

VII. LEGISLATIVE DEVELOPMENTS: THE EQUITY IN ATHLETICS DISCLOSURE ACT

BREAKING DOWN BARRIERS



Equity in Athletics Disclosure Act

The EADA and its implementing regulations require every coeducational institution of higher education that receives federal funding through Title IV of the Higher Education Act and operates an intercollegiate athletics program to prepare an annual report disclosing information on the resources and opportunities allocated to male and female students and athletes. The report must disclose:

- Numbers of male/female participants
- Total operating expenses for men's and women's sports
- Numbers of male/female head coaches
- Numbers of male/female assistant coaches
- Amount of athletic scholarship dollars allocated to males/females
- Salaries for coaches
- Amount of recruiting dollars allocated to males/females

In 1994, Congress enacted the Equity in Athletics Disclosure Act (EADA).⁴¹³ The EADA was premised on congressional findings that female athletes continue to face blatant discrimination in intercollegiate athletics.⁴¹⁴ In enacting the EADA, Congress recognized that participation in athletics plays an important part in the education of American youth and concluded that knowledge about how an institution allocates opportunities and resources would help students, as well as the general public, to make informed judgments about that institution's commitment to gender equity in athletics.⁴¹⁵

The EADA and its implementing regulations apply to every coeducational institution of higher education that receives federal funding through Title IV of the Higher Education Act (HEA) and operates an intercollegiate athletics program.⁴¹⁶ Such institutions must prepare an annual report⁴¹⁷ disclosing information on the resources and opportunities allocated to male

⁴¹³ Pub. L. 103-382, § 360B, 108 Stat. 3518, 3967-71 (1994), codified at 20 U.S.C. § 1092(g) (2007). The EADA was enacted on October 20, 1994, as part of the Improving America's Schools Act of 1994, which amended the Higher Education Act of 1965.

⁴¹⁴ See *id.* at § 360B(b).

⁴¹⁵ *Id.*

⁴¹⁶ 34 C.F.R. § 668.47(a) (2006).

⁴¹⁷ The first reports required under the EADA were due no later than October 1, 1996; in subsequent years, disclosure reports are due no later than October 15. See 34 C.F.R. § 668.41(g)(1)(i).

and female students and athletes. The annual disclosure report must include the following information: the enrollment and participation data for male and female students; the total operating expenses⁴¹⁸ attributable to each men's and women's team; information on the gender and full- or part-time status of all coaches for each team and the number of assistant coaches provided to each team; the total amount and ratio of athletic scholarship dollars awarded to male and female athletes overall; the aggregate amount of recruiting expenditures for all men's teams and all women's teams; the total revenue⁴¹⁹ generated by all men's teams and all women's teams; and the average salaries of head coaches and assistant coaches for men's teams and women's teams.⁴²⁰ By October 15 of each year, the institutions must make this information available to the public and to the Department of Education, which then disseminates the information on its website, www.ope.ed.gov/athletics.⁴²¹

These reports must be made available, on request, to students, potential students, and the public at large. The regulations do not specify where the reports are to be made available, but simply require that they be "easily accessible to students, prospective students, and the public,"⁴²² and that they be provided "promptly"⁴²³ when requested. All students must be informed of their right to request such information, but the regulations do not specify how this must be done.⁴²⁴ Although the regulations require the reports to be provided without charge to students and prospective students, other members of the public may be charged a fee to cover copying expenses only.⁴²⁵

⁴¹⁸ Operating expenses are defined narrowly under the EADA to mean "expenditures on lodging and meals, transportation, officials, uniforms and equipment." 20 U.S.C. § 1092(g)(5); 34 C.F.R. § 668.47(b)(ii). Improvements to facilities, administrative overhead, guarantees paid to opposing teams and various other expenditures are not included.

⁴¹⁹ Total revenue is broadly defined in the regulations to include "appearance guarantees and options, an athletic conference, tournament or bowl games, concessions, contributions from alumni and others, institutional support, program advertising and sales, radio and television, royalties, signage and other sponsorships, sports camps, State or other governmental support, student activity fees, ticket and luxury box sales, and any other revenues attributable to intercollegiate athletic activities." 34 C.F.R. § 668.47(b)(5). However, 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.

⁴²⁰ See 20 U.S.C. § 1092(g)(1); 34 C.F.R. § 668.47(c).

⁴²¹ Higher Education Amendments of 1998, Pub. L. 105-244, § 486, 112 Stat. 1581, 1745-46 (1998), codified at 20 U.S.C. § 1092(g)(4)(1); 34 C.F.R. § 668.41(g)(1)-(2).

⁴²² 34 C.F.R. § 668.41(g)(1)(i). Under the Secretary's interpretation, this obligation would be satisfied by making copies of the report available in athletic offices, admissions offices, libraries, or via electronic mail. Student Assistance General Provisions, 60 Fed. Reg. 61,424, 61,426 (Nov. 29, 1995) (to be codified at 34 C.F.R. pt. 668).

⁴²³ 34 C.F.R. § 668.41(g)(1)(i).

⁴²⁴ According to the Secretary, publication of a notice once a year in a widely distributed institutional publication, such as a college catalog, registration materials, athletic publications or a separate notice to all students, would meet this requirement. Student Assistance General Provisions, 60 Fed. Reg. at 61,426.

⁴²⁵ *Id.*

Enforcement authority for the EADA rests with the Department of Education, which has authority to enforce the EADA in the same manner that it enforces other provisions of the HEA.⁴²⁶ 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.⁴²⁷ All enforcement actions for EADA violations must be initiated by the Department of Education, in accordance with the requirements governing enforcement of the HEA generally. The EADA is not enforceable in court by individuals seeking the information. Violations of the EADA should be reported to the Department of Education.

Although the EADA does not cover elementary and secondary school athletics programs, Congress has begun to explore the possibility of requiring disclosure at this level. In 2003 and 2007, bills were introduced in the Senate to require the collection of similar information on athletics programs from coeducational secondary schools.⁴²⁸ Similar bills were introduced in the House of Representatives in 2005 and 2007.⁴²⁹

⁴²⁶ See 20 U.S.C. § 1092(g)(4)(C).

⁴²⁷ See 34 C.F.R. §§ 668.81-.89 (2006).

⁴²⁸ S. 518, 110th Cong. (2007); S. 282, 108th Cong. (2003).

⁴²⁹ H.R. 901, 110th Cong. (2007); H.R. 595, 109th Cong. (2005).

VIII. CONCLUSION

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Developing case law has substantially sharpened the scope of and analysis for Title IX's prohibition of discrimination in athletics. While some issues are yet to be resolved, the courts have set clear standards governing many of the rights of female athletes and the responsibilities of education institutions. Moreover, the growing number of settlement agreements provides additional important guidance for the resolution of these issues.

Litigation has proven to be an essential tool in the fight to secure gender equity in athletics and will likely continue to play a key role. Much work remains to achieve gender equity in athletics programs. The evidence shows that women still lag in participation opportunities, scholarships, budgets, and other aspects of sports programming. Hopefully, however, the lessons to be learned from plaintiffs' successes in courtrooms across the country will not be lost on the education community. When female athletes are not forced to resort to the courts to vindicate their rights, and colleges and universities, high schools and middle schools, conferences and governing bodies choose, voluntarily, to come into compliance with the law, Title IX will truly have achieved its promise.