

GOVERNMENT ACCOUNTABILITY OFFICE STUDIES— THE THREE-PART TEST

The Title IX athletics policy for female and male students' equal access to interscholastic and intercollegiate athletics is addressed by the three-part test under the "accommodation of interests and abilities." To comply, a school may choose which one test of the three-part test it will meet: test one (proportionality)—provide women's and men's participation opportunities at rates proportionate to their rates of enrollment; or test two (program expansion)—demonstrate continuing program expansion for the underrepresented sex; or test three (full accommodation)—offer to the underrepresented sex every team for which there is sufficient interest, ability, and competition in the school's normal competitive region.

The three-part test was the subject of Congressional scrutiny in 1995, when members of Congress expressed concerns that institutions were being required to comply with the first test (proportionality), and that this was the focus of OCR's enforcement. In 2002, these same perceptions were repeated often during meetings of the U.S. Secretary of Education's Commission on Opportunity in Athletics, which was formed to review application of the three-part test. Two studies by the U.S. Government Accountability Office (GAO) have demonstrated that these perceptions are incorrect.

The GAO is an independent and nonpartisan agency that conducts investigations for Congress, studying how the government spends taxpayers' dollars. The GAO has conducted two studies that included findings for OCR's investigations involving the three-part test. The combined results reveal that in 73% of OCR's cases, institutions chose compliance with test three (67%) or test two (6%), while the proportionality option of test one was selected only 27% of the time. This means that 73% of the time, compliance with Title IX was achieved or could be achieved even though women's rate of participation was less than their rate of enrollment (and sometimes significantly so). There is some margin for error with these combined figures, since the time frames overlap for the two GAO studies.

In October 1996, the GAO issued its report entitled "Intercollegiate Athletics, Status of Efforts to Promote Gender Equity," (GAO/HEHS-97-10). The study was requested by Congresswoman Cardiss Collins of Illinois. The report contains the following information (at pages 6-7): from 1992 to 1996, OCR investigated 80 intercollegiate athletics complaints involving the three-part test. Of these 80 institutions, 18 were still implementing settlement agreements and had not determined which test of the three tests they would meet. Of the remaining 62 cases, 42 institutions had demonstrated compliance or were taking actions to comply with test three, 16 with test one, and 4 with test two. In effect, 74% (46 of 62) of the institutions chose compliance with test three (full accommodation) or test two (program expansion), not test one (proportionality).

In December 2000, the GAO issued a report entitled "Gender Equity, Men's and Women's Participation in Higher Education," (GAO-01-128). The study was requested by Congresswoman Patsy Mink of Hawaii. The report contains figures (at pages 40-42) for OCR cases involving the three-part test for the fiscal years of 1994 to 1998. In 74 cases, 49 institutions selected test three (full accommodation), 21 selected test one (proportionality), and 4 selected test two (program expansion). In effect, 72% (53 of 74) of the cases were closed by the institution complying with or committing to comply with test three or test two, not the proportionality option of test one.

In another study related to the accommodation of interests and abilities, the GAO issued a March 2001 report entitled "Intercollegiate Athletics: Four-Year Colleges' Experiences Adding and Discontinuing Teams," (GAO-01-297). The study was requested by Senator James Jeffords of Vermont, Senator Edward Kennedy of Massachusetts, Congressman John Boehner of Ohio, and Congressman George Miller of California. The GAO analyzed information for NCAA and NAIA institutions for the 1981-82 to 1998-99 academic years. The GAO report includes figures for numbers of participants and teams.

Between 1981–82 and 1998–99, women’s participation increased by 81% (from 90,100 to 162,783 participants), while men’s participation increased by 5% (from 220,178 to 231,866 participants). The number of women’s teams increased by 66% (from 5,695 to 9,479), while the number of men’s teams increased by 0.4% (from 9,113 to 9,149). As of the 1998–99 academic year, men had 69,083 more participation opportunities than women, while women had 330 more teams than men. Combined participation for 1998–99 was 394,649, of which, men were 58.8% (231,866) and women were 41.2% (162,783) of the participants. The GAO also surveyed 1,310 NCAA and NAIA institutions, to which 1,191 institutions responded. Of the 948 institutions that added one or more women’s teams, 72% did not discontinue any teams. Between 1992–93 and 1999–2000, institutions added 1,919 teams for women and 702 teams for men, while discontinuing 386 men’s teams and 150 women’s teams. Institutions cited multiple reasons for discontinuing teams. For the 272 institutions that provided an explanation for discontinuing men’s teams, 91% cited lack of student interest, 31% cited gender equity goals, and 30% cited budget reallocation needs.