic director during the 1997-98 school year, was reflecting on one of the more controversial times of his tenure. During the self study process, Division I University hired Lamar Daniel to conduct a gender equity report. Daniel was the coauthor of the *Title IX Athletics Investigators*

Manual when he worked for the OCR (Bonnette & Daniel, 1990). After leaving the Department of Education, Daniel began a consulting firm that completed gender equity reports to determine if institutions were Title IX compliant. The self-study report showed that Division I University's athletic department was not in compliance with accommodating the interests and abilities of its students. Women were underrepresented as a result of having less sport team opportunities. This underrepresentation prevented Division I University from satisfying the substantial proportionality prong of the three-part test. The elimination of women's swimming prevented complying with prong two of the three-part test which required an institution to show a history and continuing practice of program expansion (Daniel, 2008). Therefore, the administration at Division I University had to decide how to become Title IX compliant. The combination of financial problems and the warning received several years earlier from the conference meetings made the choice clear: a male sport had to be eliminated. As Beta states, "The only thing that kind of put us out of whack [with Title IX] was wrestling" (personal communication, April 2, 2010). Thus, the decision to eliminate wrestling was justified.

As stated earlier, wrestling was added in 1991 when the NCAA increased the number of sports for its highest membership to 14. The idea for the wrestling program started with an athletic board member who was financially active with the university. This board member was interested in giving his son and other wrestlers in the area a place to compete in college. The board member's proposal was that if Division I University sponsored wrestling, then the program would be totally funded externally. From the beginning, there were concerns about Title IX issues due to adding wrestling. Beta states,

I had all the arguments. We can't do that because it will completely screw up what we are doing with gender equity. It will be the only sport over on

the men's side that we didn't have a comparable sport for women. I said I can see our next gender equity report coming out that [Division I University] is no longer in compliance. (personal communication, April 2, 2010)

The board member and the local wrestling community convinced the athletic and university administration to add wrestling in exchange for completely funding the sport. This began a successful seven-year period where the wrestling program won a regional team title and continually qualified individual athletes to compete at the national championships. Yet, after seven years of success, the wrestling program was being eliminated.

The elimination of wrestling caused a considerable amount of controversy at Division I University. University administrators' Title IX compliance concerns had been confirmed by the gender equity reports and self-study. Beta describes the circumstances that led to the decision,

When that initial group of students started to graduate...the parents that were totally involved financially started to drift away also. The money started drifting away. The budget for wrestling now became an issue. At the same time, the young [wrestling] coaches got into some recruiting [violations] and I think it might have been a combination of a financial crunch and the gender equity situation. In fact, it was the one program that stood alone on the men's side. The decision wasn't popular with the few strong proponents of the wrestling program. The decision was made that we couldn't fund it at that level. With the program getting in trouble with the NCAA, we decided to just drop it. (personal communication, April 2, 2010)

Athletic board members strongly supported the program due to its success and their relationship with those responsible for funding the program. The program also had strong support from the local wrestling community due to it being the only collegiate program in the state. Yet, funding the program slowly became an issue. Wrestling had funded itself in the early years, but according to Beta it had relied on athletic department funds in

order to progress in the last several years of existence. Additionally, in the months following the elimination of wrestling, the headlines of the school newspaper stated that athletic administrators had asked for university assistance to cover a \$500,000 shortfall (Haynes, 1999). This shortfall was confirmed when the annual EADA report that followed the elimination of wrestling showed expenses exceeding revenues by \$106,339 (EADA Report, 1999).

Beta was clear about the process that was used to eliminate wrestling. First, the athletic administrators generated a report describing the state of the wrestling program and its influence on the athletic department. Title IX compliance and funding issues were pushing the decision. Next, the report was presented to the president for approval. Finally, Beta states, “[we took the decision] to the monthly board meetings and we just laid it out there on the line. The board knew right off hand that financially we could not take it over” (personal communication, April 2, 2010). According to the university press release in 1999, “Due to the need to be more in line with other Division I athletic departments in the region....Wrestling no longer fit into the long-range strategic plans of the athletic department” (Haynes, 1999). The three reasons for dropping wrestling were a combination of financial troubles, Title IX compliance issues, and possible NCAA recruiting violations with the coaches.

There were several reasons for the financial troubles that led Division I University to eliminate the wrestling program. Wrestling had become dependent on additional resources from the department over the years due to the increase of travel and recruitment outside the region (Beta, personal communication, April 2, 2010). However, the university administration made an interesting decision that put the athletic department in

financial trouble. In the year preceding the elimination of wrestling, Division I University administrators hired a high profile men's basketball coach and started to invest a considerable amount of resources into the success of basketball. According to the board chairperson at the time of the hire,

I remember when we hired [the men's basketball coach]. That was the first time that we received any other outside funding. When I say outside funding, I mean money from the [University] Foundation. The Foundation guaranteed certain things. That was a major first step for finding revenue for athletics... [The university foundation] lent us money. I want to say \$300,000 was lent to the Athletic Association so that we could hire [the men's basketball coach] and we had to find a way to pay that money back or have it forgiven. That was the first time that had ever happened. (Sigma, personal communication, April 22, 2010)

This was the first time that the president through the foundation had guaranteed considerable university resources in order to support athletics. The university administration started to dramatically increase spending for men's basketball, yet were not willing to give the same support to wrestling a year later. Title IX compliance issues also contributed to the financial troubles of the athletic department. For example, the EADA report completed after the elimination of wrestling showed a 12 percentage point difference between women athletes and the undergraduate population (50.7% to 61.3%) (EADA report, 2000). Since Division I University had eliminated women's swimming several years earlier, the proportionality prong was the way administrators decided to comply with Title IX. The addition of a women's sport and the financial resources to support that program was immediately required. The resources spent on wrestling would be redirected to the new sport: women's outdoor track. Women's track was going to be the way for Division I University to eliminate its Title IX compliance issues at the time.

The elimination of wrestling did little to balance the athletic budget. In the three years after wrestling was eliminated, athletic department expenditures increased from \$4,885,000 to \$5,661,371, while revenues decreased from \$4,779,061 to \$4,721,971 (EADA report, 2000, 2002). The department had an average deficit of \$485,000 for those three years culminating with a record \$939,400 deficit in the 2000-01 school year. It was not until after the university administration pushed for an increase in the student fees for athletics that the department was able to balance the budget. The athletic department had made a decision to focus resources on sports other than wrestling.

University administrators generated a considerable amount of controversy when they eliminated wrestling. This resistance came from both inside and outside the university. Sigma, the board chairperson at the time wrestling was eliminated, recalls how the athletic board was informed,

It was a shock. It was not something that was an agenda item at our meetings, that wrestling was going to be cut. It was not something that was going to be debated....I got a call from some wrestling supporters and they wanted to make me aware of things that were going on. They were concerned that the wrestling program was going to be cut and the reason for it was because of Title IX. That is what they had been told. (personal communication, April 22, 2010)

This response seemed to contradict the previous comments from Beta, who conveyed a sense that the board was involved in the decision making process. Division I University administrators had promised the wrestling program a place to compete if they raised the funds for their program. In this board member's opinion, athletic funds that were being used in an effort to elevate the program had been agreed to by the athletic administration. Wrestling also allowed the athletic department to maintain its NCAA status when the number of sports for membership was increased to 14. Suddenly, wrestling no longer fit

into the strategic plans of the department. The athletic board chairperson was concerned that wrestling was being treated unfairly after helping Division I University meet new NCAA requirements (Sigma, personal communication, April 22, 2010). The board was also concerned about the way the decision was being handled. The new strategic plan had replaced earlier strategic plans the board had been involved in creating. The board had been completely left out of the decision making process with the elimination of wrestling. The majority of this controversy focused on the issues of Title IX compliance and specifically the three-prong test. Wrestling had started as a collaborative effort between the university administration, the athletic board, and the local wrestling community. The athletic board's involvement in the creation of wrestling had been consistent with the bylaws of the organization. The program was now being eliminated without any discussion with the board.

There is disagreement on who was ultimately responsible for the decision to eliminate wrestling. Beta, the athletic director, discusses the decision in interviews as if the decision was made within the athletic department. The university president approved the proposal to eliminate the sport at Beta's request. However, Sigma believed that the university administration failed to keep their commitment to the wrestling program. The university president had actively participated in the addition of wrestling. With the elimination of wrestling, the president was absent and silent. Sigma states, "[the president] just refused to meet with the wrestling people and talk to them about what was going on at the university and why he had to make this tough decision. It just wasn't right" (personal communication, April 22, 2010). Sigma continues with his opinion on who was responsible for deciding to eliminate wrestling by stating, "This decision came

from up high. I believe that [the president] made the decision and told [the athletic director] to get it done. So, [the athletic director] was in that tight spot of communicating with [the wrestling program] and [the president] just washed his hands of it” (personal communication, April 22, 2010). The athletic board had witnessed a commitment from the university administration with men’s basketball, but received no help when trying to save wrestling.

Women’s Track and Field and the Equity in Athletics Disclosure Act:

Decision Making from 1999 – 2005

Division I University administrators were excited to begin the fall of 1998. The university finished the self study process and was reaccredited by SACS. The athletic department had also received its first certification from the NCAA. Wrestling had been eliminated and the bad publicity surrounding that decision was waning. Athletic administrators were satisfied with the direction of the program and its commitment to Title IX compliance. Beta recalls the successes of the 1998-99 school year by stating, “That year culminated the work under my tenure.... We had the big success of winning the overall [conference] men’s, women’s, and academic awards all in one year.... Hiring a big name basketball coach gave [Division I University] national recognition.... Adding women’s track and women’s golf had put us in total compliance [with Title IX]” (personal communication, April 2, 2010). In July of 1999, Beta resigned as athletic director to take a vice president position at another university. Despite all of Division I University’s athletic successes, the student newspaper concluded an article summarizing Beta’s tenure by stating, “However, it is [Beta’s] efforts in gender equality that has

helped to boost [Division I University]” (Haynes, 1999). In the views of the newspaper reporter, Title IX compliance was the triumph of Beta’s tenure.

Women’s track was added at Division I University in order to satisfy Title IX compliance. This was a common decision among universities that were trying to attain proportionality between women athletes and the overall female population. Women’s track was so popular in trying to achieve proportionality because it was the cheapest and easiest way to increase women’s opportunities. Division I University was already sponsoring women’s cross country, which had 12 participants (EADA report, 2002). Those individuals were already competing in outdoor track meets throughout the spring. By officially sponsoring track, the number of women’s participants would increase by 12 without adding a single athlete or coach.

When defining a participant under Title IX and the EADA, each sport counts once. Therefore, an athlete who competes in cross country, indoor track, and outdoor track represents three participation opportunities. The elimination of wrestling with its 25 male athletes and the addition of women’s track caused an immediate 37-athlete swing in an effort to achieve proportionality. This decision allowed Division I administrators to move the athletic department towards proportionality and decrease expenses simultaneously. In the future, women’s indoor track was still a possibility for an additional sport. Division I leaders were “playing the [Title IX] numbers game” with Title IX compliance. This was a phrase used by several administrators and will be discussed later the chapter.

Initially, Beta had confidently stated that the addition of women’s track put the athletic department in total compliance. However, the EADA data tell a different story.

For example, the percentage of female participation opportunities during the 1999-2000 school year was 51% compared to 61% of the full-time undergraduate population (EADA report, 2000, see Table 2). This difference did not meet federal proportionality guidelines for compliance. Yet, in the years following Beta's departure as athletic director, Division I University slowly moved toward proportionality. However, due to mistakes in EADA reporting, the move toward proportionality was difficult to verify.

Table 2 gives the proportional breakdown between the sexes of both the full-time undergraduate population and the number of participants in the athletic body. Since the 1999-2000 school year, females have consisted of more than 60% of the overall undergraduate population, while improving from 50.7% to 57.9% with respect to athletic participation opportunities (See Table 2). It also appears that after making significant strides in improving women's athletic opportunities in the 2000-01 school year that those opportunities were then lost the following year. However, this was not the case. For example, the 2001 EADA reported no male participation in outdoor track despite Division I University administrators listing 16 male outdoor track runners on an official squad list (Division I University, 2001). The squad list is a conference-level document that lists all athletes that compete in a particular sport. If these athletes competed at the conference level, they should have been listed on the EADA report. This mistake resulted in women participation being overrepresented by approximately 3.5% in 2001. The report listed women as receiving 55.9% of the participation opportunities, while they actually only received approximately 52.4%. The numbers were then corrected for the 2002 reporting period.

Table 2

Comparison of Enrollment Data and Athletic Participation Opportunities at Division I University by Gender

	Overall Student Body Full-time undergraduate		Athletic Participation Opportunities	
	Female	Male	Female	Male
1999-2000	61.3%	38.7%	50.7%	49.3%
2000-2001	61.4%	38.6%	55.9%	44.1%
2001-2002	61.0%	39.0%	51.7%	48.3%
2002-2003	61.3%	38.7%	50.9%	49.1%
2003-2004	61.4%	38.6%	51.4%	48.6%
2004-2005	61.3%	38.7%	49.8%	51.2%
2005-2006	60.2%	39.8%	54.8%	45.2%
2006-2007	60.2%	39.8%	57.9%	42.1%

At the end of the 2002 school year, there were changes in the administrators that were completing the EADA report. Subsequently, there were errors in participation reporting over the next three years that underrepresented women's participation. The most serious were those listed in the 2004 and 2005 reporting periods. Division I University administrators decided to officially add indoor track in the winter of 2003 in order to increase women's opportunities. The 2004 EADA reported women receiving 51.4% of the participation opportunities. However, the administrator who completed the report did not count cross country, indoor track, and outdoor track as being three different participation opportunities. This resulted in the underrepresentation of women by approximately two percentage points. In the 2005 EADA report, women's participation was listed as 49.8%, which was underrepresented by at least five percentage points. These errors caused problems for future administrators who had to make difficult decisions on how to structure the athletic department, especially administrators who were considering the addition of football during the fall of 2005.

Table 3 gives the proportional breakdown between athletic participants and the amount of scholarship dollars that each sex received. Participants are only counted one time regardless of whether they compete in more than one sport when comparing scholarship opportunities. Therefore, scholarship opportunities are compared to unduplicated athletic participation opportunities. When analyzing athletic scholarship assistance, the policy interpretation requires that compliance be determined by considering whether athletic scholarships are distributed proportionally to participation within the athletics department. This category causes the most confusion for athletic administrators when making decisions about scholarship distribution. Contrary to the effective accommodation category described earlier that requires participation opportunities to be proportional to the overall student body, athletic departments are required to provide total scholarship dollars in proportion to only the athletic body.

Table 3

Comparison of Athletic Participation Opportunities (Unduplicated) and Athletic Scholarship Opportunities at Division I University by Gender

	Athletic Participants Unduplicated		Athletic Scholarship Opportunities	
	Female	Male	Female	Male
1999-2000	50.7%	49.3%	55.4%	44.6%
2000-2001	52.4%	47.6%	54.3%	45.7%
2001-2002	51.7%	48.3%	55.4%	44.6%
2002-2003	50.9%	49.1%	61.4%	39.6%
2003-2004	51.4%	48.6%	58%	42%
2004-2005	49.8%	50.2%	61%	39%
2005-2006	54.8%	45.2%	61%	39%

From 1999 to 2005, Division I University consistently awarded women over 55% of the scholarship opportunities despite the fact that they represented less than 52.5% of the athletic body. The disparity grew to an 11% difference in the 2004-05 school year. This difference is in excess of the 1% differential required by the OCR in order to be Title IX compliant (Daniel, 2008). Division I University would have been required to justify this difference with nondiscriminatory reasons had a complaint been filed with the OCR. However, Division I University administrators were not aware of this deficiency and it was not discussed in any interview that was conducted for this study.

The analysis of participation and scholarship opportunities in the EADA reports shed light on two important issues: the politicized nature of the proportionality prong of the three-part test and the unreliability of the EADA reports. Throughout the interviews, the three athletic administrators interviewed described how their distribution decisions were influenced by the need to satisfy the proportionality clause of the three-part test. The administrators also expressed concerns about the legal implications of ignoring the participation data in the EADA reports. The analysis of the EADA reports show that Division I University was in violation of Title IX regulations with respect to providing equitable financial aid for at least six years, but administrators were unaware of the deficiencies. It was the participation data that drew the focus of administrators and not the scholarship data. According to Will (2007), the focus on proportionality has been exacerbated by the “gender equity industry” that has been created as a result of inconsistent federal regulations and the proliferation of Title IX legal cases.

This analysis shows that the EADA reports were an unreliable resource for Division I University administrators. For example, from 2001 to 2005, it appears that

women were losing ground to men in athletics participation (see Table 2). In fact, women were actually gaining participation opportunities. Athletic administrators had added women's indoor track officially for the winter of 2003, while simultaneously placing roster limitations on several men's sports in an effort to achieve proportionality (personal communication, September 2003). However, these distribution decisions caused no increase in women's participation proportionally according to the EADA reports. Even more surprising, administrators appeared not to question why this was occurring. Although the data on scholarship distribution was accurate and showed a problem with Title IX compliance, athletic administrators took no steps to correct the deficiency. In fact, the disparity between scholarship opportunities and unduplicated athletic participation grew from 4.7% (55.4% - 50.7%) to 11.2% (61% - 49.8%) in six years (see Table 3). Administrators had no idea that a deficiency existed. This problem was first uncovered in the March 2008 compliance report conducted by Lamar Daniel that will be discussed in the next section. The politicized nature of proportionality placed the focus on the distribution of participation opportunities and not scholarship opportunities.

It is easy to see how administrators became concerned about proportionality. Athletic administrators had been warned by the conference office in the late 1980s to focus on proportionality and to eliminate only men's sports. The combination of the *Franklin* Supreme Court case and the OCR's campaign in the early to mid 1990s caused an increase of litigation across the country (Gavora, 2002). Division I University administrators analyzed the EADA reports and thought there were issues with proportionality and made decisions to correct those problems. However, they had made

mistakes when completing the EADA reports. There would soon be serious consequences for administrators as a result of those mistakes.

The Addition of Football and the Elimination of Men's Indoor Track:

Decision Making After 2005

The 2005-06 academic year would be the beginning of unprecedented growth for athletics. There was renewed interest in adding football at Division I University and the university president was now considering the decision. The president had resisted the push to add football for years and had publically stated on occasions that it was not something the university would pursue (Bethea, 2010). However, the university had recently moved into a new conference where the majority of the schools sponsored football. The university administration had pushed to move into this new conference in order to affiliate with schools that shared similar characteristics. Division I University's previous conference consisted of schools that were mostly small and private and many did not sponsor football. Division I University was a large public institution as were most schools in the new conference. The university president finally decided it was time to consider adding football. This decision was a stark contrast to the president's earlier responses to adding football, which included comments like "not in my lifetime!" and "over my dead body" (Bethea, 2010). The president finally relented to the pressures from constituents and decided that adding football was in the institutions best interest.

In hindsight, it is interesting that the president would consider adding football at that particular time. In January of 2005, the president was asked to become a member of the *Presidential Task Force on the Future of Division I Intercollegiate Athletics* by

NCAA president Dr. Myles Brand. Dr. Brand created the task force in a response to several high profile studies that highlighted excessive spending in college athletics. It was found that intercollegiate athletic spending was growing at a rate two to three times faster than the rest of higher education in the previous decade (Presidential Task Force, 2006). The NCAA press release states that the Presidential Task Force was calling for “moderation in the rate of growth in budgets for college sports and reinforcing that intercollegiate athletics is part of the educational mission” (Presidential Task Force, 2006). Division I University administrators were proposing to increase athletic spending almost twofold by adding football, while the university president was simultaneously working with a task force that was concerned about excessive athletic spending.

In the fall of 2005, university administrators hired a new athletic director to lead the athletic department. The addition of football was this administrator’s top priority. The new athletic director hired an outside consulting group to conduct a feasibility study to determine the “likely outcome” of implementing a football program (C.H. Johnson Consulting, 2006). It would not take long for Title IX compliance to take a prominent role in the discussions. It also did not take long for the erroneous EADA reporting described earlier to guide the athletic directors’ decision making in a controversial direction.

Title IX regulatory issues was one of three main sections in the final report of the *Football Program Strategy Assessment* that was completed in November 2006. This section summarized the “current state of Title IX compliance” and outlined recommendations for continuing compliance as a result of adding football. The report states, “Currently, there is substantial compliance with Title IX in the area of financial

aid, but the participation numbers raise some problems” (C.H. Johnson Consulting, 2006). There were two issues with the report that caused administrators problems in decision making. First, the report makes a statement about financial aid compliance during the 2005-06 school year without providing any data to substantiate the claim. In fact, Division I University was not compliant with providing financial aid adequately for at least the last six years prior to the report. The analysis of the EADA reports reveals a 6.2% difference between scholarship opportunities and athletic participation in the 2005-2006 school year (see Table 3).

The difference grew to 7.8% in the 2007-08 school year, as highlighted by Daniel in his gender equity study completed in March 2008. The OCR requires nondiscriminatory reasons for a difference in excess of 1%. The feasibility study has no discussion on the reasons for the scholarship differences. Second, the report uses incorrect participation data that was provided by Division I University officials. This incorrect reporting leads the authors to conclude that “even without football, the participation rates need to be adjusted” (C.H. Johnson Consulting, 2006).

The results of the football feasibility study contradicted the 2008 gender equity study, which found Division I University providing equitable participation opportunities for its student-athletes. It is clear that not only did the authors of the football feasibility study make mistakes in their analysis but they also received erroneous information from Division I University administrators. These mistakes caused problems for the new athletic director when making decisions about structuring the athletic department leading to the addition of football.

After the feasibility study was released, Division I University administrators started a campaign to generate support for the addition of football. This campaign included town hall meetings, fundraising events, and other activities to educate the public on how adding football was beneficial to the university. There were two concerns consistently discussed in the public meetings. Alpha, a former board chairperson, describes these issues that were also concerns of the athletic board.

There were two issues that I think that the board was concerned with. They were addressed very strongly by the board. One was were we going to be able to stay in Title IX compliance with the addition of football...and [the other] was that we did not want other sports to suffer because of the addition of football. (personal communication, April 2, 2010)

The board expressed these two concerns to the athletic and university administration during board meetings when discussing the addition of football. In early 2008, university administrators officially announced that football was going to be added. The press release was accompanied by a list of frequently asked questions. The last response of the 13 frequently asked questions states, “In order to maintain gender equity, [Division I University] will add a women’s lacrosse program, beginning in 2010, and the University is currently exploring additional opportunities for women’s sports. The addition of football will NOT lead to the elimination of any men’s sports” (personal communication). It was clear that the university administration had spent time thinking about the board’s concerns due to the emphasis in the quote.

During the process of selling the idea of football to the university community, athletic administrators were also dealing with perceived Title IX compliance issues. The EADA reports and the football feasibility study both used erroneous data that highlighted deficiencies in providing equitable participation opportunities to women. Additionally, in

2007, Division I University started the self-study process for its second certification that also used the incorrect participation data. The new athletic administration started using the erroneous results from the studies to guide their decision making. These perceived Title IX compliance issues led to a controversial decision to eliminate men's indoor track. The 2008 self-study extensively documents the decision to eliminate men's indoor track and uses misinformation to justify that decision.

Section 3 of the 2008 self-study describes the state of the athletic department with respect to "equity and student-athlete well-being" (Division I University, 2008). This section outlined the steps athletic administrators were taking to address gender equity issues as a result of the perceived compliance issues. There are two problems with the study. First, the study uses the EADA participation figures for the three years starting with the 2003 school year and ending in the spring of 2006. The administrators then use this erroneous data to justify the elimination of men's indoor track. The analysis in this dissertation verified the EADA participation numbers for the first two years of the self-study do not take into account multiple opportunities for athletes competing in cross country, indoor, and outdoor track.

Thus, women's participation is underrepresented. When the participation numbers are corrected for the last year of the study, it appears that Division I University was making strides toward proportionality. The report lauds the improvement in proportionality and states, "the athletic director has suggested that we practice roster management to address participation discrepancies [and]...as of the 2007-08 academic year, [Division I University] will not field a men's indoor track and field team" (Division I University, 2008). The second problem is that the report compares the percentage of

scholarship dollars to the percentage of participation opportunities instead of the percentage of unduplicated participants as required by Title IX. Therefore, athletic administrators think they are providing financial aid equitably, when this is actually not the case. When asked to comment on any areas of deficiency or trends in athletic scholarships, university administrators state, “no deficiencies were indentified” (Division I University, 2008). This was a false conclusion.

Although the self-study report gives the justification for the elimination of men’s indoor track, it appears months after the decision had been made. In an email statement from November 2006, the athletic director explains the reasons for eliminating the sport by stating, “We needed...to cut men’s indoor track effective immediately and we [will] look at men’s outdoor track for this year to consider how we proceed on that sport....Gender equity and strategy [is] the reason given and those remain the reasons for the decision” (personal communication). This email was sent during the same time period the university was involved in the campaign to generate support for the addition of football. The decision to eliminate men’s indoor track is confusing considering that members of the athletic board and university administration were publicly stating that current sports were not going to be cut, as indicated in the most frequently asked questions in the press release described earlier.

At first glance, it appears the athletic directors’ decision to eliminate men’s indoor track was justified. If women were underrepresented at Division I University, then it makes sense that administrators should look for ways to either increase women’s opportunities or decrease men’s opportunities. As the football feasibility stated, one way to become Title IX complaint was to simultaneously add women’s sports while

decreasing men's opportunities. The athletic director thought that eliminating men's indoor track opportunities was the best solution, although this decision decreases participation opportunities without eliminating athletes because they can still compete in outdoor track. However, there were two reasons the decision was controversial. First, the gender equity study completed in March of 2008 by Lamar Daniel contradicted the earlier reports. It stated that Division I University was "Arguably...providing intercollegiate level participation opportunities in substantial proportion to the enrollment rate of male and female students" (Daniel, 2008, p.3). The report also addresses the area of athletic financial assistance by stating, "A significant amount of athletic aid was awarded to women's student-athletes in substantial excess of their participation rate.

This does not comply with the 1% allowable difference that OCR requires in this area" (Daniel, 2008, p.7). The decision had been made to eliminate a men's sport and to continue to increase women's athletic aid despite knowing that the most recent gender equity report had provided information that this was not necessary. In the case of scholarship assistance, the athletic directors' decision meant that Division I University would move further from Title IX compliance. These decisions were contradicting a report authored by Lamar Daniel, who had co-written the investigators manual that was used to determine Title IX compliance when working for the OCR. The second reason that eliminating men's indoor track was controversial is due to the fact that it went against what the university administration continued to state publicly.

The athletic director employed during the time football was added and men's indoor track was eliminated did not participate in an interview for this study. Therefore, the written documents are the only source that provides insight into the reasons for the

elimination of men's indoor track. On the one hand, it is clear from the athletic directors' email and the 2008 self study report that athletic administrators thought that Title IX compliance issues existed. The March 2008 gender equity report conducted by Lamar Daniel contradicted this misinformation, but there was not an immediate move to reinstate the men's indoor track team. On the other hand, it is not clear why the athletic director continued with this decision despite the university administration's and athletic board's public statements that the addition of football would not lead to the elimination of any men's sports.

Unfortunately, this decision was partly responsible for the series of events that followed. In December 2008, just days before retiring, the president fired the athletic director. The news articles that followed the dismissal paint a picture of discontent between the athletic director and the president. The athletic director was accused of "insubordination" and having "anger management" issues (Manasso, 2009). The articles state that the athletic director disregarded instructions about commenting publicly on football prior to an official vote by Division I University's governing board. It may be that the university administration was also unhappy with the athletic director's decision to eliminate men's indoor track since it was reinstated only a month after the athletic director's dismissal.

There is a stark contrast between how the elimination of wrestling and men's indoor track was handled. In the case of wrestling, the athletic director and university president were united in the decision even though it was unclear who made the decision. Research reports had been completed by athletic officials and presented to the university administration for approval. It was not the decision to eliminate wrestling that angered

the athletic board chairperson, but how the decision was handled. The elimination of wrestling was the best option at the time. In this case, the athletic director attempted to build a consensus in support of the decision. In the case of men's indoor track, a consensus was not attained; this program was eliminated despite contradictory evidence that Title IX compliance issues existed and against the public comments of the university administration. There was not an effort to consider alternative ways to solve the perceived Title IX issues. Thus, the consequences of the decision were more severe.

Playing the Title IX Numbers Game

Division I University administrators concerned themselves with trying to achieve proportionality every time a decision was made to restructure the athletic department during the time period of this case study. The substantial proportionality prong of the three-part test requires that the gender make-up of the athletic department be approximately the same proportion as the student body. The OCR requires that an institution provide nondiscriminatory reasons for any participation discrepancy over a few percentage points. In an effort to reach proportionality, there is a focus on what some administrators refer to as "playing the Title IX game of numbers." That is, how many athletes must be added or eliminated in order for the athletic department to be Title IX compliant with respect to proportionality? This was the question that guided decision making at Division I University. The proportionality prong was the institutions "safe harbor" from Title IX litigation.

There were several Division I University administrators that described Title IX compliance as playing the numbers game. This was their reality when making structural

changes in the athletic department. These administrators had worked hard to improve women's opportunities during their tenures. As one former athletic director states, "To me [Title IX compliance] is a major issue and it is an issue we should deal with because it is what's right....It's equal opportunity and that's the intent of the law" (Alpha, personal communication, March 11, 2010). Another athletic director states, "I always operated under the philosophy that you should do what you are suppose to do and that if there are some equity issues, let's try to straighten them out" (Beta, personal communication, April 22, 2010). Yet, when Title IX compliance became an issue in the late 1990s during Beta's tenure, university administrators chose to eliminate men's wrestling instead of focusing on improving women's opportunities.

There is an argument that adding women's track improved women's opportunities. However, the first two years did little to improve opportunities for women. By adding women's track, the cross country runners who were already running track in the spring would now officially count towards achieving proportionality. There was not an increase in women athletes competing in the first year and the athletic department actually saved money initially as a result of the decision to eliminate wrestling. The administrators were playing the numbers game.

The decision to add football also tested administrators' commitment to the "intent of the law." Division I University administrators knew that the addition of football would immediately make women athletes underrepresented with respect to the student body. If proportionality was the chosen method of compliance, then women's sports needed to be added at the same time. However, university leaders made the decision to delay the addition of new women's sports over several years (Alpha, personal communication,

March 11, 2010). By doing this, university administrators were choosing to comply with Title IX using prong two of the three-part test, which requires institutions to “show a history and continuing practice of program expansion.” The women’s sports could be added every three to five years and Division I University would remain Title IX complaint. Once again, athletic administrators were playing the numbers game.

When defining “intent of the law,” most administrators focus on proportionality. Gavora (2002) and Will (2007) argue that the gender equity industry has created a focus on proportionality because it is easily measured. It provides opportunities for lawsuits charging illegal discrimination based solely on statistics rather than “any invidious policy or hostile act” on the part of the institution (Gavora, 2002, p.26). This focus on proportionality caused Division I University administrators to eliminate men’s opportunities in an effort to comply with Title IX. In times of economic difficulty, “playing the numbers game” means the elimination of participation opportunities.

The disagreement about Title IX’s intent is an argument of how the regulations of the law should be applied. Sandel (2007) argues that this is the most common disagreement. Division I University administrators interpretation of intent played a role in decision making. When men’s indoor track was being eliminated, the athletic director’s goal was to satisfy proportionality. Women’s indoor track had been added a few years earlier and the 2008 gender equity report confirmed that Division I University was satisfying the interests and abilities of its students through proportionality. However, in the administrators’ minds, strict proportionality had to be achieved. In the case of the addition of football, the recent athletic director decided to add women’s opportunities over a period of time. A question arises: Are Division I University administrators

discriminating against women by adding football immediately and adding women's sports gradually? The answer is a matter of debate. There are some who say no because they are satisfying prong two of the three-part test. The other argument is women have become more underrepresented at Division I University as a result of football. Since women were slightly underrepresented before this addition, the delay of adding a women's sport can be viewed as discriminatory. Nevertheless, as long as Division I University continues to improve the opportunities for women, the institution is most likely legally compliant with Title IX unless someone can prove that the institution is discriminating against women.

In any case, administrators are continually dealing with the pressures of how to stay Title IX compliant. These administrators also struggle with their own beliefs about the intent of Title IX. Can we measure discrimination by simply looking at proportionality and is this the intent of Title IX? One former athletic director expresses frustration with proportionality by stating,

There has to be a better way than looking at the makeup of your student body....The enforcement piece [of Title IX] is questionable....A great percentage of that relies on your integrity and whether you are willing to follow the rules. There are a lot of institutions that turn their head on some occasions. (personal communication)

Yet, the proportionality prong is not the only way to effectively accommodate the interests and abilities of students. Division I University administrators are currently using prong two of the three-part test to accommodate the interests of their students. But, prong two is not a "safe harbor" from litigation and administrators should be concerned about the potential for compliance problems. This concern is highlighted by an administrator who shows a concern for Division I University's commitment to Title IX compliance by

stating, “As I understand it, there isn’t a set rule on [proportionality]. Are we making normal progress toward satisfying proportionality?...You’re almost into playing the game again and I don’t think we are playing the game. I think we are into being fair” (personal communication). The addition of football and the delay in adding women’s sports opportunities makes the administrator question whether Division I University is in compliance with Title IX and being fair to its students.

Gender Equity Reporting: A Self Regulating Process

Gender equity reports were a major part of the decision making process when structural changes occurred at Division I University. In every interview, decision makers talked about the importance of gathering evidence about Title IX compliance to justify the decision to eliminate sports. It was equally important to have proof that these decisions were occurring as a result of moving toward Title IX compliance. Gender equity reports provided that proof. As one athletic administrator puts it, “You definitely don’t want to be on the side where [the reports] told you that you need to correct something and you don’t” (Delta, personal communication, April 22, 2010). Therefore, if the reports confirmed that Division I University had Title IX participation concerns, then administrators had to either add women’s or eliminate men’s participation opportunities.

It is interesting that Division I University administrators made the decision to eliminate sports only during the self study process conducted in conjunction with SACCS and NCAA certifications which were at the beginning and end of this case study. Even though the EADA reports revealed a wide disparity in women’s participation every year in between the 10-year certification cycles, Division I administrators chose not to

eliminate sports during this time. What caused administrators to react differently to similar Title IX deficiencies? The nature of the reports is one reason for the difference. The self study reports conducted in conjunction with reaccreditation require an institution to list gender equity deficiencies and describe a plan for improvement. Division I University administrators hired Lamar Daniel to conduct a gender equity report to assist them with certification. This report provided an outside evaluation of the institution's commitment to gender equity. During the reaccreditation process, there was also an outside committee made up of administrators from other institutions that observed and evaluated whether Division I University administrators were doing what the self study report describes. This outside involvement is an important reason for pressure to make the drastic changes in participation that program elimination provides.

Specifically, there is an aspect of the self study process that is transparent. Conversely, the EADA reports are a self reported document that categorizes spending and participation data. The report does not require institutions to analyze or comment on any deficiencies. Typically, there is not the urgency to address deficiencies unless an institution is challenged by a discrimination complaint. Division I University administrators made structural changes to athletics during the self study periods because they were forced to address the deficiencies due to the transparent nature of the process. The EADA reports did not cause the same level of urgency due to their self regulation. As one athletic administrator states, "The NCAA [and OCR] method of regulating and saying we are going to let you self regulate is a copout" (personal communication). This was a reaction during a discussion on the self regulation aspect of Title IX compliance.

The chronological examination of decision making at Division I University described earlier drew attention to the problems of EADA reporting and how it can affect decision making. The EADA report is an important tool used in decision making. This analysis revealed that mistakes in EADA reporting showed up in the football feasibility study and the self study completed in 2007. As a result, Division I University administrators made decisions to improve deficiencies that did not exist. They also missed deficiencies in scholarship assistance which resulted in recommendations that made the situation worse.

In the interviews for this study, the administrators were obviously committed to eliminating gender discrimination in college athletics. However, it was also obvious that deciding on how to measure discrimination is still a controversial issue. The EADA reports are intended to provide administrators with a tool to analyze spending and participation, but mistakes in reporting made it difficult to use these reports productively in decision making. There is a tremendous amount of pressure on administrators when it comes to gender equity reporting. This pressure shows in the frustration of a former administrator when expressing their feelings about gender equity reporting:

I can tell you that administrators get tired of some of this stuff. You are hired to come in and develop a program and be responsible....[You are hired to] make sure coaches are doing their job and athletes are there to get the education that they came there for....If you spend an enormous amount of time on filling out reports....I want to know that this is going to benefit the athletes and benefit the program....[I want to know that we will] learn something from it and it's not just an exercise in futility. (Alpha, personal communication, March 11, 2010)

Although this administrator talked about being committed to eliminating discrimination in athletics, it is evident that the pressures surrounding Title IX compliance causes frustration. The pressure that surrounds Title IX compliance and accurate gender equity

reporting made it difficult for Division I University administrators to achieve distributive justice.

CHAPTER 6

CONCLUSION AND RECOMMENDATIONS

The phrase “the political is personal” became popular during the women’s movement that surrounded the passage of Title IX (Hanisch, 2006). This statement is an excellent characterization of the feelings evoked when university administrators make distribution decisions in order to maintain Title IX compliance in college athletics. The case studies highlighted in the introduction of this dissertation are examples of how individuals react to negative distribution decisions. In many cases, these individuals take these decisions as personal attacks. JMU and QU student-athletes and coaches sued administrators over their decisions to eliminate sports. At the time of writing this conclusion, the litigation at JMU was ongoing after four years.

The QU women’s volleyball team was reinstated by court order and the student-athletes and coach were representing the same institution they had sued. JMU and QU administrators defended their decisions to eliminate the sports by stating it was necessary in order to comply with Title IX. In administrators’ minds, the gender equity mandate was the reason that sports had to be eliminated. We were provided little detail into how JMU and QU administrators decided on the sports to eliminate. At Division I University, administrators faced a similar dilemma as their counterparts at JMU and QU. There is one thing that was consistent throughout this study: the political decisions to distribute

participation opportunities and resources at Division I University elicited strong personal feelings among all those involved.

There were two themes that consistently emerged when analyzing the evidence. First, Division I University administrators focused on substantial proportionality as the only way to comply with Title IX when trying to accommodate the interests and abilities of students. These administrators were playing the numbers game. This focus on substantial proportionality was consistent whether the decision maker operated inside or outside the athletic department. Second, gender equity reports played an important role in the decision making process. The decision to eliminate sports occurred as a result of the self-study process during SACS and NCAA certification. This process is transparent due to the outside involvement of gender equity consultants and reaccreditation observation committees. There were no sports eliminated during the years between the 10-year certification cycle even though the EADA reports show that Division I University was not Title IX compliant during this time. Administrators' distribution decisions were more drastic and controversial when the evaluation process was transparent. At times, Division I University administrators struggled to balance the need to be Title IX compliant with decisions that treated student-athletes fairly.

The Self Interview: An Evaluative Lens

It is important to understand my feelings toward the enforcement of Title IX in college athletics. These feelings will affect how I evaluate the administrative decisions at Division I University. My earliest memory of hearing the term Title IX in college athletics was in my first couple of years as a head college cross country coach.

Administrators at one of the nearby colleges in the state decided to eliminate men's cross country and the need to be Title IX complaint was the reason for the decision. I knew that Title IX was a law passed to eliminate sex discrimination in educational institutions, but this was the first time that I heard of the law being applied to athletics. The decision was confusing to me. How can these administrators eliminate sex discrimination by dropping men's cross country? If women were being discriminated against, then administrators should improve the sport opportunities for women. It was at that time that I was introduced to the proportionality prong of the three-part test. It has been almost 20 years since the first time that I was introduced to Title IX and its influence on decision making in college athletics and it is still upsetting when I observe university administrators using the law as a reason for eliminating sports.

Since that time, I spent 18 years as an assistant coach, head coach, and assistant athletic director in college athletics. I have also spent much of the last 10 years studying Title IX and its influence on decision making in athletics. As part of this study, I participated in two self interviews to gain understanding into my feelings about Title IX. The analysis of these interviews focuses on one theme that has influenced my views on Title IX and decision making in athletics. That is, Title IX compliance is used as a political tool in decision making to deflect the controversy of structural changes away from the administrators making the decisions.

My first experience with Title IX being used as a political tool was when I was asked by my athletic director to officially start women's track in order to help the athletic department become compliant with the proportionality prong of the three-part test. The athletic administration made an honest commitment to improve funding for the women's

track program over the next several years. But, this decision provided only a few additional women with increased opportunity. Despite this small increase in women athletes, the gender equity reports revealed a 30-athlete increase in participation because the women's cross county team went from providing 15 participation opportunities to 45 with its official involvement in indoor and outdoor track. In fact, the women's cross country runners were already competing in indoor and outdoor track, but now due to changes in NCAA reporting women's track participation was "official" and allowed Division I University to show improved opportunities for women. Did this change in reporting eliminate discrimination against women? Was this type of participation manipulation satisfying Title IX regulations? The legal answer to both of these questions is yes. Were the changes satisfying the intent of the law? I argue "no" because Title IX's intent was to improve the quantity and quality of women's opportunities in public educational institutions.

It is also common for decision makers to attribute a lack of resources as a reason for not being able to increase the opportunities for the underrepresented gender to comply with Title IX. Therefore, decision makers contend that eliminating participation opportunities for the overrepresented gender is the only compliance option. This was the argument for administrators in the JMU and QU cases that introduced this study. It was also the case for the elimination of wrestling at Division I University. However, it is my experience that major universities have access to resources in many different forms. Resources for athletics can come from the general university fund, foundation accounts, or an increase of the student fees. University administrators can find resources if adding or maintaining sports for Title IX reasons are important. According to one Division I

University administrator, “I can promise you that [the money] was found when it needed to be found....So, I never bought [the funding issue] because I had been on the [university administration] side of it. I knew the [money] was there and [the university administration] could get it” (Delta, personal communication, April 22, 2010). This was a response when discussing the lack of funding for increased salaries when Division I University was growing. This statement seemed to be true at Division I University. Division I University administrators used “foundation monies” to fund the salary of a high profile basketball coach and the very next year eliminated wrestling. On at least two occasions, Division I University officials pushed for athletic fee increases to balance the athletic department budget. This shows that funding is not a problem when someone places a priority on a coach or team. Division I University administrators had access to resources to save wrestling and improve women’s opportunities simultaneously. The combined effort to acquire those resources would have resulted in just decision making and an excellent example of reflective equilibrium. This chapter will show that Beta was conflicted in whether it was fair to eliminate wrestling programs. Thus, the decision to eliminate wrestling was unjust.

It is my opinion that administrators have to take responsibility for and articulate accurate reasons for the decisions they make. Title IX should not be used to deflect the controversy for the elimination of a sports team. Division I University administrators made decisions to eliminate sports and place roster limitations on teams in an effort to comply with Title IX. In most cases, the administrators stated that finances played a role in the decisions. However, the athletic department continued to increase spending consistently throughout the time period of this study. Division I University administrators

had access to the resources to satisfy Title IX by improving women's opportunities. These administrators chose to focus their resources on other sports. It is now time to get a closer look at how the decision making of Division I University administrators was evaluated.

Playing the Title IX Numbers Game and Distributive Justice

As discussed earlier, Beta provided a detailed explanation of the process that surrounded the decision to eliminate wrestling. Collectively, wrestling was dropped due to a combination of financial troubles during that time, Title IX compliance issues, and possible NCAA recruiting violations with the coaches. The athletic department had slowly increased its financial support for wrestling and this started to put a strain on the athletic budget. However, it was actually the increased support of the men's basketball program a year earlier that was the start of the financial troubles. Beta stated that wrestling put Division I University "out of whack" with Title IX. Thus, men were overrepresented in the athletic department and the substantiality proportionality clause was not being met.

The possible NCAA recruiting violations by the coaches is an interesting justification for eliminating wrestling. These violations could not be verified even after talking with the administrator in charge of compliance at that time. In Beta's description of the decision making process, the elimination of wrestling was being blamed on factors beyond the control of administrators. The only statement where administrators were taking responsibility for the decision to eliminate wrestling was in the press release that stated, "Wrestling no longer fit into the long-range strategic plans of the athletic

department” (Haynes, 1999). The elimination of wrestling and the addition of women’s track was the answer to Division I University’s substantially proportionality problem. Beta was playing the Title IX numbers game and, therefore, working toward Title IX compliance. Did Beta feel that the decision to eliminate wrestling was a just decision?

Beta seemed conflicted with the issue of fairness when it came to the elimination of wrestling. In Beta’s opinion, the elimination of wrestling was the only choice that administrators had due to the Title IX and financial issues they faced. However, when asked about how Title IX enforcement has influenced decision making in athletics, Beta states,

I think it has been good. It has proven to be a boon to women and girl’s athletics overall. I think that on the negative side there are some sports like wrestling...that have suffered because administrators and universities have decided to cut those sports rather than add a women’s sport. I think that was not fair....As an administrator, I think probably...and maybe I would have been on the wrong side with alumni, fans and boosters, but I would have taken some money from the big time football programs to keep wrestling. Wrestling budgets were not very big. They were a singlet and headgear. Once you got the mats and the uniforms, that’s the majority of the start up expenses....To drop those programs was, I think, grossly not fair. (personal communication, April 2, 2010)

This statement was made just hours after discussing the process that was used to eliminate wrestling at Division I University. Beta was willing to hypothetically stand up to alumni, fans, and boosters and take money from football to save wrestling if working at a “big school.” However, wrestling was not given the same consideration while Beta was athletic director at Division I University. Beta was unwilling to take resources from men’s basketball to save wrestling. In fact, university administrators were increasing financial support of men’s basketball, making unclear the difference between one expensive revenue producing sport and another. The Hums and Chelladurai (1994) and

Mahony and Pastore (1998) studies found contradictions between athletic administrators' beliefs and distribution practices. Division I University administrators' decision to eliminate wrestling is another example of making distribution decisions that contradict what they believe to be fair. During the 1998 school year, the pressures on Division I University administrators to balance the budget and focus resources on the supposed revenue producing sport of basketball outweighed the values of fairness.

The decision to eliminate men's indoor track was made under different circumstances. Athletic administrators had instituted a tiered sports system in order to make distribution decisions. This type of system prioritizes each sport on a hierarchy and provides more focus and resources to those teams higher on the hierarchy. Similarly, teams that were lower on the hierarchy received the majority of the cuts during difficult economic times. Athletic administrators were faced with perceived Title IX compliance issues and chose to cut men's indoor track because it was lowest on the hierarchy. Administrators considered whether the decision to eliminate men's indoor track was fair. The rationale was that decreasing participation opportunities for men in indoor track eliminates participation opportunities without eliminating athletes because those athletes are still competing in outdoor track. If finances were a concern, it is likely that a sport would have been dropped that eliminated both athletes and participation opportunities. This type of decision making is an example of how the distribution principle of contribution is used by administrators to make decisions. In this example, the use of the distribution principle of equity or contribution makes cuts to those who are perceived to contribute the least to the organization. Administrators that place sports at the lowest level of the hierarchy in a tiered sports system consider those sports to contribute less to

the university in terms of prestige and resources compared to those sports higher on the hierarchy. In this situation, the justification for the distribution decision to eliminate men's indoor track is based on value to the university rather than fairness.

There were inconsistencies that surrounded the decision to eliminate men's indoor track. First, the EADA form for the 2006-2007 reporting year shows that Division I University administrators only had to add approximately 10 female athletes to achieve substantial proportionality (EADA Report, 2007). This could have been achieved by simply adding participants to the women's indoor and outdoor track teams. The addition of female athletes is certainly a less controversial way to play the Title IX numbers game because it increases participation for the underrepresented sex which satisfies the intent of Title IX. Second, the elimination of any sport at this time was contradictory to what the university administration was stating publically when it was promoting the addition of football. In fact, men's indoor track was reinstated in January of 2008 weeks after the athletic director responsible for the decision was fired. The decision to eliminate men's indoor track, like wrestling nine years earlier, was a result of political pressures to focus resources and attention on supposedly revenue producing sports. However, the process to eliminate men's indoor track was conducted without the support of decision makers inside and outside the athletic department. In this case, athletic administrators did not gain support from decision makers outside the department.

Gender Equity Reporting: The Problem with Self-Regulation

Gender equity reports influenced decision making at Division I University. The type of reporting also influenced the magnitude of the structural changes. For example,

sports teams were eliminated during the NCAA self study periods at the beginning and end of this case study. However, administrators focused on expanding women's opportunities instead of eliminating men's opportunities in between the certification cycles despite the fact that EADA reports revealed Title IX deficiencies. Were differences in decision making a result of the types of gender equity reporting? It is clear from this analysis that gender equity reporting was a major factor that influenced decision making.

This study focused on three periods of structural changes that occurred under different athletic directors. The elimination of wrestling and the addition of women's outdoor track during the 1997-98 school year, the addition of women's indoor track and the improvement of women's opportunities from 1999-2005, and the addition of football and the elimination of men's indoor track after the 2005-06 school year. Financial problems and Title IX compliance issues were cited as reasons for the elimination of wrestling. Title IX compliance was the main reason cited for the addition of women's indoor track and the elimination of men's track. Financial issues were not publically cited as a reason for these decisions even though the EADA reports show spending exceeding revenue for several years during this time period.

Therefore, Division I University administrators were dealing with Title IX compliance issues and problems with balancing the budget throughout the time period of this study. It was the type of gender equity reporting that was the difference when decisions were made to eliminate sports. University administrators were required to produce a plan to address Title IX compliance issues when completing the NCAA certification process. This plan is reviewed by an outside committee of administrators

from other institutions. Conversely, the EADA report is completed annually and is not subject to a required outside evaluation. It is published publically in aggregate form which makes it difficult to detect any Title IX deficiencies. Institutions are also not required to provide a plan to address Title IX compliance issues highlighted by the EADA reports. It appears that the transparent nature of the NCAA certification process pressures administrators to make significant structural changes in order to address Title IX compliance issues. Hence, the process of reflective equilibrium is not occurring.

Division I University administrators questioned the effectiveness of the self regulating EADA process. Alpha states, “[Self regulation] relies on your integrity and whether you are willing to follow the rules. There are a lot of institutions that turn their head on some occasions” (personal communication, March 29, 2010). This statement is in response to Alpha’s feelings about the effectiveness of Title IX enforcement. The EADA reports were originally intended to provide real time information on an institution’s commitment to provide equitable treatment between the sexes in college athletics. The report is also a tool to assist university administrators when making decisions to restructure their athletic departments. EADA reports are the most efficient way for decision makers to decide how structural changes will impact Title IX compliance. However, as Alpha states, the integrity and competence of the administrator often determines how the EADA reports will be used in decision making.

At Division I University, decision makers were influenced by mistakes in EADA reporting. Yet, the mistakes in reporting did not result in the decision to eliminate sports. The mistakes in data reporting do not create problems of distributive justice. The

administrators' decision to act solely on those data is what creates problems in distributing resources and participation opportunities unfairly.

Decision Making in Athletics: The Politics of Fairness

Division I University administrators faced a number of political pressures when deciding how to structure their athletic department. Wrestling was added due to pressures from an athletic board member who was financially connected to the university. It was eventually eliminated as a result of the pressures to maintain Title IX compliance during difficult economic times. Women's track was added to increase participation opportunities for females since they were underrepresented in the athletic department compared to the overall student body. After a dozen years spent resisting the pressure to add football, the university president relented to pressures from his constituents and decided that supporting a football team was in the best interest of the institution.

Finally, men's indoor track was eliminated due to Title IX compliance issues only to be reinstated weeks after the athletic director who made the decision was fired. Administrators are generally met with adulation and praise when adding sports. However, the decision to eliminate a sport is controversial and elicits a discussion about fair distribution practices. In all of the situations described above, university administrators point to outside forces in order to justify their decision to eliminate sports. Title IX compliance and financial issues were used as political tools to deflect the controversy that surrounded the decision to eliminate sports.

Division I University administrators stated that Title IX compliance issues and finances were the reasons that wrestling was eliminated. Sigma, the athletic board

chairperson at the time, states, “The university could not maintain a wrestling program without another women’s sport and [we] could not afford to add another women’s sport” (Sigma, personal communication, April 22, 2010). Athletic board members seemed to forget that the university foundation had recently pledged \$300,000 for improvements to the men’s basketball program. There was no discussion or investigation on how wrestling could be saved while simultaneously adding women’s indoor and outdoor track. The focus of the rationale was on Title IX compliance and financial issues. Division I University administrators had the opportunity to work with the wrestling supporters in an effort to find a compromise, in effect, moving toward reflective equilibrium. Yet, administrators chose to blame Title IX.

The task of distributing finances and participation opportunities is difficult. It takes a dedicated and competent administrator to find a balance between the pressures of adequately funding the revenue producing sports and providing equitable participation opportunities for all athletes. Alpha describes a competent administrator as someone who has ethics and integrity with a genuine interest in the student-athlete. Alpha continues by stating, “If [administrators] see themselves purely as a dollars and cents type of [person]...focus on the bottom line or [only] wins and losses, they are not going to do well” (personal communication, March 29,2010). Rawls defined justice with the needs of the individual in mind. The administrator that Alpha describes would not sacrifice a few individual student-athletes while simultaneously promoting a revenue producing sport. Administrators that sacrifice individual student-athletes to achieve proportionality violate Rawls’ definition of justice. An administrator with integrity understands that to operate in today’s political environment resources will need to be focused on the revenue producing

sports, but not at the expense of other sports. An administrator with integrity works to make their principles and distribution decisions coincide; reflect on their decisions to achieve equilibrium. An administrator with integrity finds a way to satisfy Title IX without, if at all possible, eliminating sports. This type of administrator is fair.

Limitations of the Study

Title IX compliance is a sensitive issue. Administrators are careful when discussing their distribution decisions in athletics because of the possibility of legal action. This was evident when conducting this study. The limitations of this study are a consequence of the “gender equity industry” that Will (2007) and Gavora (2002) describe in their critique of federal Title IX regulations. It is this pressure that silenced many Division I University administrators.

Institutional Review Board restrictions created the first major limitation of this study. The IRB reviewers required that department head approval was necessary for any interviewee that was a current employee in order to participate. This restriction led to a decision to exclude any current employees at Division I University. The majority of the decision makers employed during the time period of this case study were no longer working at the university during data collection. This gave me access to those individuals making the decisions. However, this restriction did not allow me to interview participants that held a supporting role in the decision making process. The majority of individuals that were in supporting roles were still employed by the university. These individuals could have provided another perspective on the decision making process. The data from individuals in supporting roles could have strengthened the internal validity of this study.

When starting the data collection process, I was asked by a potential interviewee if I was having trouble getting employees to participate. This individual had been contacted by an attorney employed by Division I University. The attorney acknowledged that I was conducting this study and cautioned this individual about participating. It became clear as I was soliciting potential participants that the Division I University legal affairs office was warning current and former employees about participating in my study. In fact, there was one interviewee who received contact from the lead attorney at Division I University. This involvement prohibited some individuals from participating in this study. It also caused interviewees that did participate to temper how they talked about sensitive decisions. In one instance, an interviewee eliminated any controversial statements when editing their interview transcript. The analysis of interview data was negatively influenced by this silencing of participants.

Division I University's president at the time of this case study did not contact me for an interview. Due to the IRB restrictions, I was unable to interview current employees who work for and with the president. Therefore, the university administration voice and the role they play in the decision making process is silent. There is also very little written documentation from the university administration that discusses the structural changes that occurred during this study. For example, I did not find one written document that quoted a member of the university administration after the elimination of wrestling. It appears that university administrators wanted nothing to do with controversies in athletics. The only exception to the lack of documentation is with the addition of football described briefly at the end of this case study. The university administration was visible during the process of adding football and the written documents chronicle its

involvement. The limitations of this study were the restrictions in who was allowed to participate and the depth of involvement for those who participated due to the warning they received from the legal affairs office at Division I University.

Finally, my feelings toward Title IX enforcement influenced my evaluation of the distribution decisions of Division I University administrators. I tried to view the distribution decisions from the administrators' point of view. I am aware that making decisions during stressful economic times is more difficult than analyzing those decisions in hindsight. I also understand that administrators have careers they have to protect, which influences their decision making. I also tried to critique the distribution decisions fairly. However, after completing this research, it is still my feeling that program elimination should only be considered as the last resort, even if it means financial cuts for the revenue producing sports. I understand that my experiences will influence the analysis of the distribution decisions at Division I University and is a limitation of this study.

Recommendations for Further Research

Gender equity reports played an important role in the decision making process at Division I University. Athletic administrators hired Lamar Daniel to conduct the gender equity reports during the self-study process. Before starting his consulting business, Daniel worked for the OCR and coauthored the *Title IX Athletics Investigators Manual* (Bonnette & Daniel, 1990). The *Investigators Manual* is a step-by-step guide used to investigate Title IX complaints. It is not surprising that Daniel is a popular consultant due to his professional background. However, he also causes some controversy. In 1999,

Daniel made comments regarding the state of college wrestling due to the influence of Title IX. The amateur wrestling organization North Carolina MAT reported, “Consultant Daniel adds fuel to the fire with his attitude about wrestling” (North Carolina MAT, 1999). In this report, Daniel is quoted as saying, “I feel for wrestlers, and track is going to get hit hard....It’s tragic. Yet, on the other hand, women deserve the opportunity to compete. And I have yet to meet an administrator who was crazy about wrestling” (North Carolina MAT, 1999). These comments came less than a year after he completed his gender equity report for Division I University, which led to the elimination of wrestling.

There are two interesting questions raised by this statement. First, how does eliminating men’s sports create participation opportunities for women? If the money saved from eliminating men’s sports went directly to women athletes, then Daniel might be correct. At Division I University, women’s outdoor track was added after the elimination of wrestling. But, the increase in participation opportunities were mainly due to counting the women’s cross country runners as participants in track. Administrators were playing the numbers game in an effort to move toward proportionality. The analysis of the evidence in this study showed that the majority of the additional resources were being spent on the improvement of men’s basketball. Second, how did Daniel choose men’s wrestling and track as the sports that were going to be “hit hard?” Why not football or men’s basketball? Daniel is probably just making an observation of what sports colleges are choosing to eliminate. In any case, is the role of the consultant to judge the value of a particular sport to an institution?

I believe further research is needed on the role of the gender equity consultant in college athletic decision making. It is not surprising that Division I University

administrators reacted by eliminating men's opportunities to rectify Title IX compliance issues after Daniel's report due to his background with the OCR. Daniel stated in his most recent gender equity report, "If the first test of compliance [substantial proportionality] is the option, this will probably need to be achieved through roster management and/or elimination of men's sports" (Daniel, 2008). This recommendation pushed Division I University administrators to reduce opportunities for men rather than improve opportunities for women. If Daniel believes that "women deserve the opportunity to compete," then why not recommend that complying with the first test will probably need to be achieved by improving opportunities for women? There is a possibility of a contradiction between Daniel's statement that women deserve the opportunity to compete and his recommendation to eliminate men's opportunities as a way to comply with Title IX. It would be interesting to investigate whether gender equity consultants play a role in the elimination of men's sport teams.

The university president is the most powerful administrator in the decision making process (Cohen & March, 1986). Yet, Division I University's president did not respond to be interviewed for this study. The analysis of the written documentation revealed little information into the presidents' role in the decisions to add or delete sports, with the exception of football. It will be important to study the president's views of how Title IX influences decision making in college athletics.

The focus of this study on the administrators' role in decision making led to several important groups being silenced. University faculty, coaches, and student-athletes are important groups that are affected when structural changes are made in college athletics. In fact, Division I University faculty members were surveyed about their

opinions on athletics during the time period of this study. The role of the faculty in athletic department decision making should be studied more extensively. Finally, student-athletes and coaches are most affected by structural changes in athletics and their role in decision making should be studied further.

Is Program Elimination Necessary?

My first discussion with an athletic administrator about my interest in studying how Title IX influences decision making in college athletics drew an interesting response. “John, [university and athletic administrators] don’t want to talk about Title IX,” replied the athletic director. This response surprised me. Title IX was responsible for providing women with access to athletic resources and participation opportunities in unprecedented numbers and this individual had a female family member that surely benefited from this law. The administrators’ response proved to be correct.

Administrators that participated in this study were all retired or had minimal involvement in college athletics at the time of being interviewed. Yet, there was still hesitation when discussing Title IX compliance issues. Those individuals that I contacted who had left Division I University and were working in athletics elsewhere were not interested in being interviewed. It seemed like individuals involved in the decision making process at Division I University did not want to talk. However, the process for how administrators make decisions is important.

There is never going to a positive reaction to the elimination of a sports team. During the ten years of this study, Division I University administrators eliminated two sports. Beta made the difficult decision to eliminate wrestling due to Title IX compliance

issues and financial troubles. This decision was made after a thorough evaluation of the situation and discussion with the university administration. Yet, the athletic board was not consulted during the evaluation stage of this decision. The board was told that either wrestling had to be eliminated or that an entire women's sport needed to be added. In the minds of the administrators, they had no choice but to eliminate wrestling. However, the analysis of evidence shows that the financial issues were created by decisions that focused resources on other sports and the Title IX compliance issues could have easily been eliminated with an increased commitment to women's track. In reality, the elimination of wrestling was not necessary.

Men's indoor track was eliminated under different circumstances. The athletic director believed Division I University had Title IX compliance issues and instead of improving opportunities for women chose to eliminate men's opportunities. This athletic director was playing the numbers game. However, the athletic administration neglected to take all the information into consideration or build a consensus outside the athletic department for the decision to eliminate men's indoor track. The athletic administration did not work to achieve reflective equilibrium. The decision to eliminate men's indoor track was unjust and the university administration agreed. University officials reinstated the sport within weeks after the athletic director was fired.

University and athletic administrators have a daunting task when trying to distribute resources and participation opportunities in a just manner. The pressures to be Title IX compliant, balance the budget, and appease boosters and fans by supporting the most visible sports are overwhelming. It will take a combined effort from inside and outside the educational enterprise in order to create an environment that discourages

program elimination. There are times when scarce resources require tough decisions in order for an athletic department to progress. However, program elimination is rarely necessary. On the positive side, Division I University student-athletes have been fortunate. The sports programs have enjoyed a long period of expansion. Division I University administrators should be commended for their commitment to providing quality participation opportunities to all of the student-athletes, but they need to consider, as do their colleagues across the nation, the implications of using proportionality to create gender equity in college sports.

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