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DOE Denies CSC Petition to Further Clarify/Amend Title IX

RESTON, VA (April 14, 2008) - This month the Department of Education (DOE) denied a petition submitted by the College Sports Council (CSC) asking the Department to repeal, amend, and clarify its rules as they apply to Title IX of the Education Amendments of 1972.

Opposition to the CSC Petition was presented to the DOE in writing by several organizations with a history of Title IX advocacy. The National Association for Girls and Women in Sport (NAGWS) signed onto the opposition along with the National Women's Law Center, American Association of University Women, Girls Inc., and the Women's Sports Foundation.

On June 19, 2007 the CSC requested the following actions from the DOE:

1. Clarify that the Three-Part Test does not apply to high school athletics;
2. Repeal or amend any rule, regulation, interpretation, or clarification applying the Three-Part Test to high school athletics; and
3. Clarify the Department's guidance to high schools with regard to measuring athletic interests and abilities.

In her response to the CSC, Secretary of Education Margaret Spellings wrote that the regulations implementing Title IX require recipients of federal funds to provide equal athletic opportunities for both sexes in interscholastic AND intercollegiate athletics. Therefore the DOE disagrees with the CSC position that the legislation does not apply to high school athletics.

Secretary Spellings also noted that the Intercollegiate Athletics Policy Interpretation (1979 Policy Interpretation) requires effective accommodation of student athletic interests and abilities as measured through the Three-Part Test. This policy further extended to "often apply to club, intramural, and interscholastic athletic programs which are also covered by the regulation." (*44 Fed. Reg. 71413, December 11, 1979*)

CSC argued that the Three-Part Test violates the principles of equal protection and limits participation opportunities. The CSC argued in the same way in January 2003 "Petition to Repeal and Amend Guidance Issued under 34 C.F.R. 106.4 (c) Concerning Equal Athletic Opportunity." The DOE denied the 2003 request with the response that the Three-Part Test neither violates equal protection nor creates a gender-conscious affirmative action quota system.

The DOE released “Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance” on July 11, 2003 in which the Department explained that the Three-Part Test does not limit opportunities but provides schools “with the flexibility to provide greater athletic opportunities for students of both sexes.”

DOE also informed the CSC that the Three-Part Test is consistent with Title IX Regulations, thereby denying the request to issue further guidance. Secretary Spellings also noted that the DOE has “repeatedly and clearly stated its view that institutions are not required to cut or reduce teams to comply with Title IX.”

NAGWS has advocated for Title IX legislation since its inception and has developed a variety of educational materials on Title IX as it relates to sport. Title IX was signed by Richard M. Nixon on June 23, 1972; continued challenges to the legislation have been received from those who believe the law has hurt men’s sports because some schools have chosen to cut men’s teams to address equity issues in their program.

Further information on Title IX and programs and products on this issue developed by NAGWS are available on the association’s website: www.nagws.org. NAGWS is one of five national associations of the American Alliance for Health, Physical Education, Recreation and Dance (AAHPERD).

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