

# Strengthening the Equity in Athletics Disclosure Act to Improve Gender Equity Transparency & Institutional Accountability in the Future

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In 1994, the United States Congress enacted The Equity in Athletics Disclosure Act (EADA). The EADA requires colleges and universities receiving federal financial assistance to provide an annual public report on the number of athletic participation opportunities provided to men and women athletes at the varsity level and the allocation of resources and personnel made in support of those opportunities. The passage of the EADA occurred on the heels of the 20<sup>th</sup> anniversary of Title IX of the Education Amendments Act, a time marked by the realization that the vast majority of schools around the country were not in compliance with Title IX's requirements as applied to athletic departments two decades after its passage. The purpose of the EADA when initially proposed in 1993 was to provide accessible information to stakeholders, most specifically prospective students, the public, and the U.S. Congress, that would allow interested parties to raise questions regarding the fair and equitable treatment of women athletes in the nation's intercollegiate athletic programs. The annual report, colloquially referred to as the EADA report, is officially called The Report on Athletic Program Participation Rates and Financial Support Data. Three decades after the passage of the EADA and five decades after the passage of Title IX, there is reason to question whether the EADA has served its purpose. During Title IX's 50<sup>th</sup> anniversary year, researchers and journalists uniformly reported a systemic failure to comply with Title IX in the area of athletics. Over the years, some have argued that the EADA should be eliminated; others have documented how valuable the information from the EADA is to researchers, journalists, and litigators; others have recommended changes that would strengthen the data collection required under the EADA; and others have argued that something akin to an EADA requirement needs to be adopted nationwide to help address sweeping gender inequities in athletics at the high school level. This essay begins with an overview of the current state of Title IX compliance and gender equity in college sport, revisits the history of the EADA, provides an overview of what the EADA covers and who uses it, explores the criticisms and limitations of the EADA, and concludes with recommendations for making the EADA a more effective tool.

*Keywords:* Equity in Athletics Disclosure Act, EADA, gender equity in athletics, Title IX



## Overview of the Current State of Title IX Compliance and Gender Equity in College Sport

The year 2022 marked the 50<sup>th</sup> anniversary of the passage of Title IX of the Education Amendments Acts of 1972, the law barring gender discrimination in educational institutions within the United States that receive federal financial assistance. Lauded for its impact in opening up opportunities previously foreclosed to citizens because of discrimination on the basis of gender, Title IX's 50<sup>th</sup> anniversary offered cause for celebration. At the same time, advocates, journalists (Axon, 2022), public policymakers (U.S. Senator Murphy's Staff, 2022), and researchers (Staurowsky et al., 2022; Wilson, 2022) noted that data from publicly available documents like the EADA report and lawsuits were strongly suggestive that the majority of athletic departments at the college level were not in compliance with Title IX's requirements and at the high school level, data to assess gender equity patterns in participation and resource allocations was largely unavailable, difficult to access, or limited in scope (Staurowsky et al., 2022).

An investigative series undertaken in 2022 by *USA Today* reporters revealed that out of 107 schools competing in the NCAA's Football Bowl Subdivision (FBS), only 30% met Title IX's substantial proportionality standard in terms of athletic scholarship allocation. Under that standard, schools are expected to provide athletic scholarship support that is proportional to the representation of men and women athletes, within one percentage point, unless there is a non-gender specific reason for a gap (for example, in-state tuition versus out-of-state tuition). In effect, if half of the athletes in a program are women, half of the athletic scholarship dollars should be allocated to them, with a one percentage point variance on either side (49% to 51%) (Jacoby, 2022).

The underfunding of women's athletic scholarships translates into significant financial deprivation. In the *USA Today* study cited above, 49 FBS institutions for the 2020-2021 academic year underfunded women athletes in terms of athletic scholarship support, a shortfall that would have required an additional \$23.7 million to rectify (Jacoby et al., 2022).

The issue of women college athletes not receiving their fair share of athletic scholarship support is amplified by the fact that the athletic scholarship calculation is based on the number of athletes in a program (Buzuvis, 2023, in this issue; Staurowsky et al., 2022). Women athletes have yet to be afforded athletic participation opportunities proportional to enrollment, a shortfall representing more than 81,000 missed athletic opportunities for women college athletes across all divisions and athletic associations in 2019-2020. As a consequence, their access to athletic scholarships is further undermined (Buzuvis, 2023, in this issue).

The economic advantage accorded to men athletes as a result of the inequity in the system is considerable. During the 2019-2020 academic year, men athletes competing at two- and four-year institutions across the country received \$252 million more in athletic scholarships compared to women athletes. If athletic programs at those schools had offered participation opportunities to women proportional to their

enrollment, “. . . they would have had to award an additional \$750 million in athletic scholarship assistance” (Staurowsky et al., 2022, p. 11). Commenting on the impact this kind of inequity has on women college athletes, Neena Chaudry, general counsel for the National Women’s Law Center, observed:

For many athletes, an athletic scholarship can make the difference between being able to go to school or not. In addition to sending a message to women about how they’re valued, this is real money that makes a real difference in people’s lives (Jacoby et al., 2022, para. 19).

Beyond the gender inequities in available athletic participation opportunities and athletic scholarship support, there are other areas of note system-wide that have drawn attention. In terms of recruiting, of the more than \$241 million expended in 2019-2020 by athletic departments in two- and four-year institutions, just over 30% of that was invested in finding the best talent for women’s teams (Staurowsky et al., 2022). In terms of compensation in 2019-2020, coaches of men’s college teams received more in compensation in every division across athletic associations. While the gaps in salary allocations were smaller in non-football playing divisions, no division compensated the head coaches of women’s teams equally or more as a general trend compared to head coaches of men’s teams. As a matter of magnitude, in the NCAA’s most elite division, the FBS, of the nearly \$1 billion expended on head coach salaries, 81% was awarded to head coaches of men’s teams with the remaining 19% allocated to head coaches of women’s teams (Staurowsky et al., 2022).

In terms of allocation of resources expended on supporting women’s athletic programs offered by colleges and universities,

Of the more than \$14 billion spent on athletic programs at the NCAA Division I level in 2018-19, 46% was spent on men’s programs (\$6.5 billion+), 22% on women’s programs (\$3 billion +), less than 1% on coed programs (\$5 million +), and 32% (\$4.5 billion+) to non-gender-specific allocations. Expenditures in men’s programs are more than twice what they are for women’s programs) (Staurowsky et al., 2022, p. 40).

## **History of the Equity in Athletics Disclosure Act**

Events occurring in the early 1990s converged in a particular way to lay the groundwork for a discussion that would eventually lead to the proposal and passage of the Equity in Athletics Disclosure Act. As Title IX’s 20<sup>th</sup> anniversary approached in 1992, the NCAA was under fire from members of the U.S. Congress and the general public on a number of issues pertaining to equity and fairness. Studies at the time revealed low graduation rates among football and men’s basketball players compared to other athletes and students with several former college athletes testifying before Congress that they were functionally illiterate (Southall, 2014). An enterprise flush with financial resources from a newly negotiated men’s basketball tournament contract with CBS for an unprecedented \$1 billion was claiming that its ability to address racial and gender equity issues was hampered by budget limitations (Cooper et al., 2014; Staurowsky, 1996). The effectiveness and fairness of the NCAA’s

enforcement process and procedures were called into question with the creation of the Federation for Intercollegiate Fairness and Equity (FIFE), a coalition of state and federal legislators, current and former college coaches and athletes, and journalists, who were calling for federal intervention (Schmidtke, 1991). The issues raised about the NCAA's enforcement process at that time included criticisms that there was an imbalance in terms of the targets of investigations, penalties for wrongdoing punished the innocent, and a lack of a meaningful appeals process (Goplerud, 1991; Pernell, 1991; Schmidtke, 1991).

In the two years leading up to the proposal of the Equity in Athletics Disclosure Act in 1993, the Subcommittee on Commerce, Consumer Protection, and Competitiveness of the U.S. House of Representatives Committee on Energy and Commerce hosted a series of hearings on college sport. Topics covered in those hearings included “. . . graduation rates of college athletes, problems faced by historically black colleges and universities, the fairness of the National Collegiate Athletic Association enforcement procedures, and gender equity” (Transcript, Hearing on Title IX's Impact . . ., February, 1993, p. 5).

In terms of gender equity, 20 years after Title IX had been passed only one NCAA Division I athletic department, Washington State University (WSU), was offering equal athletic participation opportunities and equal athletic scholarship support to women's sports. Washington State, however, was no hero in this regard. It was positioned to emerge as the only big-time college athletic program in the country to be in compliance with Title IX's requirements because its own women athletes sued them and won (*Blair v. Washington State University*, 1987). After losing the case, WSU was then compelled to comply with Title IX (Jordan, 1992). As then WSU assistant athletic director, Harold C. Gibson admitted, the institution had not been disposed to complying with Title IX voluntarily. He stated, "We were dragged kicking and screaming into the forefront" (Jordan, 1992, para. 12).

This growing recognition in Title IX's 20<sup>th</sup> anniversary year that schools were not complying was amplified for higher education officials when the U.S. Supreme Court rendered a decision in *Franklin v. Gwinnett County Public Schools* in February of 1992. When schools failed to respond to intentional sex discrimination, those subjected to that discrimination could seek monetary damages for the harms suffered (Jordan, 1992; Wright, 1992).

Pressure from the threat of Congressional oversight had prompted then head of the NCAA, Dick Schultz, to initiate an NCAA Gender Equity Study. With 646 colleges participating, the results confirmed that there were system-wide gender inequities. As Congresswoman Collins noted in her opening remarks in the February 1993 hearing, "The fact remains that, 20 years after passage of Title IX, men continue to dominate all areas of collegiate sports. They get the lion's share of the athletic scholarships, coaching salaries, and operating expenses" (Transcript, Hearing on Title IX's Impact . . ., February, 1993, p. 5).

Findings from the NCAA's study of gender equity in intercollegiate athletic programs revealed that women athletes in 1992 had access to 30% of athletic participation opportunities, despite the fact that women comprised 50% of the under-

graduate population. In the area of expenditures, women athletes received 30% of athletic scholarships while 23% of operating budgets and 12% of recruiting dollars were allocated to women's programs (NCAA Gender Equity Study, 1992; NCAA Staff, 1993). Commenting on those findings, associate athletic director and senior women's administrator at the University of Connecticut, Pat Meiser-McKnett, said: "Those numbers confirm everything that anyone who's operated in Division I athletics long suspected . . ." (Garber, 1992, para. 11).

The NCAA's executive director at the time, Dick Schultz, avoided admitting that the survey offered evidence of systemic non-Title IX compliance, preferring to refer to the findings as broad areas of gender inequities.<sup>1</sup> He did, however, concede that "While the study was not designed with a view to measuring Title IX compliance by institutions, much of the data did, in fact, provide a basis for analysis. That analysis was disturbing" (NCAA Staff, 1993, para. 4). Schultz was called out by Congresswoman Collins in the 1993 hearing for reporting that the NCAA membership had taken a "wait until next year" attitude toward addressing gender equity. Collins went on to say ". . . while he thinks the Association has a moral obligation to promote gender equity, he believes, and I quote, 'It is virtually impossible to try to put legislation in place to deal with gender equity'" (Transcript, Hearing on Title IX's Impact . . ., February, 1993, p. 6). Part of the rationale contributing to a belief that it was impossible to pass rules regarding gender equity within the NCAA at that time stemmed from an ongoing perception that men's sports, most particularly the sport of football, would be diminished or eliminated. In response to that, Collins went on to say,

I find it curious that the NCAA is quick to write rules to regulate student behavior but considers it impossible to write rules to end discrimination against women even though women's sports have been part of the NCAA for 10 years. Why is it that when a group asks for equal rights the dominant group's first reaction is defensive; the second reaction is to interpret equal rights for one group as diminished rights for another; and finally, to stall and stall and stall? (Transcript, Hearing on Title IX's Impact . . ., February, 1993, p. 6).

While the record showed that colleges and universities felt little pressure to comply with Title IX, Congresswoman Collins pointed out that the governmental agency

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1. The NCAA's navigation around its own responsibilities under Title IX may have contributed to the express focus on "gender equity in college sport" rather than "Title IX compliance in college sport". This question of whether the NCAA itself is obligated under Title IX is one that is increasingly drawing attention from federal lawmakers. The NCAA has relied on a narrow ruling in *Smith v. NCAA* (1999) to argue that the Association is not subject to Title IX. Following the release of photo and video evidence of blatant gender inequitable treatment to which women athletes were subjected during the NCAA's Division I Women's Basketball Tournament in 2021, and a subsequent investigation revealing systemic gender discrimination within the NCAA itself (Kaplan Hecker & Fink, 2021), bills like the Gender Equity in College Sport Commission Act (Dellenger, 2022) and the Fair Play for Women Act have been proposed. The Fair Play for Women Act includes a provision that would "Hold athletic programs and athletic associations like the NCAA more accountable for Title IX violations and discriminatory treatment" (U.S. Senator Murphy's Staff, 2022, para. 9).

responsible for Title IX oversight, the U.S. Department of Education Office for Civil Rights (OCR), had also fallen short in executing its obligations. The Commerce Subcommittee's consideration of the issue of Title IX and gender equity in the nation's colleges and universities was happening during a presidential transition as newly elected President Bill Clinton assumed office in 1993, following President George H. W. Bush. Collins noted in her opening remarks that the enforcement record of the OCR under the Bush Administration had been, in her words, "woeful". She expressed a belief that with the new administration, there would be increased impetus to do a better job, observing that "Twenty years is too long to wait for enforcement of a law passed by Congress. It's clear that neither the NCAA nor colleges are going to do the right thing any time soon" (Transcript, Hearing on Title IX's Impact . . . , February, 1993, p. 7).

Collins announced she was introducing a bill modeled after the Student Right to Know Act (an act that required disclosure of information about graduation rates) and the Campus Security Act (requires disclosure regarding incidents of crime on college campuses). She considered the EADA to be ". . . the first step to increase compliance with Title IX" (Transcript, Hearing on Title IX's Impact . . . , February, 1993, p. 7). The purpose of the bill as she described it was to ". . . provide prospective students and the public with specific information on each school's efforts to provide gender equity and fairness for all of its students" (Transcript, Hearing on Title IX's Impact . . . , February, 1993, p. 7). Proposed on February 17, 1993, H.R. 921, titled the Equity in Athletics Disclosure Act, called for the Higher Education Act of 1965 to be amended so as to ". . . require institutions of higher education to disclose participation rates, and program support expenditures, in college athletic programs" (para. 1). The EADA was enacted into law in 1994 with the first reports generated in 1996. The EADA applies to schools that are co-educational, offer intercollegiate athletic programs, and participate in a federally funded financial aid program (through Title IV of the Higher Education Act) (National Women's Law Center, 2015). Schools are required to complete the report on an annual basis, not later than October 15 of the reporting year. The federal agency charged with oversight of the EADA is the United States Department of Education. "Violations of the EADA are punishable by a variety of sanctions, including possible fines, limitations, suspension, or termination of participation in Title IV HEA programs" (National Women's Law Center, 2015, p. 107).

## **What the EADA Report Covers and Who Uses It**

The purpose of the EADA is to inform interested stakeholders about how colleges and universities allocate resources to support men's and women's athletic programs. In keeping with that purpose, the EADA report requires schools to provide the following information:

- Undergraduate enrollment data by gender
- Number of athletic participation opportunities by gender
- Number of teams offered for men, women, and mixed-gender teams

- Number of athletes by gender
- Percent and amount of athletically-related financial aid distributed by gender
- Amount of recruiting dollars allocated by gender
- Number of head, assistant, part-time, and volunteer coaches
- Salaries of coaches reported in the aggregate and by full-time equivalent (FTE) average
- Game day expenses by sport and gender, and;
- Total expenses and revenues by gender as well as non-gender specific allocations.

Those completing the report may provide caveats to explain year-to-year changes in the data or to elaborate more fully on certain data categories where they deem helpful and appropriate. In order to achieve the goal of public accountability, the U.S. Department of Education Office of Postsecondary Education (OPE) curates a database that contains the information schools provide through the EADA survey and makes that information available online through the Equity in Athletics Data Analysis Cutting Tool.<sup>2</sup> As the U.S. Department of Education (USDOE) explains, “This analysis cutting tool was designed to provide rapid customized reports for public inquiries relating to equity in athletics data. The data are drawn from the OPE Equity in Athletics Disclosure Website database” (U.S. Department of Education, 2023a). As of this writing, the Equity in Athletics Data Analysis Cutting Tool contains data for reporting years 2003-2004 through 2020-2021 (U.S. Department of Education Office of Postsecondary Education, 2023b).

Given the intention of the EADA to help members of the public assess whether colleges and universities are investing equitably in athletic programs for men and women, the EADA report is available not just through the Equity in Athletics Data Analysis Cutting Tool. Any prospective student wishing to see the report must be informed of their right to do so by institutions. Requests for the report from prospective and current students and members of the general public must be responded to in a timely fashion. Institutions may not deny requests to members of the news media, nor are they permitted to charge a fee for the report or require individuals who wish to review the report to physically visit their campus (U.S. Department of Education Office of Federal Student Aid, 2021).

While the USDOE does not track the number of times the EADA Website is accessed or the number of requests that schools receive for EADA data, there is evidence that EADA data is used by researchers and litigators. As the director of Empirical Analytics in the Department of Economics at the University of Utah, Ted Tatos (2019) identified data collected from EADA surveys is one of the two most common publicly available data sources on intercollegiate athletics finances (the other being data from NCAA Financial Reports obtained by *USA Today* through public records requests). Tatos (2019) further noted that like other data sources, individuals

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2. The U.S. Department of Education uses a private research company, Westat, to run the Equity in Athletics Data Analysis Cutting Tool and the actual survey registration and data collection.



interpreting the data need to understand both the advantages of the data set they are using and be clear in terms of what their research goals are.

To this point, EADA data offer insight into decisions made by athletics administrators as to how resources are allocated but data provided in an EADA report by itself is not determinative of Title IX compliance. This reality is addressed on the EADA Website, which cautions under the banner of “EADA and Title IX Compliance” that

The data collected in this survey are provided by institutions in accordance with the EADA and may not be the same as data used for determining compliance with other Federal or state laws, including Title IX of the Education Amendments of 1972 (USDOE, 2023b, para. 4).

In effect, the EADA provides access to information to raise questions about what an athletic department is doing in terms of resource allocations and Title IX compliance. Because Title IX compliance is determined on a case-by-case basis, the onus falls on an institution to explain whether and how it is complying with Title IX (Staurowsky et al., 2022).

EADA data, along with other information garnered from online rosters and other publicly available resources, has been used by investigative reporters, Title IX experts, and researchers to question, among an array of issues, the veracity of claims made by schools relative to the offering of participation opportunities (de Leon, 2016). By way of example, in an analysis of EADA data for 127 of the top football-playing institutions in the country for the academic year 2020-2021, Axon and Schnell (2022) found that 87% of those institutions did not provide athletic opportunities to women proportional to enrollment. Although schools can still meet Title IX requirements in the athletic participation area by demonstrating that they have a history and continuing practice of program expansion (meaning that athletic participation is not proportional but the institution is addressing the issue) or that the institution has met the needs of interested and qualified women athletes through the current athletic offerings, the fact that women athletes continue 50 years after the passage of Title IX to be afforded disproportionately fewer opportunities compared to men athletes is strongly suggestive of system-wide non-compliance. For 110 of the schools reviewed in the Axon and Schnell (2022) analysis, schools would need to add 11,501 opportunities. Per school, that would require on average adding 104 opportunities for women athletes per school. In athletic terms, that translates into three or four teams per school. Notably, annual reports submitted under the EADA are used at the local institutional level by student writers at colleges and universities to examine gender equity within their athletic programs, to raise questions about how decisions are made on their campuses, and to educate their own communities (Aferiat, 2018; Glunt, 2021; Long, 2020; Morgan, 2022; Mulkey, 2022; Skarboviychuk, 2021).

Consistent with the public accountability goal of the Equity in Athletics Disclosure Act, organizations like Champion Women (Champion Women Communications, 2022) and the Women’s Sports Foundation (Staurowsky et al., 2022) have drawn upon EADA survey data to generate reports on the status of gender equity ef-



forts within the college sport sector. And EADA data have been used by both women and men athlete plaintiffs seeking relief from gender discrimination under Title IX (*Balow v. Michigan State University et al.*, 2022; Bryant, 2021; *Ohlensen v. University of Iowa*, 2020; *Robb v. Lock Haven University*, 2019).

For an industry that is often criticized for its lack of transparency (Krishnan, 2018, Marsigliano, 2020), data gathered through the EADA by itself or in tandem with other data sets such as the NCAA Membership Financial Reports, have been used to shed light not only on gender equity issues but also more broadly on the industry itself. A critical aspect about the EADA data collection is that it is longitudinal, starting in 1996 and occurring thereafter on an annual basis, interrupted only once for some schools during the COVID-pandemic that spanned the spring of 2020 through 2021. The results of the EADA are required by law to be publicly available.

Demonstrably, EADA data provided a foundation for athlete plaintiffs and campus communities to challenge administrators who attempted to cut athletic programs in violation of Title IX during the COVID crisis. Following an announcement that seven sports were to be cut at William and Mary (three men's and four women's teams) despite historically falling short of Title IX's expectation across a range of issues from athletic participation opportunities, athletic scholarship allocation, and fair treatment in operational areas (uniforms, travel, accommodations), the ability of plaintiffs and lawyers to draw upon public records aided in an eventual acknowledgment that the cuts to women's programs had exacerbated Title IX non-compliance. The end result was the reinstatement of the four women's teams, the addition of a new women's team, and a commitment to remedying persistent inequities that had existed for decades (NBCSports Staff, 2021). Between 2020 and 2022, similar results occurred on behalf of both women and men athletes alleging discrimination under Title IX and other laws (such as Title VI) at Brown University, Dartmouth College, Dickinson College, East Carolina University, La Salle University, the University of North Carolina at Pembroke, and the University of St. Thomas (Bailey Glasser, 2021).

In a time when big-time athletic programs are exploring avenues to sidestep open-records laws, the public disclosure requirement mandated by the EADA may prove to be increasingly important moving into the future. Illustrative of this point, when *Washington Post* reporters Emily Giambalvo and Rick Maese (2021) sought access to communications among presidents and chancellors of Big Ten institutions about their deliberations regarding football's return to play in the fall of 2021 during the COVID-19 pandemic, the reporters discovered that the Big Ten chief executive officers had deliberately moved their communications (exchanges, record-sharing) to a protected Big Ten platform, out of public view.

## **Criticisms and Limitations of the EADA**

As useful as the EADA report is, it has been the subject of criticism over time. In this section, some of the most persistent criticisms are explored and critically examined.

### **Criticism 1. The EADA Falls Short of Its Intention to Inform Prospective and Current Students**

On its face, the notion that prospective athletes still in their teen years who are going through that critical transitional period of their lives from high school to college, confronted with what is often one of the biggest decisions they have had to make up to that point, would a) know about the Equity in Athletics Disclosure Act, and b) feel compelled to read a data-dense report without any background or training might test credulity. In effect, the logic might suggest that the idea is good (educate athletes about their rights which have been routinely violated over the span of decades), but the implementation is bad (if an athlete has no history or context to appreciate where the EADA came from or what Title IX is, the compelling motive to pay attention is absent).

Vice president and general counsel for the American Council on Education, Sheldon Steinback, was particularly critical of the premise behind the EADA. In 2005, he observed,

Please. Student-athletes, male or female, who are seeking a full-ride scholarship at a Division I school will look at a lot of things . . . They will look at the training facilities. They will look at the size of the stadium. They will look at what meals are served at the training table. They will be influenced dramatically by who the coach is. But the last thing any of them would think to look at is financial data filed with the federal government (Brady, 2005, para. 10).

The common-sense perspective offered has some validity but ignores the fact that the mechanisms that were in place to foster an understanding about Title IX as it applies to schools in general and athletics in particular, as well as the EADA, have largely been disabled for decades. Historically, schools may suffer some public embarrassment if they fail to comply with Title IX and/or the EADA, moments generally revealed through investigative reporting efforts, and may lose in court, drawing attention to a laissez-faire attitude toward compliance, but schools have not been sanctioned in meaningful ways by the Federal government for failing to meet their obligations under Title IX and/or the EADA.

Each school obligated to abide by Title IX requirements was required to appoint a Title IX coordinator responsible for overseeing compliance, creating grievance procedures, and educating constituents about Title IX requirements no later than June of 1976. Schools were slow to appoint Title IX coordinators and empower them with the support they needed to execute their responsibilities (National Coalition of Girls and Women in Education, 2017). As late as 2017, during Title IX's 45<sup>th</sup> anniversary year, the National Coalition of Girls and Women in Education reported that schools still were not designating Title IX coordinators, and many were also not providing the necessary resources to ensure that Title IX coordinators had the training and/or authority to do their jobs (Nowicki, 2017; Staurowsky & Rhoads, 2020).

The disabling of mechanisms to routinely educate constituencies (e.g., athletes, coaches, parents) about Title IX as it applies to athletics has resulted in those most impacted by the legislation knowing very little about Title IX's athletics require-

ments or the EADA (Staurowsky, 2011; Staurowsky & Weight, 2011, 2013; Staurowsky et al., 2017). In one of the largest studies of Title IX knowledge among college coaches (n=1,093), 83% were found never to have received any formal training about Title IX as part of preparation for their jobs (Staurowsky & Weight, 2011). After surveying college athletes (n=1,303) about Title IX, Druckman, Gilli, Klor, and Robinson (2014) identified the “starkest finding is the evident lack of knowledge among athletes about the content and target of Title IX . . .” (para. 29). In a study assessing Title IX awareness among NCAA Division I and III athletes (n=210), 40 percent indicated that they did not know what Title IX was (Staurowsky et al., 2017).

In a study of those responsible for Title IX compliance efforts within NCAA Division I athletic programs in 2020 (n=90), there was relatively low outreach to athletes and coaches about Title IX matters. Among respondents, 11 percent indicated they met athletes from their advisory committees once a year along with their institutional Title IX compliance officer; 13 percent reported that they developed educational training for coaches; and 9 percent reported that they developed educational training for athletes (Staurowsky & Rhoads, 2020). Only 2-3 percent of respondents indicated that they provided athletes and coaches with education about the EADA (Staurowsky & Rhoads, 2020).

## **Criticism 2. EADA is a Cumbersome Report that Imposes a Burden on Schools**

Under the George W. Bush Administration, Title IX’s impact on athletics was reviewed by the Secretary of Education’s Commission on Opportunity in Athletics (2003), which conducted its work between 2002 and 2003. One of the recommendations considered by the Commission, which ultimately failed to receive support, was the repeal of the Equity in Athletics Disclosure Act. Support for repealing the EADA stemmed from a belief that the reporting requirement was “overly burdensome, subjective and cumbersome” (Brady & Upton, 2005, para.12). As then president of the Pennsylvania State University, Graham Spanier, argued in a December 2002 meeting of the Commission,

If you totaled up the bill of what we are all spending on these reports that go to the Department of Education, it's probably a couple of hundred thousand dollars per institution. If we did away with all of the reports, we could add another women's sport. I'm dead serious about that (as quoted in Brady & Upton, 2005, para. 5).

While the governmental expectation that colleges and universities complete the EADA report on an annual basis has been met over the years with criticisms that it is a burden to complete, according to the Paper Burden Statement,

the Campus Equity in Athletics Disclosure Act (EADA) Survey Public reporting burden for this collection of information is estimated to average 5.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of information (Cerny, 2022, para. 1).

One might ask just how onerous of a task completing the EADA could be for any

institution that was already attesting to Title IX compliance. If schools claim that they are in compliance with Title IX, something that they need to do in order to retain their eligibility to receive federal financial assistance, then reporting out the information requested by the USDOE in the EADA should be accessible with little to moderate additional effort. As a matter of determining Title IX compliance, and for other federal reporting requirements, schools track their undergraduate enrollment and allocations of financial aid (athletically related or not). From a budgetary perspective, schools know what their allocations of budget resources are in supporting recruitment efforts for athletes and other operational areas.

Deconstructing the claims that the EADA report is an onerous task that imposes difficulty on an institution may hint at the fact that an institution is not actually taking its obligations under Title IX seriously. In the absence of the EADA, there would be no national repository of publicly available information about college and university athletic programs and their provision of athletic opportunities and allocation of resources on the basis of gender.

### **Criticism 3. EADA Data is Limited**

As Tatos (2019) noted in his assessment of the EADA, reports have different purposes and there are other reports, such as the NCAA Membership Financial Report (MFR), that provide a fuller accounting of college and university athletic department budgets at the NCAA Division I level. From an NCAA perspective,

The EADA report is a governmental report that is geared towards Title IX analysis, whereas the NCAA Membership Financial Report is geared toward institutional performance for comparison purposes with like institutions or within a conference. The EADA report may not match the NCAA Membership Financial Report (NCAA AUP and Financial Reporting FAQs, 2022, p.1).

There is a legitimate issue with the fact that the EADA does not provide a full and complete accounting of athletic department revenues and expenses. In point of fact, the definitions used for the EADA report are narrow. For example, capital expenditures (stadium expansions, new building projects, renovations of locker rooms), guarantees paid to opposing teams, and various other expenditures are not included (National Women's Law Center, 2015). The way in which revenues are calculated for the report forecloses on an opportunity to report profits per se:

Because the EADA requires reporting of total revenue, rather than net revenue, it is not possible to determine from the disclosure reports whether a program is actually profitable. Moreover, because the expenditures required to be disclosed under the EADA do not reflect the actual costs of operating athletics programs, such as facilities maintenance and improvements, crowd control, concession costs, appearance fees, capital expenditures and overhead costs, the disclosure reports tend to make many programs look more economically viable than they actually are (National Women's Law Center, 2015, p. 106).

Over the years, athletic directors have lamented what they perceive to be the inadequacy of the EADA. In 2003, Stanford athletic director, Ted Leland, found the limitations of the EADA to be problematic because schools employ a variety of methods when accounting for what is happening not just in athletic department budgets but institutional budgets generally (Brady & Upton, 2005). That very variability explains in part why the EADA devised narrow definitions in terms of how to account for revenues and expenditures. Upon questioning, schools have every opportunity to elaborate further on how they distribute resources but the EADA provides a snapshot in time to begin an inquiry or conversation.

It is notable that the NCAA pursued a strategy with the EADA similar to what the Association did with the Student Right to Know Act, an act that created the federally mandated requirement that schools generate graduation rate reports providing information on how college athletes receiving athletic scholarships compare to the undergraduate student population and how athletes in different sports compare to each other by gender and race. In the early 2000s, the NCAA devised a different graduation rate than that used by the federal government, one that the Association claims would more accurately reflect undergraduate enrollment and transfer patterns. The NCAA's metric is called the "graduation success rate".

As Southall (2014) has written about, this effort to create a new metric was part of a rebranding strategy by the NCAA to counter public criticism that the educational bargain promised to athletes as part of the athletic scholarship agreement was not being fulfilled. The NCAA's graduation success rate has allowed the organization to repeatedly publish reports and make claims that athletes continue to graduate at record rates and yet since this is an athletic-population-focused metric that offers no comparison to the larger full-time undergraduate population, offers an inflated view of college athlete graduation rates, particularly within the profit-generating sports of football and men's basketball. Using a metric called the Adjusted Graduation Gap (AGG), college football players were far less successful over a 12-year span of time to graduate when compared to full-time men undergraduates with the largest gaps in graduation happening among Black football players (Corr et al., 2022).

The NCAA's counter to the EADA was the Member Financial Report Survey (MFRS). In contrast to the EADA, the MFR is an audited report that "... likely does provide the most extensive coverage of the athletic department financials of member institutions" (Tatos, 2019, p. 415).

There are two key distinguishing features about the MFR that reveal the resistance the athletic community has to public disclosure. The first is the fact that there is no central place where the public can go to review these reports. For MFRs generated by public institutions, those so motivated may be able to obtain them through public records requests, requests that would need to be made to each institution. And second, approximately 35% of NCAA Division I institutions are private, thus their MFRs are not available unless those schools opt to voluntarily disclose them, a prospect that has historically not happened (Tatos, 2019).

The NCAA has at times taken the additional step of suggesting that data gathered from the EADA is flawed. In 2018, then NCAA Managing Director of Research,

Todd Petr, testified in a lawsuit against the NCAA that he regarded data gathered from the EADA to be “unreliable” (Tatos, 2018, p. 433). As Tatos (2019) rightly pointed out, data from the EADA is not flawed or unreliable but simply different. As he explained in terms of appreciating what a data set offers, a hammer is not unreliable if criticized when put to the wrong use, for example, using one to install a screw. A screwdriver and a hammer are both construction tools with each having a legitimate purpose.

Sorting through the fog around the EADA coming from the NCAA and athletic administrators reveals the fact that there is general resistance to public transparency in terms of athletic department practices and budget allocations. In 2018, U.S. Representatives David Price (D-NC) and Tom Petri (R-Wis.) introduced the Standardization of Collegiate Oversight of Revenues and Expenditures Act, also known as the SCORE Act (H.R. 5110). The bill called for 1,700 colleges and universities, including private institutions, to make their MRFS reporting of revenues and expenses on a sport-by-sport basis available to the public. The bill also proposed to extend public financial disclosures to the NCAA, conferences, and bowl entities (Berkowitz, 2014). In the end, the bill garnered considerable pushback from the very officials who criticized the limits of the EADA.

#### **Criticism 4. EADA Mistakes v. Manipulation**

In the course of discussions as part of the Commission on Opportunities in Athletics, then Assistant Secretary of Education, Sally Stroup, shared “The Education Department does not use the report and cannot verify the data that colleges publish under it” (Suggs, 2005, para. 18). While the U.S. Department of Education does encourage schools to check the accuracy of the data shared in the EADA survey before submitting, errors have been found.

A 2005 investigation of EADA data for 2003 and 2004 by *USA Today* reporters Jodi Upton and Erik Brady (2005) revealed that “Of the nation’s highest-profile athletic programs, more than 34% had at least one error . . . The errors range from a few dollars to a \$34 million data-entry mistake in the University of Texas report” (para. 2). Errors could occur as a result of a typographical error, misreading a column of numbers, lack of familiarity with the form itself, putting a number in the wrong column, or miscalculating.

A persistent question with the EADA is when data errors are due to benign reasons (mistakes) versus deliberate attempts to be misleading. This question has often surfaced as a result of a pattern of errors found in data submitted for athletic participation opportunities and the number of athletes. An examination of data submitted for the 2018-2019 academic year by 107 of the public schools in NCAA Division I FBS Division, cross-checked with information obtained through public records requests (e.g., internal athletic department squad lists) and other publicly available information (such as online rosters), revealed “. . . widespread use of roster manipulation across many of the nation’s largest and best-known colleges and universities” (Jacoby, 2022, para. 1).

Beyond discrepancies across data sources, Title IX athletics experts for years have been aware of the methods used to distort numbers to make it appear that the athletic opportunities offered by colleges and universities were more favorable to women than they actually are, including double-or triple-counting women athletes; including men who practice with women's teams as women; and the padding of women's rosters either by carrying large rosters that exceed a reasonable expectation of competing or including injured athletes who are not able to compete<sup>3</sup> (Lopiano, n.d.). It should be noted that all three of these methods are permitted under the definitions that govern accounting of athletic participation opportunities in the EADA. In response to an analysis of roster manipulation on the part of colleges and universities in 2011, former U.S. Secretary of Health and Human Services who was serving then as president of the University of Miami, Donna Shalala, commented: "Those of us in the business know that universities have been end-running Title IX for a long time, and they do it until they get caught" (Thomas, 2011, para. 8).

Evidence of all three of those data manipulation methods was found in the *USA Today* analysis of athletic participation opportunities as reported for the 2018-2019 academic year. Under the EADA, there is nothing that prevents a school from double- and triple-counting women athletes. Thus, for a sport like track and field, a middle-distance runner (one athlete) may be counted three times because of their participation in cross country, indoor track, and outdoor track. When schools maintain their women's cross country and track and field programs as varsity but label one or more of their men's cross country and track and field programs as club, there is an appearance that the overall women's participation opportunities are better than what they actually are (the women are counted as varsity athletes; the men are not). The impact this has can be dramatic. As reported by *USA Today*, the double- and triple-counting of women athletes resulted in an additional 2,252 women's roster spots in 2018-2019 (Jacoby, 2022).

In terms of padding women's rosters, 27 schools reported rosters averaging 87 women per team in the sport of rowing. Those roster counters were more than double the maximum number allowed at most conference championships (Jacoby, 2022). The accumulated effect of that inflation amounted to at least 838 women rowers occupying spots that afforded little actual competition opportunity. In turn, the counting of men athletes skews the reporting of athletic opportunities for women in the EADA. By way of example, 52 out of the 107 EADA reports reviewed for NCAA Division I institutions revealed that 25% of the athletic participation opportunities in the sport of women's basketball, or one in every four, actually represented an opportunity in which a man participated. Although the EADA does provide space for schools to provide an explanation regarding men practice players, and some do, those unfamiliar with the report are likely not to be aware of this and not look to check. Further, if a school does not report men practice players then those numbers might be buried within the overall count. In actual numbers, 601 men athletes who

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3. Schools have also been found to create "phantom" participation opportunities, meaning a number of spaces are created on a roster with the full understanding that a woman athlete will not actually fill that space.



practiced with women's teams were counted as women athletes that year (Jacoby, 2022).

## Conclusions and Recommendations

When considered in light of the fact that colleges and universities have persistently failed to comply with Title IX in the athletics area for five decades (Bushnell, 2022; Hogshead-Makar, 2022; Staurowsky et al., 2022; *USA Today* Staff, 2022), the motive behind the EADA, a consumer protection measure was, as Congresswoman Collins pointed out in 2005, “. . . to make it easier for anyone to judge whether schools were treating athletes fairly” (Upton & Brady, 2055, para. 19). Viewed through the simplicity of that lens, the design of the report makes sense. Even if one is not an expert on Title IX, a cursory examination of an EADA report will offer certain insights into how an athletic department operates. A reader of the report may wonder why men athletes receive more athletic opportunities compared to women athletes; why men's operating budgets are larger than those for women; why men's sports have more head and assistant coaches and those coaches are paid more; why men athletes receive more money in athletic scholarship assistance; and why more money is spent on recruiting for men's sports than for women's sport. The EADA is not a Title IX audit but a compliant institution should readily be able to explain these systemic trends and offer defensible reasons as to why resources are allocated disproportionately to support men's sports. These trends by themselves are not enough to determine Title IX compliance but in a system that is segregated by gender, and where there has historically been exclusion, discrimination, lack of enforcement, and lack of transparency, public access to information remains crucial to achieving the ultimate goal of the legislation, that is a college sport system that is free from gender discrimination.

The 50th anniversary of Title IX offers an opportunity to acknowledge the value of the EADA but also to recognize its limitations. There are ways that the EADA could better fulfill its purpose of serving as a consumer information and protection mechanism and a mechanism for fostering greater transparency and accountability. Recommendations for strengthening the EADA as a data-collection instrument from the Women's Sports Foundation (Staurowsky et al., 2022)<sup>4</sup> include the following:

- “The U.S. Congress and the U.S. Department of Education should adjust the Equity in Athletics Disclosure Act (EADA) and its regulations so that the annual data it requests on its form fully encompass the practices of athletic departments in order to comprehensively assess gender equity practices, including the reporting of information about an institution's athletics-related capital as well as operating expenses” (Staurowsky et al., p. 64). This would require an expansion of the EADA's methodology and definitions but would address criticisms that the information as reported is too narrowly focused.

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4. Recommendations in the Women's Sports Foundation report on 50 Years of Title IX were developed in collaboration with Libby Sharrow, a researcher at the University of Massachusetts-Amherst.

It is clear, given that the NCAA collects these data through the MFR survey that it would not create a further reporting burden for schools.

- “The U.S. Department of Education should establish an external audit system to promote public confidence in and full accuracy of EADA reports. Such an auditing system would hold institutions accountable to the data reported; provide a mechanism for sanctioning institutions that fail to take their reporting obligations seriously; and better serve the public in general” (Staurowsky et al., 2022, p. 64). While Tatos (2019), in his comparison of EADA and NCAA MFRS data, found that even with audited reports there are errors, this would be an additional step to signal to schools that suffer no penalty at present for publishing inaccurate and/or misleading information that the stakes have been raised. In the alternative, schools should be required to have the report externally audited before submission.
- “U.S. Congress should pass legislation extending similar EADA intercollegiate disclosure requirements to primary and secondary school districts where schools sponsor interscholastic athletic programs, in order to promote transparency and enforcement of Title IX at the elementary and secondary level of education. This should include disclosure of information regarding participation, expenditures, and budgets to help make public full information about the status of Title IX implementation and the equitable treatment of girls in sport” (Staurowsky et al., 2022, p. 65). Given the lack of Title IX and EADA education in schools, extending national data collection efforts into the primary and secondary level would prompt greater public engagement at those levels that would carry forward generationally.

From the perspective of making the data gathered by the EADA more accessible to those who can benefit the most from it, the presentation of the data to the public could be improved through the creation of a data visualization feature within the EADA Website. As a case in point, a quick tutorial on Title IX’s three-part test of compliance as it is applied to athletic participation opportunities along with disclosure from schools as to which part or parts of the test they comply with would be instructive from a public access and accountability perspective.

The first part of the three-part test to assess whether athletic participation opportunities are being offered fairly is called substantial proportionality. A school needs to demonstrate that it is offering athletic participation opportunities to men and women proportional to the representation of men and women in the undergraduate student population. If a school does not meet this part of the test, it needs to demonstrate if athletic interest has been met either by showing a history and continuing practice of program expansion (meaning that athletic participation opportunities have been added over time and on a continuing basis to address shortfalls for the underrepresented sex) or that the athletic participation opportunities offered fully and effectively accommodate the existing interests of athletes who are qualified to participate (Staurowsky et al., 2022). One of the ways that the EADA could be made more user friendly is for the substantial proportionality figure to be calculated for the user so they would not have to find the data themselves and learn the calculation. If

the system shows a gap in athletic participation opportunities that favors one gender over the other disproportional to their enrollment, the notation by the school of what other part of the test they are using to comply with this standard would increase public accountability but also make the EADA data more usable and accessible.

Whether through the EADA or the enactment of other federal legislation, it is clear that there is a need for greater transparency in terms of the business practices employed by colleges and universities in the running of athletic departments. Thus, support for legislative initiatives such as the Standardization of Collegiate Oversight of Revenues and Expenditures (SCORE) Act and the Fair Play for Women Act would support and supplement the data gathered through the EADA. U.S. Senator Christopher Murphy (D-CT) re-introduced the SCORE Act in April of 2021, citing examples of how women college athletes were routinely treated as second-class citizens. Referencing events that occurred during March Madness in 2021, where social media posts from players and coaches captured profound gender inequities in terms of accommodations, training facilities, venues, health and safety measures for COVID, and food for NCAA Division I women college, he commented:

One of the ways we can help fix this problem is by shedding a light on how the NCAA and its members manage the billions they generate in revenue every year. The SCORE Act would shine a bright light on college sport finances, by requiring the NCAA, athletic conferences, and all colleges with Division I athletic programs to report far more data about their finances and provide the transparency that's desperately needed to fix the inequities and broader issues in college sports (U.S. Senator Murphy's Staff, 2021, para. 3).

The Fair Play for Women Act, also introduced by Senator Murphy and co-sponsored by U.S. Representative Alma Adams (D-NC) in December of 2022 would provide for three things:

- an expansion of reporting requirements to include not only colleges and universities but also elementary and post-secondary schools and to require schools when submitting reports to explain how they are complying with Title IX;
- establish greater clarity in terms of gender equity expectations for athletic associations that govern school athletic programs as well as authorize the Department of Education to levy fines against non-Title IX compliant institutions; and,
- increase efforts to educate stakeholders (athletes, parents, coaches, staff) about Title IX and their rights (U.S. Senator Murphy's Staff, 2022).

These efforts by themselves will not be sufficient to remedy the issues with Title IX compliance. At present, because the federal government does not employ available options to punish schools for Title IX non-compliance in athletics, the record of compliance among colleges and universities during the first 50 years of Title IX suggests that there is little incentive to voluntarily do so. Saliently, as a general observation, schools are more inclined to abide by NCAA rules than to comply with Title IX, which is a federal law. That should offer some insight to public policymakers and

legislators about what needs to happen to get the attention of college sport officials. A continuing push for greater public disclosure is warranted given this history, and a consideration of how to strengthen the role of the EADA has the potential to aid in those efforts.

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