



Athletics

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- [Background](#)
- [Amateur v. Professional Athletes](#)
- [The NCAA v. Professional Sports Associations](#)
- [Other Legal Issues Confronting Amateur and Pro Athletes](#)
- [Title IX and Sex Discrimination in Amateur Athletics](#)
- [Title IX: Background](#)
- [Title IX: Parties Subject to Liability](#)
- [Title IX: Standards for Liability](#)
- [Title IX: Remedies](#)
- [Additional Resources](#)
- [Organizations](#)

Background

The law governing amateur athletics is an amalgam of statutes, regulations, rules, procedures, and judicial decisions that apply to individual athletes, the academic institutions for which they compete, and most persons employed by those academic institutions. This body of law spans several areas of American [JURISPRUDENCE](#), including [TORT LAW](#), tax law, [ANTITRUST LAW](#), and [CIVIL RIGHTS](#) law, among others. Thus, the law governing amateur athletics is not a single body of law unto itself.

Amateur v. Professional Athletes

The most basic difference between amateur and professional athletes lies in the rewards that each group receives for its athletic performances. Generally speaking, amateur athletes are not paid for their athletic performances, though the U.S. Gymnastics Association and the U.S Figure Skating Association now allow member athletes to sponsor commercial products so long as the money earned is placed into trust. Professional athletes, by contrast, are typically paid annual salaries plus incentives tied to individual and team performance.

Athletic scholarships are the biggest reward offered to amateur athletes. Athletic scholarships pay for some or all of a student-athlete's tuition, including room and board, as long as the student-athlete remains enrolled at the school, continues to participate in the athletic program for which the scholarship was awarded, and maintains academic eligibility. Amateur athletes who are compensated for their performance in any way beyond their athletic scholarships can be stripped of their amateur status by the National Collegiate Athletic Association (NCAA).

The NCAA v. Professional Sports Associations

Headquartered in Shawnee, Kansas, the NCAA is the governing body that regulates athletic competitions

among many colleges and universities. Colleges and universities must elect to join the NCAA, and once they do they relinquish ultimate [JURISDICTION](#) over their athletic programs, student-athletes, and coaches. To remain a member of the association, colleges and universities have to abide by NCAA rules, regulations, and policies.

Pursuant to its governing authority, the NCAA has established criteria that college athletes must satisfy to stay eligible for NCAA sanctioned athletic competitions. One of these criteria is that student-athletes be in good academic standing and maintain a certain minimum grade-point average. Schools and coaches are subject to NCAA restrictions regulating how high school students may be recruited, while both coaches and athletes are subject to discipline for violating NCAA rules relating to use of illegal or banned substances, gambling, point-shaving, and [BRIBERY](#).

The NCAA conducts its own investigations of alleged rule violations and assesses penalties based on the severity of the violation, after giving the suspected offender an opportunity to be heard during a public proceeding in which most fundamental legal rights may be invoked. Penalties may be assessed against an offending school, coach, or athlete, and entail loss of scholarships and loss of post season awards, and include fines, [PROBATION](#), suspensions, [FORFEITURE](#) of games, and forfeiture of tournament and playoff opportunities. Despite the sometimes-daunting power exercised by the NCAA, being a member-school is a symbol of prestige, and many schools use their membership as an enticement during the recruiting process.

Professional sports teams in the National Football League (NFL), Major League Baseball (MLB), the National Hockey League (NHL), and the National Basketball Association (NBA) are also governed by voluntary associations, but their associations are comprised of the individual owners who buy professional sports franchises and agree to abide by the rules, policies, and procedures established by the league. Also known as the constitution and by-laws, these rules, policies, and procedures generally govern the circumstances under which franchises may move their team from one city to another; players may be drafted, sign contracts, become free agents, and receive retirement pensions; and owners, coaches, and players may be fined, suspended, banned, or otherwise punished. The league's constitution and by-laws may also be influenced by the terms of any [COLLECTIVE BARGAINING AGREEMENT](#) entered into between franchise owners and labor representatives for the players' union and by any applicable antitrust laws (i.e., federal laws that protect trade and commerce from restraints, monopolies, [PRICE-FIXING](#), and price [DISCRIMINATION](#)).

Each professional league also allows its teams to set their own rules, which must be consistent with the league's rules. Some teams set rules that the players consider unreasonable. For example, many teams prohibit players from growing facial hair or wearing jewelry, require players to make themselves available for interviews, and subject players to curfews during the season. The NHL, NBA, NFL, and MLB have all appointed commissioners to oversee the administration of their rules, and individuals punished for violating a league or team rule may appeal to the commissioner's officer for review.

Other Legal Issues Confronting Amateur and Pro Athletes

Amateur and professional athletes must comply with state and federal laws that exist independent of the rules established by the athletic association in which they are members. Nonetheless, many professional and amateur athletes are surprised to learn the extent in which they must understand the intricacies of civil and criminal law if they want to stay out of court. For example, professional athletes are required to pay [INCOME TAX](#) to every state in which they appear to play a game, and not just to the state in which their teams play home games. Amateur athletes may be taxed on the funds they receive for athletic scholarships when those funds exceed the cost of tuition, room, board, and necessary supplies.

Many amateur and professional athletes are also surprised to learn that they can be held civilly and criminally liable for injuries they inflict on other athletes during competition, even in contact sports such as hockey and football. Contact-sport athletes consent to some contact as part of the game and assume the risk for injuries that are sustained during the normal and ordinary course of an athletic contest. But under the [COMMON LAW](#), no athlete assumes the risk for injuries that result from the reckless or intentional misconduct of another athlete. Depending on the laws of the state in which an injury is inflicted, the blameworthiness of the misconduct, and the severity of the injury, athletes who recklessly or intentionally injure competitors during an athletic contest may be prosecuted in criminal court or sued in civil court for battery, [ASSAULT](#), or other such related unlawful acts. A minority of jurisdictions also allow athletes to recover for injuries sustained from the negligent conduct of competitors.

In some cases academic institutions may be held liable for injuries suffered by athletes. As a general rule, coaches, trainers, and referees must exercise reasonable care to prevent foreseeable injuries to athletes, and under no circumstances may a school employee encourage athletes to injure opponents or competitors. If a school employee fails to exercise the degree of care that is reasonable under the circumstances, the school itself may be held vicariously liable under the doctrine of *respondeat superior*, which makes principals liable for the wrongful acts of their agents, when those acts are committed in the ordinary course and scope of the agent's authority.

Because the relationship between the law and amateur and professional athletes can be complicated, many colleges, universities, and pro sports franchises require athletes to attend classes that introduce them to a variety of legal issues. Some of these classes are geared solely toward male athletes. Given the number of highly publicized cases in which male athletes have been [ACCUSED](#) of sexual assault and violence, these classes are intended to help male athletes avoid situations where they can get themselves into trouble.

Title IX and Sex Discrimination in Amateur Athletics

In amateur athletics another hotly litigated issue involving both genders is [SEX DISCRIMINATION](#). Title IX of the Education Amendments of 1972 provides that "[n]o person in the United States may, upon 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." Pub. L. 92-318, Title IX, section 901, June 23, 1972, 86 Stat. 373, codified at 20 U.S.C.A. sections 1681 et seq. The phrase "education program or activity" has been broadly interpreted to include athletic programs. Title IX may be enforced by the federal government in an administrative proceeding or by a private individual in civil court. The law guarantees [EQUAL PROTECTION](#) at all federally funded academic institutions for both male and female student-athletes and male and female persons employed by school athletic programs.

Title IX: Background

Congress enacted Title IX to serve as a catalyst against sex discrimination at federally funded academic institutions, to encourage the development of athletic programs for female student-athletes, and to stimulate female participation in school sports. Within eleven years of Title IX's enactment, statistics revealed that progress was being made toward these goals. In 1983 more than 150,000 women were participating in college sports, compared to 32,000 in 1972, while the number of colleges and universities offering athletic scholarships to women increased from 60 in 1974 to over 500 in 1981.

However, further progress was impeded by the U.S. Supreme Court's decision in *Grove City College v. Bell*, 465 U.S. 555, 104 S.Ct. 1211, 79 L.Ed.2d 516 (U.S. 1984), where the court ruled that Title IX applied only to

the athletic programs that directly received funding from the federal government and not to athletic programs that received funding from the college, even if the college itself was a federally funded institution. Because very few college athletic departments ever receive direct federal funding, the Supreme Court's decision in *Grove City* essentially insulated virtually all collegiate athletic programs from liability for sex discrimination under Title IX. In response to *Grove City*, the U.S. Department of Education (DOE) suspended 29 Title IX compliance cases, and many universities began cutting women's athletic programs.

In 1987 Congress formulated its own response to *Grove City* by enacting the Civil Rights Restoration Act (CRRA). Pub. L. 92-318, Title IX, section 901, June 23, 1972, 86 Stat. 373, codified at 20 U.S.C.A. section 1685. The CRRA adopted an "institution-wide" approach, providing that if any one program within an educational institution receives federal funding, then all of the programs or activities at that institution are subject to Title IX's requirements. As a result, all athletic programs offered by academic institutions receiving any form of federal funds have been subject to the strictures of Title IX since March 22, 1988, the effective date of the CRRA.

Title IX empowers every federal department and agency to extend financial assistance to educational institutions by way of grant, loan, or contract. The U.S. Departments of Agriculture, Health and Human Services, and Education have all extended financial assistance pursuant to Title IX. However, the DOE is primarily responsible for implementing Title IX, and it has delegated much of its responsibility to the Office of Civil Rights (OCR). The OCR has responsibility for promulgating regulations to enforce Title IX, initiating administrative proceedings against alleged violators, and terminating federal funding for proven violators. Although neither Title IX nor any of its amendments expressly authorizes individuals to bring a lawsuit against a violator independent of an action brought by the DOE or OCR, the U.S. Supreme Court has ruled that Title IX implies a private cause of action pursuant to which aggrieved individuals may seek [REDRESS](#) for sex discrimination in federal court without first having exhausted their administrative remedies. *Cannon v. University of Chicago*, 441 U.S. 677, 99 S.Ct. 1946, 60 L.Ed.2d 560 (U.S. 1979).

Title IX: Parties Subject to Liability

Title IX conditions the offer of federal funding on each funding recipient's promise not to discriminate on the basis of sex, in what amounts to a contract between the government and the funding recipient. Elementary schools, junior high schools, high schools, and both undergraduate and graduate colleges and universities must comply with Title IX if they receive federal funding and wish to continue receiving it. However, federally funded recipients may be exempted from liability under Title IX if they have had a continuous policy and tradition of admitting students of only one gender. 20 U.S.C.A. section 1681(a)(5). Federally funded recipients are also exempt from Title IX suits that arise from employment discrimination claims over jobs in which sex is a bona fide occupational qualification, as might be the case for persons hired to clean or monitor locker rooms and toilet facilities.

As noted above, athletic departments and athletic programs infrequently receive funding directly from the federal government. The same holds true for directors, coaches, trainers, and other individuals employed by school athletic programs. Instead, school boards, school districts, colleges, and universities are the most common recipients of federal funding, and thus they are also the most common targets of Title IX [LITIGATION](#). Since Title IX has been interpreted as abrogating the states' Eleventh Amendment [IMMUNITY](#), state governments themselves may also be sued in federal court for discrimination that occurs at one of their federally-funded, state-sponsored academic institutions.

Title IX: Standards for Liability

Title IX bars sex discrimination in any interscholastic, intercollegiate, intramural, or club athletic program offered by a federally-funded academic institution. This prohibition has two prongs. The first prong prohibits sex discrimination against students participating in or seeking to participate in a school-sponsored sport. The second prong prohibits sex discrimination against persons employed or seeking employment with a school sponsored athletic program, including persons employed or seeking employment as athletic directors, athletic coordinators, coaches, physical therapists, trainers, or any other job within a school's athletic program.

Under both prongs, the law requires federally funded academic institutions to guarantee equal opportunity for student-athletes and employees without regard to gender. Ten specific factors may be considered in determining whether this obligation has been met: (1) the particular sports and levels of competition selected by an institution to accommodate members of both sexes; (2) the quality and quantity of equipment and supplies that are provided to teams of each gender; (3) the scheduling of games and practice time; (4) travel and per diem allowances; (5) the opportunities to receive coaching and academic tutoring; (6) the compensation of coaches and tutors; (7) the provision of locker rooms, as well as practice and competitive facilities; (8) the provision of medical and training facilities and services; (9) the provision of housing and dining facilities and services; and (10) the publicity afforded to each gender's athletic programs. 34 C.F.R. section 106.41.

The circumstances of each case determine how much weight is allotted to a given factor in resolving Title IX disputes. Nonetheless, a significant portion of litigation has focused on the first factor, and courts will normally ask three questions when evaluating whether an academic institution has taken steps to effectively accommodate athletes of both sexes: (1) does the number of athletic opportunities provided for males and females proportionately represent their respective overall enrollments to a substantial degree? (2) does the academic institution have a history of expanding programs to accommodate female interests and abilities in sports? and, if so, (3) has that institution fully and effectively accommodated those interests and abilities? If a preponderance of the [EVIDENCE](#) offered during a Title IX proceeding answers these questions in the affirmative, the [DEFENDANT](#) will normally prevail. Plaintiffs are more likely to prevail when the defendant has a poor or inconsistent record on these issues.

Student-Athletes' Title IX Claims

A court's analysis will also depend on whether the plaintiff is a disgruntled student-athlete or a disgruntled employee. For disgruntled student-athletes, Title IX does not compel federally funded educational institutions to sponsor one program for each gender in every sport they sponsor. However, if a school sponsors only one program for a sport, then that school must allow members of both sexes to try out for the team, unless the sport is a contact sport, in which case the school may limit participation to one gender. Conversely, if a school sponsors only one program for a contact sport and then allows members of both sexes to compete for the team, the school may not exclude an athlete from the team on account of his or her gender. "Contact" sports include boxing, wrestling, rugby, ice hockey, football, and basketball. 45 CFR section 86.41. Non-contact sports include volleyball, baseball, tennis, and swimming.

Disgruntled students may also [ALLEGE](#) that they have been victims of [SEXUAL HARASSMENT](#) in violation of Title IX. Sexual harassment typically consists of receiving unwanted sexually oriented comments, receiving unwanted sexually oriented physical contact, or working in a sexually charged environment. The threshold of liability is higher for sexual harassment than it is for sex discrimination. To prevail on a Title IX sexual harassment claim, a plaintiff must show that the institution was aware of the harassment, exercised control over both the harassed and the environment in which the harassment occurred, and that harassment was serious enough to have the systemic effect of denying the victim equal access to participate in an athletic

program. Mere name-calling or teasing will not give rise to a Title IX harassment claim, even when the offensive comments single out differences in gender.

Courts are much more inclined to find that offensive comments give rise to Title IX liability when they are made by a coach or person acting in an official capacity for the academic institution. Plaintiffs are less likely to prevail when the offensive behavior takes the form of student-on-student or athlete-on-athlete harassment. In such instances, the plaintiff must not only prove that the academic institution was aware of the harassment and had authority to stop the harassment but also that the harassment was "so severe, pervasive, and objectively offensive" that it amounted to a "deliberate indifference" by the institution in failing to stop it. *Davis Next Friend LaShonda D. v. Monroe County Board of Education*, 526 U.S. 629, 119 S.Ct. 1661, 143 L.Ed.2d 839 (U.S. 1999). Thus, sexual harassment by fans, athletes, or coaches from opposing schools is generally not actionable.

Coaches' Title IX Claims

The [STATUTORY](#) proscription against sex discrimination in education programs and activities encompasses employment discrimination, which means that any person working for an athletic program at a federally funded academic institution is entitled to protection from Title IX. The law protects employees in all aspects of their employment, ranging from hiring and compensation to promotion, demotion, suspension, and termination, regardless of the position held by the employee and regardless of whether the federally funded academic institution is a tiny elementary school or an enormous Division I university.

Over the last ten years a large number of Title IX employment discrimination complaints have been filed by college coaches. Frequently, these claims allege that the head coach of a women's college team is being discriminated against because she is being paid less than the head coach of the men's team for the same sport and from the same school. Courts will consider several factors in evaluating these claims, including the following: (1) the differing rates of compensation; (2) the duration of the contracts; (3) provisions relating to contract renewal; (4) the relative training and experience of the two coaches; (5) the nature of the coaching duties performed by each; (6) working conditions; (7) professional standing; (8) other terms and conditions of employment; and (9) other professional qualifications.

In *Stanley v. University of Southern California*, 178 F.3d 1069 (9th Cir. 1999), the Ninth Circuit Court of Appeals discussed what it considered the relevant professional qualifications and conditions of employment in evaluating a coach's Title IX claim based on pay disparity. The case began when Marianne Stanley, the head coach of the women's basketball team at the University of Southern California (USC), sued the school for Title IX discrimination after learning that her \$64,000 annual salary was less than half of the salary paid to the head coach of the men's basketball team, George Raveling, who made \$135,000 annually.

The court conceded that both coaches were extremely well qualified for their jobs. Raveling had 31 years of experience, while Stanley had 16 years of experience. Raveling had won coach-of-the-year honors twice, had been named assistant coach for a U.S. Olympic team, and had marketing and promotional experience. Stanley had won three national championships and had marketing and promotional experience of her own. However, the Ninth Circuit observed that Raveling was also required to conduct twelve outside speaking engagements per year, make himself accessible to the media for interviews, and participate in certain activities designed to produce donations and endorsements for the USC Athletic Department as a whole. Stanley's position as head coach of the women's team did not require her to engage in the same intense level of promotional and revenue-raising activities. Moreover, the court found, Raveling's activities generated 90 times more revenue for the school than did Stanley's activities. These differences justified the disparity in pay for the two coaches, the court concluded.

Other Title IX plaintiffs have been more successful. For example, in the unpublished case *Tyler v. Howard University*, No. 91-CA-11239 (D.C. Sup.Ct. June 24, 1993), a District of Columbia Superior Court jury awarded \$2.4 million to the Howard University women's basketball coach, Sanya Tyler, after she offered proof that the school had afforded her inadequate office space, poor locker room facilities, no assistant coach, and about half the salary of the men's head coach. The jury award was later reduced to an undisclosed amount via an [OUT-OF-COURT SETTLEMENT](#), but not before the school gave her a bigger office and upgraded her team's locker room facilities.

Title IX: Remedies

A plaintiff instituting a private action to enforce Title IX may not ordinarily recover [COMPENSATORY DAMAGES](#), unless the plaintiff offers evidence that the discrimination was willful, deliberate, or intentional. Injunctive relief is the remedy most regularly sought in Title IX actions. Injunctions may take the form of an order compelling an academic institution to cease an offending practice or an order compelling the institution to take specific action to level the playing field for the victims of discrimination. Prevailing Title IX plaintiffs may also recover attorney fees and expert witness fees pursuant to 42 U.S.C.A. section 1988. Additionally, when the Title IX defendant is a state government, plaintiffs may pursue remedies available under the Civil Rights Act, which prohibits discrimination by state actors. 42 U.S.C.A. section 1983. Both compensatory and [PUNITIVE DAMAGES](#) are recoverable in section 1983 actions.

Litigants who are unhappy with a federal agency's decision made pursuant to Title IX may generally appeal that decision to a federal district court as provided in 20 U.S.C.A. section 1683. However, if the agency's decision involves terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with a Title IX requirement, then [JUDICIAL REVIEW](#) may only be pursued as provided in 5 U.S.C.A. sections 701 et seq. Title IX does not contain a [STATUTE OF LIMITATIONS](#). So both administrative agencies and judicial bodies rely on the most analogous [STATUTE](#) of limitations provided by the law of the state from which the discrimination complaint originated.

Additional Resources

American Jurisprudence. West Group, 1998.

"Howard's Tyler Savors Fight, Refocuses on Women's Team." Hente, Karl, Washington Post, November 21, 1993.

West's Encyclopedia of American Law. West Group, 1998.

Organizations

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