

Cutting Sports and Cutting Corners: The Effect of COVID-19 Sport Cuts on Title IX Compliance

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College sports changed in March 2020 due to the fiscal impact of multiple seasons of lost revenue and increased health and safety costs created in part by a global pandemic. In the year following, NCAA institutions often looked to eliminating sponsorship of athletic teams to cut costs during a time of such financial instability. This article examines the impact of sport cuts during the COVID-19 pandemic on equity in participation opportunities, ultimately noting whether each institution that eliminated sports would likely be compliant with Title IX. Title IX was passed more than 50 years ago, and many colleges and universities are still non-compliant in providing equitable participation opportunities. College athletics is currently in a period of rapid change and fiscal uncertainty; this research provides a reminder and a road map for institutions to make programming decisions that will be compliant with Title IX in the future.

Keywords: Title IX, NCAA, cutting sports, participation opportunities

Introduction

In March 2020, the entire world as we knew it came to a halt in an effort to stop the spread of COVID-19 and attempt to minimize the effects of the virus. NCAA athletic departments were forced to adjust quickly, creating health and safety protocols for their student-athletes while facing major budget losses. Not only did many student-athletes lose the 2020 season to train and compete, but many subsequently lost their teams due to sport cuts.

Since March 2020, 290 NCAA athletic programs have been eliminated by their respective universities (Bryant, 2020). More than 1,500 student-athletes across the

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country were no longer able to compete wearing their university's name across their chest (Marshall, Arkin, & Syed, 2020). In the wake of the COVID-19 pandemic and the subsequent financial losses that NCAA member athletic departments faced, sport cuts were the financial solution chosen by many schools. Despite promises of fulfilling scholarships until graduation and the continuation of athletic benefits, student-athletes felt betrayed by their schools' decisions. After the elimination of their teams, many student-athletes drew attention to Title IX compliance concerns, threatening or filing lawsuits against schools for their decisions (see Kumar, 2020; Ngo, 2020). All of this was especially timely, as the NCAA celebrated the 50th anniversary of Title IX in 2022. COVID-19 presented unprecedented challenges, and athletic departments were focused on finding quick financial solutions. Some failed to recognize the strong impact the elimination of athletic programs can have on an institution's compliance with Title IX. This research measured the impact on Title IX compliance related to participation opportunities for programs that eliminated NCAA athletic teams during the COVID-19 pandemic. As NCAA member institutions continue to navigate a rapidly changing athletics environment with new financial challenges related to name, image, and likeness (NIL) and revenue sharing, this research provides a reminder and a road map for institutions to make programming decisions that will be compliant with Title IX in the future.

Background

The NCAA was founded in 1906 to regulate college athletics and protect the health and safety of athletes (NCAA, 2021). Since then, the non-profit has grown exponentially as an organization and in its membership. Today, the NCAA has more than 480,000 student-athletes competing across the three athletic divisions (NCAA, 2020). The number of student-athletes and the sports in which they compete has changed and evolved over the NCAA's lifespan, due largely to changes in sport sponsorship by colleges and universities.

One way in which NCAA sport sponsorship has evolved is through the addition of teams. In 1981, the NCAA had 244,039 student-athlete participants on 11,619 teams (NCAA, 2022). Between 1988 and 2018, 10,141 teams were added across the three divisions. These schools cited the need to address student interest and comply with Title IX as the primary reasoning for adding these programs (United States General Accounting Office, 2001).

Due to the competitive nature and ever-evolving landscape of college athletics, colleges and universities have found themselves in situations where it is no longer feasible for their institution to financially support all athletic programs they currently sponsor. Between 1988 and 2018, 5,459 programs were dropped at schools across the United States (NCAA, 2022). Research has shown that decisions to discontinue men's teams were based primarily on lack of student interest in the sport, financial



need, and gender equity concerns. Women's teams were discontinued largely because of the team's inability to compete at the desired level and the absence of adequate facilities and sufficient equipment (United States General Accounting Office, 2001).

COVID-19 Pandemic

When the COVID-19 pandemic hit the United States in early March 2020, the NCAA suspended all winter and spring athletic activities, including practice and competition—a decision that was heartbreaking for student-athletes, coaches, administrators, and fans alike. Administrators were then left to navigate a complex public health situation that affected their student-athletes athletically and academically, while simultaneously recognizing the unprecedented financial effect this was having on college athletics. Notably, the pandemic cancelled the Division I men's basketball tournament, one of the largest revenue drivers to the NCAA nationally and the respective conferences who qualify. The cancellation of the Division I men's basketball tournament alone resulted in a loss of \$375 million in direct payments to Division I universities (Swanson & Smith, 2020). With these major financial losses, some schools chose to reduce the number of athletic teams sponsored. This ultimately led to the elimination of 290 teams across all three divisions in the NCAA (Bryant, 2020).

Title IX Fundamentals

Title IX of the Education Amendments of 1972 was passed as a federal civil rights law to protect individuals from discrimination on the basis of sex in schools. Title IX states that, “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance” (Education Amendments of 1972, 1972). Title IX was not passed to address sex discrimination in college athletics, which is evident as the NCAA did not start sponsoring women's sports until 10 years after Title IX was enacted. However, Title IX has had a tremendous impact for girls and women in athletics because all schools that receive any amount of federal funding must comply with Title IX in all programs and activities offered by their institution. Title IX regulations, promulgated in 1975, further explain what institutions must do to provide equal opportunity in athletics programs by providing equal financial aid, equal participation opportunities, and equal treatment for athletes of both sexes. Schools must provide women and men equitable opportunities to participate in sports, provide athletics scholarship dollars proportional to their participation, and provide equal treatment in the provisions of equipment and supplies, scheduling of games and practice times, travel and per diem, tutoring, coaching, facilities, medical/athletic training services, housing, publicity, support services, and recruiting (NCAA, n.d.).



Compliance with Title IX's equal participation requirement is evaluated using the three-part test, introduced in the 1979 Policy Interpretation. The three-part test states that schools can prove compliance by achieving one of the following criteria: substantial proportionality, history of adding participation, or accommodating athletic interests. The first option requires schools to show that the ratio of female and male participants in athletics is substantially proportionate to the gender ratio of the undergraduate study body. To be considered an athletic participant under Title IX, a student-athlete must a) receive the institutionally sponsored support normally provided to athletes competing (e.g., coaching, athletic training, academic support); b) participate in organized practice and other team activities on a regular basis; c) be listed on the eligibility or squad lists maintained for each sport, or d) be injured and thus unable to participate, but still receive athletic aid. The second option requires that schools that are unable to meet substantial proportionality show a history of continuing to expand athletic opportunities for the underrepresented sex. The third option requires that schools show they are fully accommodating the athletic interests of the underrepresented sex at their institution (U.S. Department of Education, 2020).

The first part of Title IX's three-part test relies on measuring the number of athletic participation opportunities for male and female students at their universities and comparing this proportion to the enrollment proportion of men and women in the undergraduate student body. Title IX requires that a school's participation opportunities be substantially proportional to its enrollment, meaning that they must be largely the same but are not required to be equivalent. The U.S. Department of Education clarified this in the 1996 Dear Colleague letter, stating that, "in some circumstances it may be unreasonable to expect an institution to achieve exact proportionality--for instance, because of natural fluctuations in enrollment and participation rates or because it would be unreasonable to expect an institution to add athletic opportunities in light of the small number of students that would have to be accommodated to achieve exact proportionality--the Policy Interpretation examines whether participation opportunities are 'substantially' proportionate to enrollment rates" (U.S. Department of Education, 1996, p. 10). Because determining if a school is substantially proportionate depends on the institution's specific circumstances and the size of its athletic program, the Office of Civil Rights makes this determination on a case-by-case basis rather than by specifying a percentage for compliance (U.S. Department of Education, 1996). The policy clarification clearly states that there is no single threshold that leads to Title IX compliance, as it is entirely based on whether the participation gap, as measured by participation opportunities, is larger than the number of student-athletes needed to create a team that the school does not currently sponsor. If this is the case, the expectation is that the institution creates that team.

Upon eliminating an athletic team, institutions trigger an examination of the equity in its participation opportunities. A school will not be able to show a continuing



history of program expansion when a team or teams have been cut. Similarly, they will not be able to show effective accommodation of the interests and abilities of the student body because the institution took away opportunities from athletes who were interested and able. This leaves only the substantial proportionality option for a school to prove compliance with equal participation opportunities under Title IX. This was seen in *Cohen v. Brown University* (1996), as the First Circuit was one of the first courts to analyze and uphold use of the three part-test. The substantial proportionality option requires schools to prove that their ratio of participants in athletics is close to that of the university's gender ratio for full-time undergraduate enrollment. Creating a balance within the new number of athletic opportunities available to the underrepresented sex may be challenging. Eliminating sports may create imbalances on the other side of the spectrum, as eliminating too many athletic opportunities for the previously overrepresented gender may create a new inequity.

The difference in the number of participation opportunities is considered substantially proportionate when the participation gap is not large enough to sustain a viable team. A viable team is one in which there are a sufficient number of students with an interest in participating and adequate competition to sustain the team. When deciding whether the participation gap is too large, the size of teams the institution does not yet offer for the underrepresented sex are considered (U.S. Department of Education, 1996).

The viable team test was demonstrated through *Biediger v. Quinnipiac University* (2012). In 2009, five volleyball student-athletes and their coach filed a Title IX lawsuit after the women's volleyball, men's golf, and men's outdoor track programs were discontinued, citing financial concerns as the driving force behind the sport cuts. Quinnipiac announced they would simultaneously be creating a new varsity cheerleading program. The plaintiffs sought a preliminary injunction to prevent elimination of the volleyball program, arguing that by cutting this team, the university would be in violation of Title IX because they would no longer be providing female students with adequate athletic opportunities. Following these cuts, Quinnipiac had 400 student-athletes—233 women and 167 men. When comparing the athletic opportunities with Quinnipiac's majority female student body, there was a 3.62% disparity. In order to close this participation gap, Quinnipiac would need to add 38 roster spots for women. The court ruled that Quinnipiac's athletic opportunities for women were not substantially proportionate, as a gap of 38 athletes was enough to field a viable team (*Biediger v. Quinnipiac University*, 2012).

Balow v. Michigan State University (2021)

A notable case of sport discontinuations that caught national attention was at Michigan State University. On October 22, 2020, Michigan State University announced the elimination of the men's and women's swimming and diving teams following the



2020-2021 school year. In the announcement of the discontinuation, the Director of Intercollegiate Athletics and University President cited the financial crisis and a revenue shortfall of more than \$30 million dollars as the driving force behind this decision (Beekman & Stanley, 2020).

Following this decision, 11 female student-athletes sought a preliminary injunction to save the women's swimming and diving program, arguing that the athletic opportunities available for women were not substantially proportionate to the female enrollment, as is required by Title IX. The teams had 33 women and 29 men during the 2019-2020 school year, resulting in a net loss of four female participation opportunities for the athletics program. The United States District Court for the Western District of Michigan, Southern Division, denied the motion for a preliminary injunction based on the merits of the swimmers' Title IX claim and the court's assessment that it would not likely be successful (*Balow v. Mich. State Univ.*, 2021).

The plaintiff's appeal of this claim was then heard by the Sixth Circuit, which remanded the case back to the District Court for further proceedings because of three reversible errors found in the rationale of the lower court decision (*Balow v. Mich. State Univ.*, 2022). First, improper metrics were used to evaluate participation gaps at the university, as they measured the difference in participation as a percentage rather than by a count of athletic opportunities. Additionally, the court calculated participation gaps using data from the Equity in Athletics Disclosure Act (EADA) rather than using the school's Title IX participation count, which has a narrower definition of a participant than the EADA. Finally, when considering the substantial proportionality of opportunities, the District Court compared the participation gap to an arbitrary percentage that they deemed appropriate (2%). This percentage does not consider any specific factors about Michigan State University, such as the overall enrollment of the university or current situation, as is required by Title IX (*Balow v. Mich. State Univ.*, 2022).

Michigan State University petitioned the United States Supreme Court to review the Sixth Circuit decision in July of 2022, drawing national attention to the legal battle. On December 12, 2022, the Supreme Court announced they would not hear the case, sending it back to the Sixth Circuit (Berkowitz, 2022). While the Supreme Court does not explain why it declines to hear a case, it typically will not review a decision unless there is a conflict currently among the circuit courts regarding the issue, in this case how compliance with participation opportunities is measured under Title IX, or the Supreme Court is not concerned with the way the Sixth Circuit court measured the participation gap.

Ultimately, the case was settled through mediation in January 2023, requiring the school to hit key benchmarks through 2030. The requirements include: a Gender Equity Compliance Report including on treatment, benefits, athletic financial aid, etc. conducted by a neutral party; capping the women's rowing roster at 85



student-athletes (eliminating the ability to “pad” this roster); the inability to drop a women’s team during this time period; and a guarantee on roster equivalence. Yearly, the department will evaluate participation by gender and if the gap in favor of male student-athletes exceeds 16 student-athletes in one year or 28 student-athletes in two years, roster management will be conducted or a women’s team will be added (Weaver, 2023).

Awareness of the impact eliminating swimming and diving would have on Title IX compliance would have allowed Michigan State to avoid this lengthy legal battle that has required the utilization of substantial resources, funding, and personnel.

Purpose and Methodology

The purpose of this research is to demonstrate the impact of eliminating sports during the pandemic on compliance with Title IX’s proportionality prong and to provide an example for institutions of the consideration and calculations required for Title IX compliance in providing participation opportunities. Between March 2020 and August 2022, 290 athletic teams were cut at 74 colleges across all three NCAA divisions (Bryant, 2020). Sixty-seven of these schools had data that was publicly available and therefore are the focus of this study. The remaining seven institutions closed following the 2020-2021 academic year, thus eliminating all of their athletic programs in the process. The 67 schools of focus account for 155 of the 290 teams that were cut. For these institutions, the NCAA division, number of teams cut, and the number of athletic opportunities that were lost for female and male student-athletes were recorded. The Equity in Athletics Disclosure Act (EADA) is the most accessible publicly available reporting tool and was therefore used to identify the number of athletic opportunities for female and male students following the sport cuts, and the undergraduate female and male enrollment percentage at the school. The duplicated count for athletics opportunities was used for our calculations as it is the number of participation opportunities, and not the number of individual athletes participating, that is being measured.

To calculate the participation gap at an institution, the U.S. Department of Education formula was utilized:

$$\% \text{ of women in the undergraduate student body} = \frac{y}{x + y} \%$$

The percentage of women in the undergraduate student body is the percentage of women enrolled at the institution in the year following the sport cuts. In this equation, x is equal to the current count of male participants remaining in the athletics program in the year after the cuts. This count is known and retrieved through the EADA. The number of female athletes is represented by y , and because the equation calculates the number of opportunities that would exist if there was no participation gap, y is currently unknown. When solved, y is then compared to the current, actual count



of the female student-athletes. The resulting number is the participation gap. This number is then compared by athletic departments, Title IX coordinators, and lawyers to determine if there is a need for additional athletic participation opportunities for either sex. This gap is considered by the university and athletic department as a frame of reference, and ultimately determines if the school satisfies the proportionality test and is compliant with Title IX.

Once the participation gap was calculated, the next step was to determine whether the institution would be able to field a viable team given that number of participation opportunities. The average number of female athletes on the smallest NCAA sponsored team was 10 during the 2020-2021 school year (NCAA, 2022). Therefore, this research presumes schools with a participation gap of nine or fewer would achieve substantial proportionality in compliance with Title IX, assuming all EADA reported data is correct (U.S. Department of Education, 1996). The number of an average-sized team sponsored by NCAA institutions during the 2020-2021 school year was 24 (NCAA, 2022). Therefore, this research presumes schools with a participation gap above 24.5 would not be in compliance, as the number of lost opportunities may be large enough to add a viable team. Finally, the last step is to examine each institution with a participation gap between 9 and 24.5 by noting which sports they currently sponsor and identifying whether there are opportunities to add sports with roster sizes that would bring them into Title IX proportionality compliance.

Results

Of the institutions that cut teams between March 2020 and August 2022, 67 were identified with participation gaps between 9 and 24.5. These 67 schools include 28 Division I institutions. With 350 schools sponsoring Division I athletics, 8% of Division I schools eliminated teams. Of the Division I schools that eliminated teams, only three institutions were from an autonomy conference, and all three were in the Big Ten Conference. All other Division I institutions that eliminated teams during the pandemic were from Group of 5 conferences. Table 1 identifies the population for this study by division. Table 2 lists the conference affiliation of the Division I schools that cut teams.

Sixteen Division II schools eliminated athletic teams. With 300 schools competing in Division II athletics, this signifies that 5.33% of Division II member institutions eliminated at least one athletic team. Twenty-three Division III schools eliminated athletic teams. Of the 440 Division III schools in the NCAA, 5.22% eliminated at least one sports team.

After the elimination of athletic teams, women remained the underrepresented sex at 57 of the 67 institutions in the sample. Men were the underrepresented sex at 10 institutions: Florida Tech, Loras College, the University of Alabama in Huntsville, Greenville University, Tiffin University, Notre Dame College, the University of



Table 1. Characteristics of Divisions

	Members	Schools Cutting Sports	Percentage
Division I	350	28	8.00%
Division II	300	16	5.33%
Division III	440	23	5.22%

Table 2. Conference Affiliation of Division I Schools that Cut Teams

Program	Conference	Power
Akron	Mid-American	Group of 5
Alaska-Anchorage	Great Northwest	Group of 5
Appalachian State	Sun Belt	Group of 5
Boise State	Mountain West	Group of 5
Brown	Ivy	Group of 5
Central Michigan	Mid-American	Group of 5
Chicago State	Western	Group of 5
Cincinnati	American	Group of 5
Connecticut	American	Group of 5
East Carolina	American	Group of 5
Florida International	Conference USA	Group of 5
Fresno State	Mountain West	Group of 5
Furman	Southern	Group of 5
George Washington	Atlantic 10	Group of 5
Green Bay	Horizon	Group of 5
Hampton	Big South	Group of 5
Iowa	Big Ten	Power 5
Lasalle	Atlantic 10	Group of 5
Michigan State	Big Ten	Power 5
Minnesota	Big Ten	Power 5
North Carolina Central	Mid-Eastern	Group of 5
Northern Colorado	Big Sky	Group of 5
Old Dominion	Conference USA	Group of 5
San Diego State	Mountain West	Group of 5
Southern Utah	Big Sky	Group of 5
Western Illinois	Summit League	Group of 5
Winthrop	Big South	Group of 5
Wright State	Horizon	Group of 5



Saint Thomas (MN), the University of Cincinnati, Lagrange College, and Lincoln University (MO).

The next step to determine substantial proportionality compliance is to do an individualized examination of each institution with a participation gap between 10 and 24.5. There is no singular quantity or percentage that determines if schools are providing adequate participation opportunities, as compliance is entirely dependent upon whether there would be enough athletes represented by the participation gap to field a viable team the institution does not currently offer. Institutions with a participation gap of nine or fewer were presumed to achieve substantial proportionality in compliance with Title IX (U.S. Department of Education, 1996). Schools with participation gaps greater than 24.5 were not examined further as this number is greater than the number of an average-sized team sponsored by NCAA institutions during the 2020-2021 school year and they are not compliant in providing proportional opportunities. It is not necessary to conduct an individualized inquiry for these schools as it is up to the institution to make adjustments that will bring the program into compliance.

It is important to note that the population of institutions for this study are those that eliminated athletics teams during the pandemic. While the three-part test provides three opportunities for an institution to prove they are providing equitable participation opportunities, failure to meet substantial proportionality would result in non-compliance because the school would not be able to meet the second prong (cutting teams does not show a history of continuing program expansion) or third prong (the institution is not meeting the interest and ability of its student body because it cut teams that students were interested in and were able to participate) (U.S. Department of Education, 1996). Schools with participation gaps of greater than 25 participants would need to assess whether to reinstate teams, cut additional teams, or engage in reasonable roster management to achieve substantial equity with a participation gap of less than 10 participants.

Division I

Of the 28 Division I institutions that cut sports between March 2020 and August 2022, the University of Alaska Anchorage is the only school that is presumed compliant with Title IX. The University of Alaska Anchorage eliminated the men's ice hockey and women's gymnastics programs, resulting in a participation gap of seven, which is less than the size of the average roster on the smallest NCAA-sponsored team. Four Division I institutions had participation gaps between 9 and 24.5 participants, prompting them to be considered on a case-by-case basis. The remaining 20 institutions had participation gaps greater than 25 participants, which would fail the substantial proportionality test (assuming all EADA reported information is correct). These 20 institutions need to assess whether to reinstate teams, cut additional teams,



or engage in reasonable roster management to achieve substantial equity with a participation gap of less than nine participants.

Each of the schools that had a participation gap between 9 and 24.5 participants was analyzed further to determine whether the schools would be presumed compliant (as they would not be likely able to add another sport based on the sport they were already sponsoring) or not.

Brown University, an Ivy League school in Providence, Rhode Island, eliminated six teams across their athletic department: men's fencing, men's and women's golf, men's and women's squash, and women's skiing. Following this cut, the participation gap at Brown is 15.1. Brown currently sponsors 13 varsity men's teams, 18 varsity women's teams, and one coed team. The NCAA sponsors five sports with average roster sizes of less than 15.1 and Brown currently offers only three of these sports (basketball, fencing, and tennis; NCAA, 2022). In this situation, Brown would likely need to add an additional women's athletic team to provide equitable opportunities under Title IX. Skiing, golf, and bowling all have roster sizes that would be appropriate for this situation. It is of note that women's golf and women's skiing were sports that Brown eliminated during the pandemic. With a roster size of nine student-athletes during the 2019-2020 school year, reinstating women's golf would lower Brown's participation gap to 6.1, bringing it back into substantial proportionality (Brown University Athletics, n.d.a). Reinstating women's skiing would have the same effect, as the team's previous roster size of 10 would lower the participation gap to 5.1 (Brown University Athletics, n.d.b). Because of the participation gap of 15.1 and the lack of sponsorship of sports with smaller roster sizes, Brown University is not providing substantially proportionate participation opportunities according to Title IX and would need to add an additional program or reinstate golf or skiing to be presumed in compliance.

Hampton University, an HBCU in Hampton, Virginia, eliminated the men's and women's golf programs. The elimination of these programs discontinued six female and five male athletic opportunities, resulting in a participation gap of 15.3. Hampton currently sponsors 13 championship sports, including six men's teams, seven women's teams, and one coed team. Additionally, Hampton sponsors women's triathlon, an NCAA emerging sport. The NCAA sponsors five sports with average women's roster sizes of less than 15.3 (NCAA, 2022). Hampton currently sponsors only two of these teams: basketball and tennis. In order to meet the substantial proportionality requirement under Title IX, Hampton would need to add one of the remaining sports (golf, skiing, or fencing). As women's golf was one of the sports eliminated, this would likely be the easiest sport to reinstate for compliance purposes; however, reinstating the team at its previous roster size of six would put Hampton right at the cusp of compliance (Hampton University Athletics, n.d.). Reinstating women's golf



and having a roster of at least six would be the most efficient way to meet substantial proportionality for Title IX compliance following these sport cuts.

The University of Connecticut (UConn), the main campus for the state's flagship university, cut men's swimming and diving, cross country, and tennis. Despite eliminating 52 men's roster spots, UConn still has a participation gap of 21 female athletes. UConn currently sponsors 19 athletic programs, including seven men's teams and 12 women's teams. The NCAA sponsors 11 women's sports with average roster sizes below 21 participants (NCAA, 2022). UConn currently offers four of these sports (basketball, cross country, tennis, and volleyball). To become compliant with Title IX, UConn could add a sports team such as bowling, fencing, golf, gymnastics, beach volleyball, skiing, or water polo, or further reduce opportunities for male student-athletes. If UConn was looking to start a new program, women's golf may be the easiest program to add; the university currently sponsors a men's golf team with a state-of-the-art indoor facility that was completed in 2021 (Santo, 2021).

Wright State University, a public school in Fairborn, Ohio, eliminated men's tennis, women's tennis, and women's softball. This brought its participation gap to 24.5 athletic opportunities. Wright State currently sponsors 12 varsity sports, six each for men and women. The NCAA sponsors 14 women's athletic teams with an average roster size of less than 24.5 (NCAA, 2022). Wright State currently sponsors four of these sports (basketball, bowling, country, and volleyball). For Wright State to be in Title IX compliance, it must bring its participation gap to less than 10. This can be done through adding a single sport with a roster size of more than 14, such as fencing, field hockey, gymnastics, ice hockey, beach volleyball, softball, or water polo, or reduce additional opportunities for male athletes. Wright State could also add multiple programs that would bring this participation gap down, which could include sports with roster sizes less than 14, such as golf, skiing, or tennis. Although there are numerous ways for Wright State to meet substantial proportionality under Title IX, one that should be highlighted is the reinstatement of its softball program. With a roster size of 17 during the 2019-2020 school year, reinstatement of the team would lower the institution's participation gap to 7.5, bringing the university into presumed compliance with Title IX (Wright State University Athletics, n.d.).

Lastly, the University of Cincinnati cut men's soccer, resulting in a participation gap of 18.4 and left men as the underrepresented sex with regard to their participation numbers. Cincinnati currently offers 16 athletic programs, seven for men and nine for women. The NCAA currently sponsors seven men's sports with an average roster size of less than 18.4 (NCAA, 2022). Cincinnati currently offers only three of these sports (basketball, cross country, and golf). In order to meet substantial proportionality, Cincinnati must bring its participation gap to less than 10. This can be done by adding a single sport with a roster size greater than eight, such as fencing, skiing, or tennis. Title IX compliance could most easily be achieved, however, through the



reinstatement of men’s soccer. With a previous roster size of 23 during the 2020-2021 school year, reinstatement of the team would lower the school’s participation gap significantly (University of Cincinnati Athletics, n.d.).

Division II

In Division II, only two schools were presumed compliant with the substantial proportionality requirement under Title IX following the elimination of sports teams. Lincoln University (MO) cut the women’s bowling team, resulting in the loss of five athletic opportunities for female student-athletes. Lincoln’s participation gap following these cuts is only 1.6 student-athletes. Fayetteville State University dropped women’s tennis and the seven roster spots that came with it, resulting in a participation gap of 8.7 student-athletes. The remaining 15 institutions had participation gaps greater than 25 participants, which presumably would fail the substantial proportionality test (assuming all EADA reported information is correct). These schools would need to assess whether to reinstate teams, cut additional teams, or engage in reasonable roster management to achieve substantial equity with a participation gap of less than nine participants.

Table 3. Division II Results

School	Participation Gap	Compliance Status
Florida Tech	-115	N
Alabama-Huntsville	-84 2/3	N
Tiffin	-63 1/6	N
Notre Dame College	-45 1/3	N
Lincoln	-1 5/8	Y
Fayetteville State	8 3/4	Y
College of Staten Island	40 3/8	N
Seattle Pacific	69 5/6	N
Sonoma State	87 4/9	N
Holy Family	98 1/5	N
Oklahoma Baptist	101	N
Rollins	111 1/2	N
Concord	114 4/7	N
Azusa Pacific	125 2/3	N
Nova Southeastern	142	N
Roberts Wesleyan	259 5/7	N

Note: Negative numbers represent a participation gap for male student-athletes.



Division III

Of the 23 Division III schools that cut sports, five were compliant with Title IX following the elimination of these teams, as their participation gaps were less than the size of the average roster on the smallest NCAA-sponsored team. Lagrange College cut men’s swimming and diving, women’s swimming and diving, and women’s lacrosse. Eliminating these 20 participation opportunities resulted in a participation gap of 7.4. The University of Massachusetts Dartmouth cut six programs, including coed

Table 4. Division III Results

School	Participation Gap	Compliance Status
Loras	-103 1/2	N
Greenville	-66 5/7	N
St. Thomas (MN)	-32 7/9	N
LaGrange	-7 2/5	Y
UMass Dartmouth	0	Y
Bryn Athyn	2 1/2	Y
Roger Williams	4 1/2	Y
Monmouth (IL)	4 5/7	Y
Morrisville State	10 5/9	TBD
Blackburn	19 5/6	TBD
Austin College	24 5/6	N
Johnson and Wales	31 6/7	N
Earlham	33 1/4	N
Rutgers-Newark	36 1/3	N
Delaware Valley	50	N
St. Edward's	68 1/6	N
Houghton	68 3/5	N
Dickinson	70 1/3	N
Ohio Wesleyan	79 3/5	N
Fontbonne	89 1/8	N
Elmira	142 2/7	N
Keuka	143 3/4	N
Sage	253 4/5	N

Note: Negative numbers represent a participation gap for male student-athletes.



sailing, men's golf, men's lacrosse, men's swimming and diving, men's tennis, and women's equestrian. This eliminated 72 participation opportunities for men and seven for women, resulting in a participation gap of zero. Bryn Athyn College (PA) cut 29 athletic opportunities in men's ice hockey, leading to a participation gap of 2.5. Roger Williams University eliminated men's polo and the four members of the team, bringing the school to a participation gap of 4.5. Monmouth College (IL) eliminated the men's and women's water polo teams. The school now has a participation gap of 4.7.

Two Division III institutions were left with participation gaps between 9 and 24.5 participants, prompting them to be considered on a case-by-case basis. The remaining 16 institutions had participation gaps greater than 25 participants, which would fail the substantial proportionality test (assuming all EADA reported information is correct). These schools would need to assess whether to reinstate teams, cut additional teams, or engage in reasonable roster management to achieve substantial equity with a participation gap of less than nine participants.

SUNY Morrisville, a branch campus within the State University of New York system, eliminated men's golf, bringing its participation gap to 10.6. SUNY Morrisville currently sponsors six men's teams, eight women's teams, and two coed teams. The NCAA sponsors four women's athletic teams with an average roster size of less than 10 in Division III (NCAA, 2022). SUNY Morrisville does not currently sponsor any of these sports (tennis, rifle, golf, or bowling). To meet substantial proportionality, SUNY Morrisville could add one of these teams. However, upon examination of its current women's sport offerings, it is noteworthy that there is potential for roster expansion in numerous sports currently sponsored. SUNY Morrisville's field hockey team currently has 12 players on its roster (SUNY Morrisville, n.d.), while the NCAA Division III average roster size for field hockey is 20 (NCAA, 2022). Softball and soccer both have rosters with five fewer participants than the Division III average as well. By adding participation opportunities in existing sports, such as field hockey, soccer, and softball, the university could not only become compliant with Title IX but perhaps also improve its athletic success by providing more depth on its teams.

Blackburn College, a private institution in Carlinville, Illinois, eliminated men's and women's tennis, bringing its participation gap to 19.8. Blackburn College currently sponsors six men's and seven women's athletic programs. The NCAA sponsors 11 women's athletic teams with an average roster size of less than 19.8 in Division III (NCAA, 2022). Blackburn currently offers four of these teams (basketball, cross country, golf, and volleyball). In order for Blackburn College to meet substantial proportionality, it must bring its participation gap to less than 10. This can be done through adding a single sport with a roster size of more than 9.8, such as bowling, fencing, gymnastics, rifle, beach volleyball, skiing, swimming & diving, tennis, or water polo. Blackburn could also add multiple programs that would bring this



participation gap down, which could include sports with roster sizes less than 10, such as bowling, rifle, and tennis. Reinstating women’s tennis with the roster of nine that it previously held and adding an additional roster spot to any women’s team across the athletic department is also a viable option, as is eliminating additional men’s opportunities (Blackburn College, n.d.).

The elimination of athletic opportunities can be particularly challenging to balance with a school’s ratio for gender enrollment. Table 5 illustrates the impact of sport cuts on Title IX compliance across the three Divisions. The number of schools that ultimately ended up meeting substantial proportionality was then compared to the total number of schools in their respective divisions that cut at least one athletic program. The data showed that the largest number of Division III schools (five) were in compliance with Title IX following sport cuts. Additionally, of the institutions that cut athletic teams during the COVID-19 pandemic, the largest percentage that were successful in achieving substantial proportionality as a result were from Division III (22.73%).

Table 5. Title IX Substantial Proportionality Compliance Following Sport Cuts

	Schools	In Compliance	Percentage
Division I	28	1	3.57%
Division II	15	2	13.30%
Division III	22	5	22.73%

Limitations

A limitation of this study is that it was conducted using data from the Equity in Athletics Disclosure Act. The EADA is a federal act that requires all coed higher education institutions that receive federal student aid to submit information and data to “make prospective students aware of a school’s commitment to providing equitable athletic opportunities for its men and women students” (U.S. Department of Education, n.d.). The EADA clarifies 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” (U.S. Department of Education, n.d.).

This study utilizes EADA data, as it is the only participation data that is accessible to the public. Participation data retrieved through the EADA may not be identical to the Title IX participation counts, as was seen in *Balow v. Michigan State University*. The EADA defines participants as:



Students who, as of the day of a varsity team's first scheduled contest (A) Are listed by the institution on the varsity team's roster; (B) Receive athletically related student aid; or (C) Practice with the varsity team and receive coaching from one or more varsity coaches. A student who satisfies one or more of these criteria is a participant, including a student on a team the institution designates or defines as junior varsity, freshman, or novice, or a student withheld from competition to preserve eligibility (i.e., a redshirt), or for academic, medical, or other reasons. This includes fifth-year team members who have already received a bachelor's degree. (U.S. Department of Education, n.d.)

While the use of this data is a limitation, it is still useful to illustrate the process schools should consider when cutting sports. It also provides insight whether schools that cut sports are doing so in a way that achieves substantial proportionality or if the institution likely remains out of compliance for participation opportunities. While the calculations of the participation gap based on EADA data are correct, the numbers reported may not be the true participation gap because of this limitation.

Discussion

There are many options for an institution to provide equitable participation opportunities for its student-athletes. One possible solution for schools to come into proportionality compliance is to increase the size of some rosters while decreasing the size of others. Roster padding is the inflation of participants on athletic teams beyond what would provide a genuine participation opportunity for all of the student-athletes on the team (see *Biediger v. Quinnipiac University*, 2012). When team rosters are so inflated that all members of a team are not actively engaged in practices or do not have meaningful opportunities to compete, the student-athletes on that team are not being equally and effectively accommodated (see *Biediger v. Quinnipiac University*, 2012).

Other ways that participation opportunities may be manipulated are through repeat counting and the inclusion of practice players (Simon et al., 2014). Repeat counting is when a student-athlete participates in multiple sports at the same institution and is double or even triple counted because of this. This is commonly seen in collegiate running, specifically in the sports of cross country and indoor and outdoor track and field. Distance runners may be participants on the cross country, indoor track and field, and outdoor track and field teams. So, one student-athlete who is a runner may be counted three times, which is allowed under the definition of a participant under Title IX. In EADA data, this is the duplicated count. However, some schools take advantage of this method, counting student-athletes who are not actively participating in that season. A prominent example of this was at the University of South Florida. After adding football in 1997, the athletics program was alerted by its gender equity consultant that the addition of 100 football players would put its



participation opportunities ratio out of compliance with Title IX. When looking for a solution, the University of South Florida identified women's running as a program that would benefit from roster expansion. Thus, from 2002 to 2008, more than 50 additional student-athletes were added to the University of South Florida cross country team. Only 28 of the 71 women on the roster ran at least one race that season. However, the remaining student-athletes—members of the track team—were not aware they were considered members of the cross country team (Thomas, 2011). Although these student-athletes were counted as participants for cross country, they did not meet the Title IX guidelines of practicing with the team and receiving instruction from the coaches, pointing to these counters as methods of manipulating the rosters.

An additional method of manipulating participation numbers is counting male practice players as female participants, which is allowed under the EADA, but not under Title IX. Male practice players are talented athletes who are used by female teams to simulate an elevated level of play. The use of male practice players is common at Division I Power 5 institutions; however, when these practice players are included in EADA participation counts, this does not provide an accurate portrayal of what opportunities look like for female students at that school. Although practice players are counted to varying degrees, one university reported a women's basketball roster of 32 athletes—14 women and 18 male practice players (Eisenberg, 2022). With the potential for roster manipulation in mind for compliance purposes, comparing the EADA's definition of a participant to Title IX's definition highlights how much broader and more inclusive the EADA's definition is. It is important to note the differences in these definitions, as utilization of EADA participant numbers is common for schools who are trying to inflate their rosters to appear in compliance. Ideally, institutions should be committed to achieving Title IX compliance (they have had more than 50 years to do so) instead of attempting to look as if they were compliant by manipulating their rosters or the reported number of participants. Only an audit of the athletics department rosters with a roster verification process can determine whether EADA reported participant numbers are the same as participants for Title IX compliance.

The purpose of Title IX was to eliminate sex discrimination in educational programs and activities. In athletics, the intent was to provide more opportunities for those of the underrepresented sex; eliminating opportunities by cutting sports does not increase opportunities. Eliminating sports remains a disfavored but legal method of being compliant, as explained by the Office of Civil Rights in 1996:

“An institution can choose to eliminate or cap teams as a way of complying with part one of the three-part test. However, nothing in the Clarification requires that an institution cap or eliminate participation opportunities for men ... Ultimately, Title IX provides institutions with flexibility and choice regarding how they will provide nondiscriminatory participation opportunities.” (U.S. Department of Education, 1996)



Despite this clarification, schools have chosen to continue to eliminate men's teams and justify the decision by claiming a need to become Title IX compliant, whether they achieve compliance or not.

Conclusion

This study shows that many institutions that eliminated teams during the COVID-19 pandemic may not have considered compliance with Title IX when making these decisions. The majority of NCAA member schools in the study population failed to achieve substantial proportionality, and for some institutions, the cuts put the institution even further out of compliance with Title IX than it was before the pandemic. Of the 67 schools that cut sports, only eight were in compliance with the substantial proportionality prong following the cuts. This included one Division I school, two Division II schools, and five Division III schools.

Despite sport cuts creating further disparities in the availability of opportunities offered for men and women, Title IX compliance remains elusive. While institutions are expected to comply because it is the law, meaningful change appears to happen more often when student-athletes file complaints with the Office for Civil Rights in the U.S. Department of Education or by filing lawsuits. The statutory penalty for failing to comply with Title IX has been to withdraw federal funding, and the U.S. Department of Education has not chosen to use that “nuclear” option. Many are left wondering what can incentivize college athletic departments to prioritize Title IX compliance (Axon, 2022; Yanus & O'Connor, 2016). In *Balow v. Michigan State University*, the school emphasized that cutting men's and women's swimming would save it more than \$2,073,461 per year. However, cutting a sport without consideration of how it will impact Title IX compliance would cost the institution a considerable sum in litigation as well (Balow, 2022). A recent report disclosed that Michigan State had already spent more than \$700,000 on legal bills fighting that lawsuit (Paul, 2022). Additionally, lawsuits open the doors for every element of an athletic department to be evaluated for equal treatment for female student-athletes, not just examination of the equal opportunity component. Further disparities in treatment, if found, will be mandated by the court to be fixed, increasing the yearly institutional investment. Sport cuts, especially through the COVID-19 pandemic, were used as “easy” ways for athletic departments to save money; however, this research shows that institutions are putting themselves at risk for Title IX non-compliance, and the student-athletes whose teams are cut, like the swimmers in *Balow*, are willing to hold institutions accountable.

The current state of college athletics is rapidly changing, with significant policy changes related to NIL and a litigation settlement that could require sharing television revenues with student-athletes (*House v. NCAA*, 2024). As institutions look for ways to reduce spending to balance increased costs, Title IX compliance should be a major consideration in their decision making.



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