

Gender

Men's and Women's Intercollegiate Sports

Title IX and the Expansion of Intercollegiate Women's Sports

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.

Title IX Legislative History

The passage of Title IX and its potential impact on college sports proved highly controversial. Between 1972 when the measure was passed until 1982 when it became effective, various legislators and others attempted to weaken Title IX measures by various means. A key goal of the opposition was to create a special place for football outside Title IX in order to protect the number of men's sports which they believed would need to be eliminated to reach reasonable parity of men and women participants. While some number of men's sports were eliminated, as the data that follows demonstrate, the number of men's sports and men's participation increased overall somewhat in college championship sports, and the number of women's sports and women participants increased dramatically.

The theory that women would not be interested in competitive championship sports was easily demonstrated to be false.

The following four slides outline the history of the controversy over Title IX.

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.

An educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education.

Exceptions:

- **Private college** or university undergraduate admissions [Title IX applies only to institutions of vocational education, professional education, and graduate higher education, and to **public institutions of undergraduate** higher education]
- Educational institutions of **religious organizations** with contrary religious tenets
- Educational institutions training individuals for **military services** or merchant marine
- Public institutions of undergraduate higher education which have had a **policy of admitting only students of one sex**
- **Social fraternities or sororities**
- **Separate living facilities** for different sexes

Passed:

Signed into law by President Richard Nixon, June 23, 1972.

May 20, **1974**, Senator Tower introduced an amendment to exempt revenue-producing sports from being tabulated when determining Title IX compliance. The amendment was rejected.

1975 HEW issues final Title IX regulation Signed into law by President Gerald Ford, effective 7/21/75. Includes provisions prohibiting sex discrimination in athletics and establishes a three year window for educational institutions to comply.

1975 Congress reviews and approves Title IX regulations and rejects resolutions disapproving them.

Efforts to Undermine:

June 1975, Rep. O'Hara introduced House Bill (H.R. 8394), proposing to use sports revenues first to offset cost of that sport, then to support other sports. (dies)

July 15, 1977, Senators Tower, Bartlett, & Hruska introduced Senate Bill(S. 2106), proposing to exclude revenue-producing sports from Title IX coverage. (dies)

Passed:

June 4, 1975: The present Title IX regulation was transmitted to Congress.

Efforts to undermine :

June 5, 1975, Senator Helms and **June 17, 1975**, Rep. Martin disapproving entire Title IX legislation

June 17, 1975, Rep. Martin disapproving Title IX legislation only as it has to do with intercollegiate athletics

July 16, 1975, Senators Laxalt, Curtis & Fannin , disapproving application of Title IX to intercollegiate athletics

July 21, 1975, Senator Helms prohibit the application of Title IX regulations to athletics where participation in those athletic activities are not a required part of the educational institution's curriculum. January 31, 1977, Senator Helms re-introduced same bill.

Passed:

1978 HEW issues proposed policy "Title IX and Intercollegiate Athletics" for notice and comment. Presumption of compliance based on substantially equal average per capita expenditures for men and women athletes and future expansion of opportunity and participation for women.

1979 HEW issues final policy interpretation on "Title IX and Intercollegiate Athletics". Final policy focuses on institution's obligation to provide equal opportunity and details the factors to be considered in assessing actual compliance. (Currently referred to as the 3-Prong-Test)

Undermines Title IX:

1984 Grove City vs. Bell Decision Removed the applicability of Title IX in athletics programs by stating that only those programs or activities which receive direct Federal financial assistance be held under the umbrella of Title IX.

Passed:

1988 Civil Rights Restoration Act Becomes law on 3/22/88 after overriding a Presidential veto by President Ronald Reagan. Overrides Grove City vs. Bell, and mandates that **all educational institutions** which receive any type of Federal financial assistance, whether it be direct or indirect, be bound by Title IX legislation.

Strengthens:

1992 Franklin vs. Gwinnett County Public Schools February 2, 1992: Supreme Court rules unanimously that plaintiff's filing Title IX lawsuit are entitled to receive punitive damages when intentional action to avoid Title IX compliance is established.

NCAA on Board:

1992: NCAA Gender Equity Study Shortly after Franklin decision, NCAA completes and publishes a landmark Gender-Equity study of its member institutions.

Passed:

1994 Equity in Athletics Disclosure Act (EADA) any coeducational institution of higher education that participates in any Federal student financial aid program and has an intercollegiate athletics program must disclose certain information concerning that intercollegiate athletics program.

Impact of Title IX: Introduction to the Following Three Slides

The basic impact of this legislation is relatively simple. It dramatically increased the number of women participating in intercollegiate athletics. To achieve this result, colleges and universities increased the number of sports and teams available for women, and increased the scholarship money available for women.

By the 2018-19 academic year, the landscape for women's intercollegiate athletics had changed completely, with large numbers of women competing on many more teams than in the past. While Title IX has so far not achieved the same participation for women as for men, it has come much closer than many observers believed possible in the 1970s.

Perhaps the most important conclusion is to recognize that participation in activities is often a function of the opportunity to participate, rather than an a priori expectations of which individuals might want to participate. People choose to participate in activity for many reasons, and assumptions based on past behavior within a restricted environment are almost always wrong.

Finally, the Title IX process related to participation highlights the overwhelming significance of football in American intercollegiate athletics. No sporting activity comes close to the approximately 30,000 men participating in football in Division I. The adjustments made to create equivalent participation without restricting football required the establishment of many new women's sports teams to provide the necessary opportunities.

Colleges and universities did whatever was necessary to preserve the preeminence of football while increasing the opportunities for women. In the end, of course, men ended up with a small increase in participation and women with a large increase in participation. Women by the 2018-19 years had more teams, but so did the men.

The fears of a decline in men's teams and sports opportunities proved unfounded.

1981-81 Men's and Women's Teams and Participants

SPORT	DIVISION I		
	Teams	Athletes	Avg. Squad
Basketball	273	3,659	13.4
Cross Country	183	2,208	12.1
Fencing	39	353	9.1
Field Hockey	95	2,078	21.9
Golf	83	739	8.9
Gymnastics	99	1,059	10.7
Lacrosse	39	930	23.8
Softball	143	2,532	17.7
Swimming	161	3,038	18.9
Tennis	246	2,649	10.8
Track, Outdoor	180	4,264	23.7
Volleyball	226	2,952	13.1
SUBTOTAL	1,767	26,461	

SPORT	DIVISION I		
	Teams	Athletes	Avg. Squad
Baseball	254	7,461	29.4
Basketball	273	4,122	15.1
Cross Country	256	3,915	15.3
Fencing	43	767	17.8
Football	187	17,842	95.4
I-A	137	14,112	103.0
I-AA	50	3,730	74.6
Golf	263	2,963	11.3
Gymnastics	59	1,052	17.8
Ice Hockey	48	1,367	28.5
Lacrosse	50	1,658	33.2
Rifle	49	442	9.0
Skiing	20	372	18.6
Soccer	182	4,631	25.4
Swimming	181	4,109	22.7
Tennis	267	2,884	10.8
Track, Indoor	209	7,012	33.6
Track, Outdoor	230	8,394	36.5
Volleyball	33	455	13.8
Water Polo	28	637	22.8
Wrestling	146	3,659	25.1
SUBTOTAL	2,778	73,742	

At the beginning of serious Title IX Effort:
The tables above illustrate the relative participation of men and women
1981-82 Teams and Participation--Women and Men

Women's Teams: 1,767 Athletes: 26,461
 Men's Teams: 2,778 Athletes: 73,742

Men have 1,011 **more** Teams in 1981-81
Men have 47,281 **more** Participants in 1981-82
 Men have 17,842 football participants

2018-19 Participation Study – Women's Sports

2018-19 Participation Study – Men's Sports

DIVISION I				DIVISION I			
SPORT	Teams	Athletes	Avg. Squad	SPORT	Teams	Athletes	Avg. Squad
Championship Sports				Championship Sports			
Basketball	349	5,042	14.4	Baseball	297	10,820	36.4
Bowling	34	325	9.6	Basketball	351	5,510	15.7
Cross Country	348	5,978	17.2	Cross Country	317	4,906	15.5
Fencing*	26	437	16.8	Fencing*	21	396	18.9
Field Hockey	77	1,772	23.0	Football	254	29,206	115.0
Golf	267	2,196	8.2	FBS	129	15,710	121.8
Gymnastics	61	1,105	18.1	FCS	125	13,496	108.0
Ice Hockey	35	860	24.6	Golf	299	2,921	9.8
Lacrosse	116	3,661	31.6	Gymnastics	15	312	20.8
Rifle*	24	179	7.5	Ice Hockey	60	1,711	28.5
Rowing	88	5,472	62.2	Lacrosse	73	3,489	47.8
Sand Volleyball	60	1,053	17.6	Rifle*	18	113	6.3
Skiing*	12	153	12.8	Skiing*	11	149	13.5
Soccer	333	9,446	28.4	Soccer	205	6,044	29.5
Softball	295	6,407	21.7	Swimming/Diving	131	3,771	28.8
Swimming/Diving	194	5,751	29.6	Tennis	251	2,539	10.1
Tennis	312	2,836	9.1	Track, Indoor	269	10,286	38.2
Track, Indoor	332	13,296	40.0	Track, Outdoor	289	11,228	38.9
Track, Outdoor	340	13,511	39.7	Volleyball	22	455	20.7
Volleyball	334	5,550	16.6	Water Polo	25	603	24.1
Water Polo	33	713	21.6	Wrestling	75	2,479	33.1
SUBTOTAL	3,670	85,743		SUBTOTAL	2,983	96,938	

By the 2018-19 Academic Year, Title IX had Achieved the Following Results :
as detailed in the tables above, for Division I institutions

Women: 3,670 Teams 85,743 Athletes
Men: 2,983 Teams 96,938 Athletes

Women have 687 **more** Teams than Men
Men have 11,195 **more** Athletes than Women
Men have 29,206 Football Participants

Overall Growth of College Championship Sports Teams and Participants

1981-1982 to 2018-2019

Men's participation grew from.....73,742 to 96,938 = **Increase** of 23,196

Women's participation grew from...26,461 to 85,743 = **increase** of 59,282

Because Football remained at 85 scholarship athletes, the number of women's teams had to be increased substantially since no women's teams had that large a number of scholarship athletes.

1981-1982 to 2018-2019

Men's number of teams grew from.....2,778 to 2,983 = **Increase** of 205

Women's number of teams grew from.. 1,767 to 3,670 = **Increase** of 1,903

However, since the percentage of women in college remained well above 50%, parity between men and women scholarship student athletes was not fully obtained even though many new sports for women were introduced to make progress towards achieving this objective.

As a final note about the impact of Title IX on sports, note in the table below the equally dramatic increase of Girls in high school athletics. Girls rose from only 10% of the participants to 43%. This increase, of course, contributed to the continued interest experience and training of women in sports once enrolled in college.

HIGH SCHOOL ATHLETICS PARTICIPATION SURVEY TOTALS			
<u>Year</u>	<u>Boys</u>	<u>Girls</u>	<u>Percent Girls</u>
1971-72	3,666,917	294,015	10%
2017-18	4,565,580	3,415,306	43%
<u>% Increase</u>	24.5%	1061.6%.	

Note: Although the NCAA promised to provide a gender equity study report every two years, the last available report is for 2009-2010.

Nonetheless, the data summarized in the three slides below are likely to be reasonably representative of the relationships today, except that the numbers in most categories will be larger, even if the relationship between men and women remains generally the same.

The purpose of these slides is to illustrate the distribution of various elements of college sports between men's and women's programs.

The first slide shows that men's programs at FBS programs with football have dramatically greater resources than the women's programs,

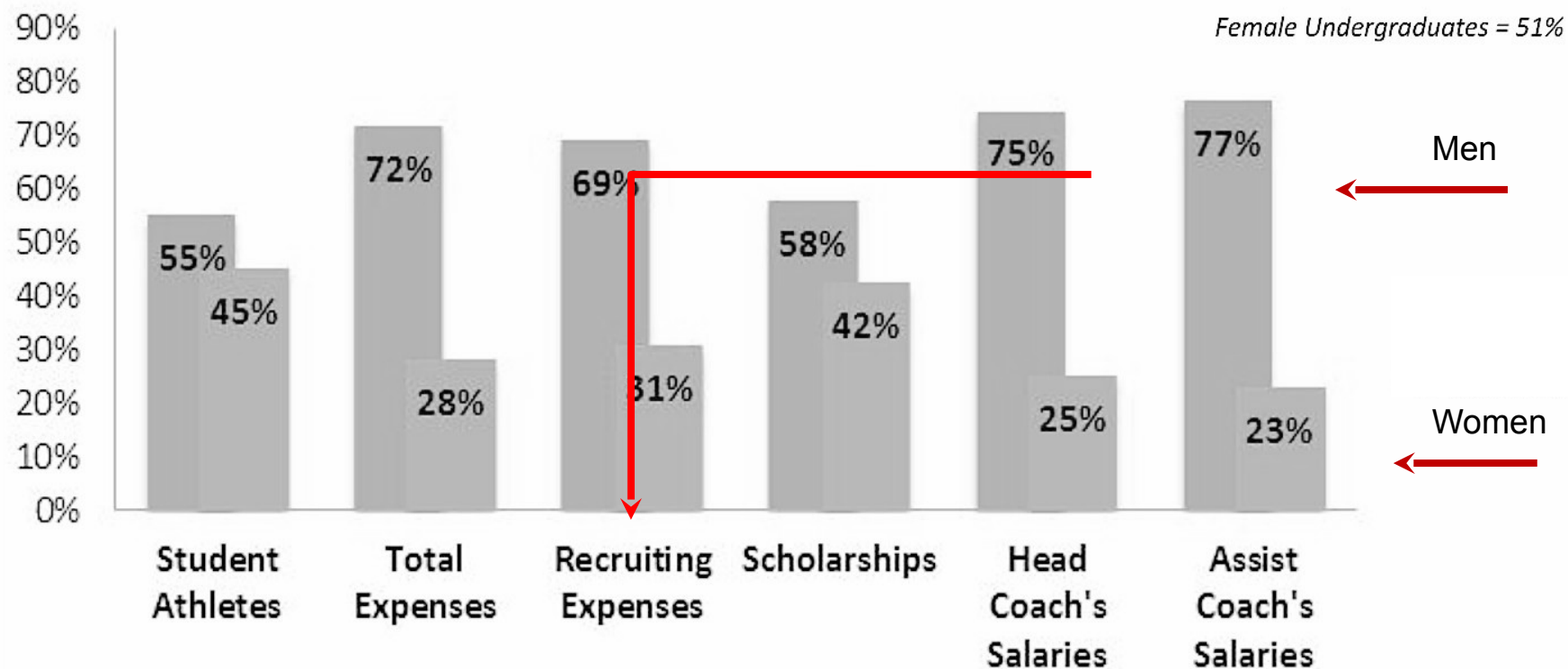
Note that the number of men and women are fairly close and the number of scholarships are close, but the recruiting and coach salaries are much greater for men than for women.

However in the second slide, focused on Division I institutions without football, we see that while the men have more than the women, the differences are much smaller than in institutions that have football programs.

In the third slide, focused on Division III, we see a distribution that also shows the impact of football with distributions that look remarkably like those of Division I with football, except without scholarships. In short, football always distorts the conversation about intercollegiate athletics.

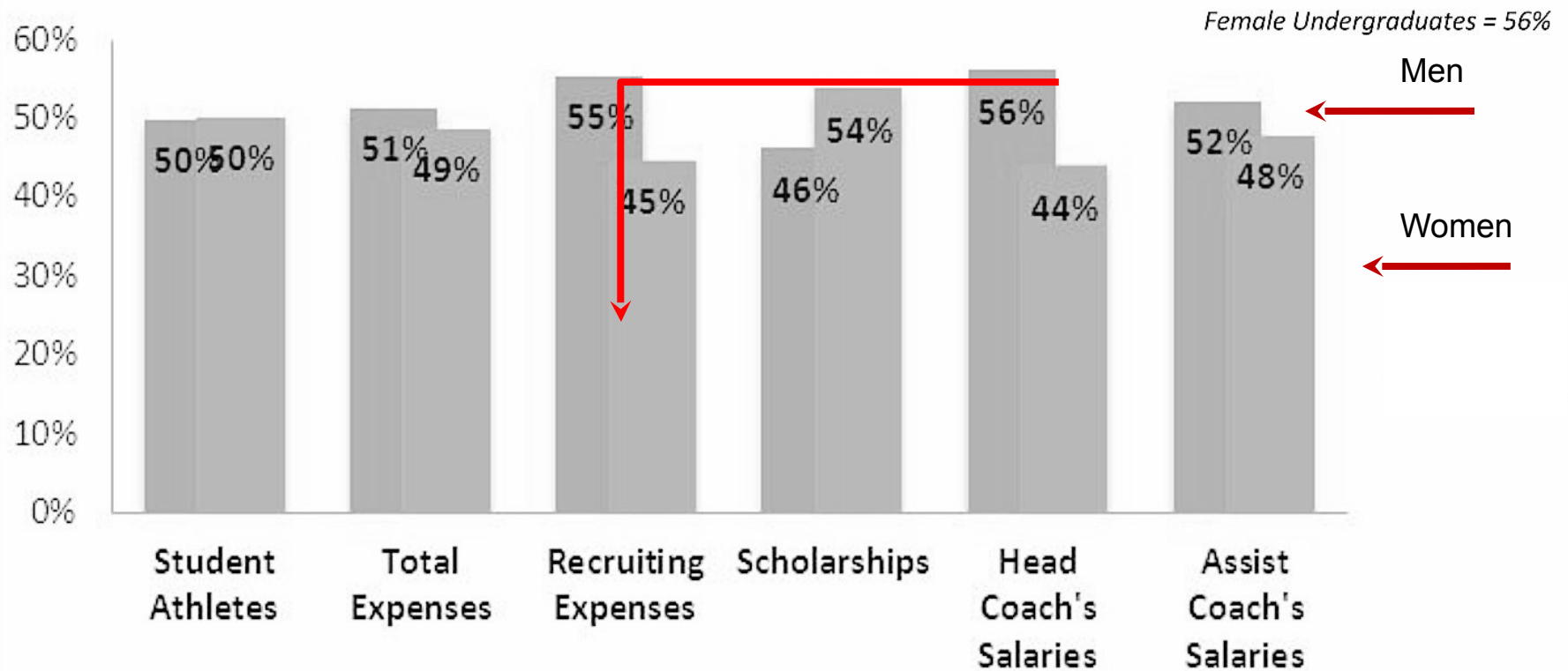
Participation and Allocation of Resources

Percent at Median, Division I, Football Bowl Subdivision (FBS), 2009-10



NCAA Gender-Equity Report, 2004-10, p. 27-40

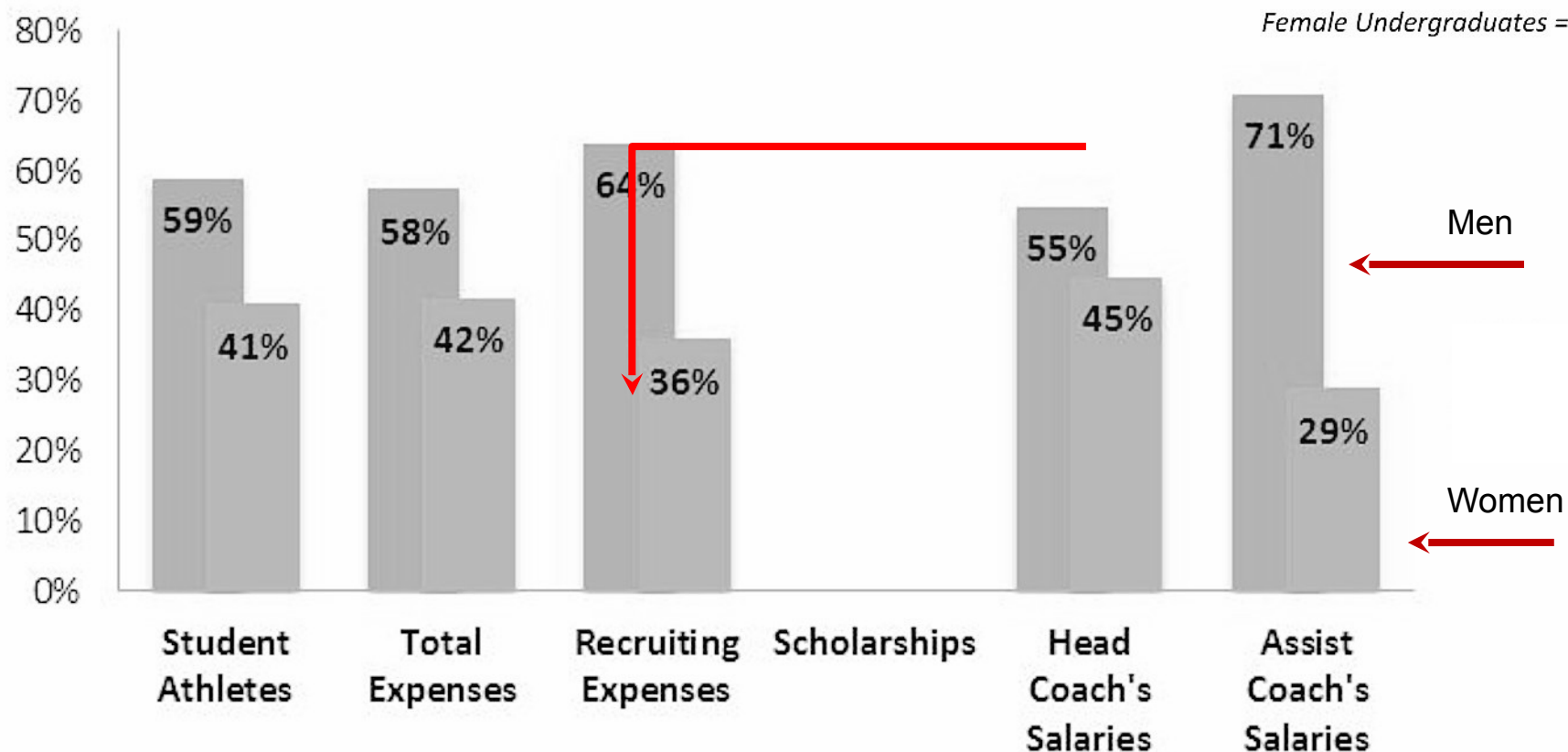
Participation and Allocation of Resources Percent at Median, Division I - Without Football, 2009-10



NCAA Gender-Equity Report, 2004-10, p. 55-68

Participation and Allocation of Resources Percent at Median, Division III, 2009-10

Female Undergraduates = 55%



The slides that follow offer some additional perspective on the coaching salary distributions between men's and women's programs.

The first slide makes clear the dramatic increase in expenses for men's programs in the top FBS-Group of Five subdivision of the NCAA Division I. While the other subdivisions of DI also showed increases in expenses for men's programs, they are quite small compared to the top division.

The second slide shows a similar increase for expenses for women's programs in the same subdivisions of Division I, although at a much lower level.

Coaching expenses for men's and women's programs, as a more or less constant percentage of total expenses, rose along with the total.

A third slide shows the difference in salaries over time between men and women coaches up through 2009. This pattern with greater amounts continues today.

There are many analyses of the differential between the coaching salaries paid to those who coach men's teams and those who coach women's teams. The principal difference appears to be a consequence of the much larger and therefore more profitable audiences drawn to men's competitions compared to women's. The resulting payments for endorsements and the compensation related to revenue generated by the programs likely accounts for the differences in the compensation between the coaches of men's teams and those of women's teams.

Discrimination against women coaches compared to men coaches with comparable positions and circumstances is not as likely because of the legal consequences and financial penalties of such gender based discrimination.

Home Page	Summary: Revenues and Expenses 2018	Revenues and Expenses: 2009-2018	Where the Money Comes From (Revenues)	Where the Money Goes (Expenses)	Major Financial Indicators: 2009-2018
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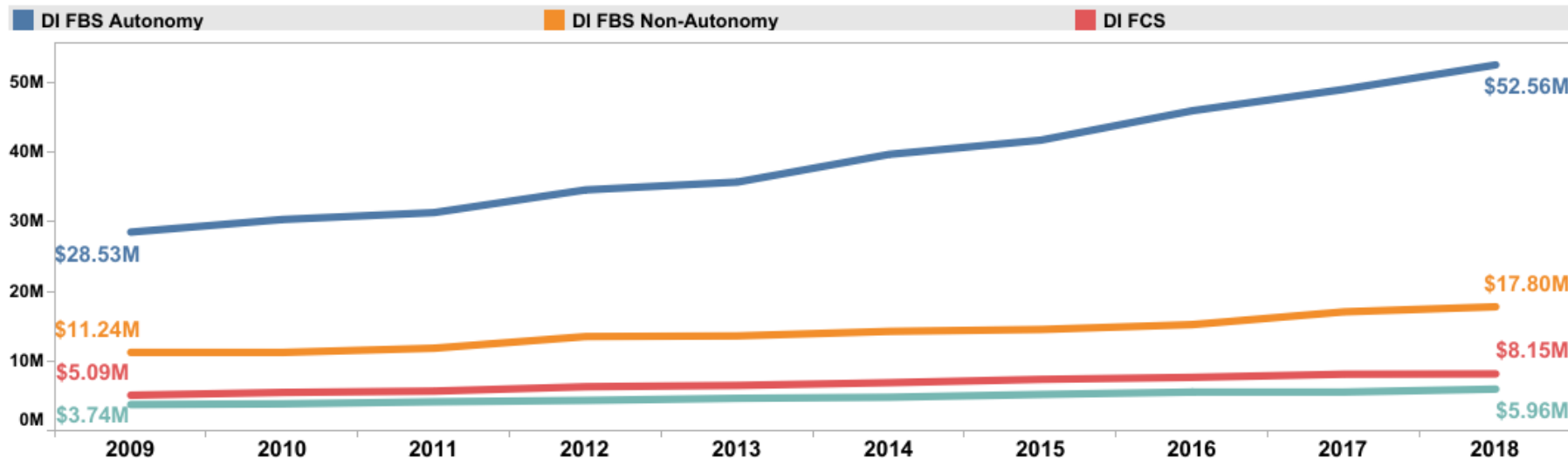
Select a Division
Division I

Select a Sport Gender
Men's

Select a Financial Item
Total Expenses

Median Total Expenses Trends for Division I Schools Men's Sports

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
DI FBS Autonomy	\$28.53M	\$30.34M	\$31.33M	\$34.60M	\$35.72M	\$39.70M	\$41.74M	\$45.98M	\$49.05M	\$52.56M
DI FBS Non-Autonomy	\$11.24M	\$11.24M	\$11.84M	\$13.52M	\$13.61M	\$14.26M	\$14.53M	\$15.23M	\$17.07M	\$17.80M
DI FCS	\$5.09M	\$5.48M	\$5.67M	\$6.30M	\$6.49M	\$6.88M	\$7.36M	\$7.65M	\$8.10M	\$8.15M
DI Subdivision	\$3.74M	\$3.85M	\$4.14M	\$4.34M	\$4.64M	\$4.79M	\$5.19M	\$5.54M	\$5.54M	\$5.96M



Home Page	Summary: Revenues and Expenses 2018	Revenues and Expenses: 2009-2018	Where the Money Comes From (Revenues)	Where the Money Goes (Expenses)	Major Financial Indicators: 2009-2018
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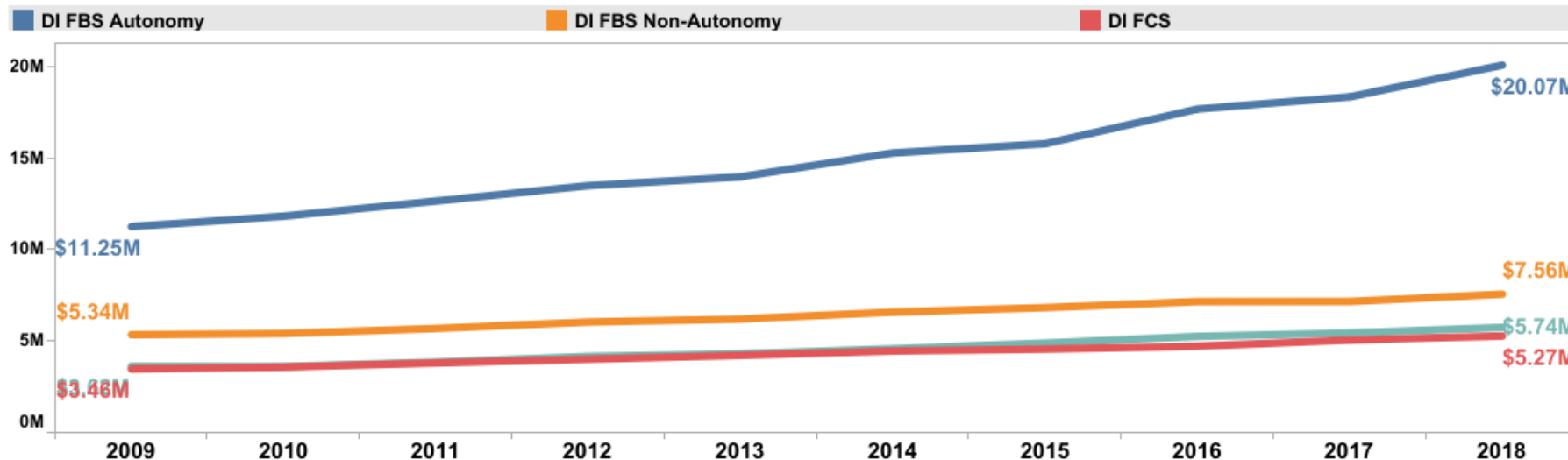
Select a Division
Division I

Select a Sport Gender
Women's

Select a Financial Item
Total Expenses

Median Total Expenses Trends for Division I Schools Women's Sports

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
DI FBS Autonomy	\$11.25M	\$11.82M	\$12.65M	\$13.49M	\$13.97M	\$15.27M	\$15.78M	\$17.67M	\$18.34M	\$20.07M
DI FBS Non-Autonomy	\$5.34M	\$5.41M	\$5.68M	\$6.04M	\$6.20M	\$6.58M	\$6.82M	\$7.15M	\$7.16M	\$7.56M
DI FCS	\$3.46M	\$3.57M	\$3.80M	\$4.00M	\$4.21M	\$4.45M	\$4.55M	\$4.71M	\$5.05M	\$5.27M
DI Subdivision	\$3.62M	\$3.60M	\$3.84M	\$4.15M	\$4.30M	\$4.58M	\$4.88M	\$5.25M	\$5.44M	\$5.74M



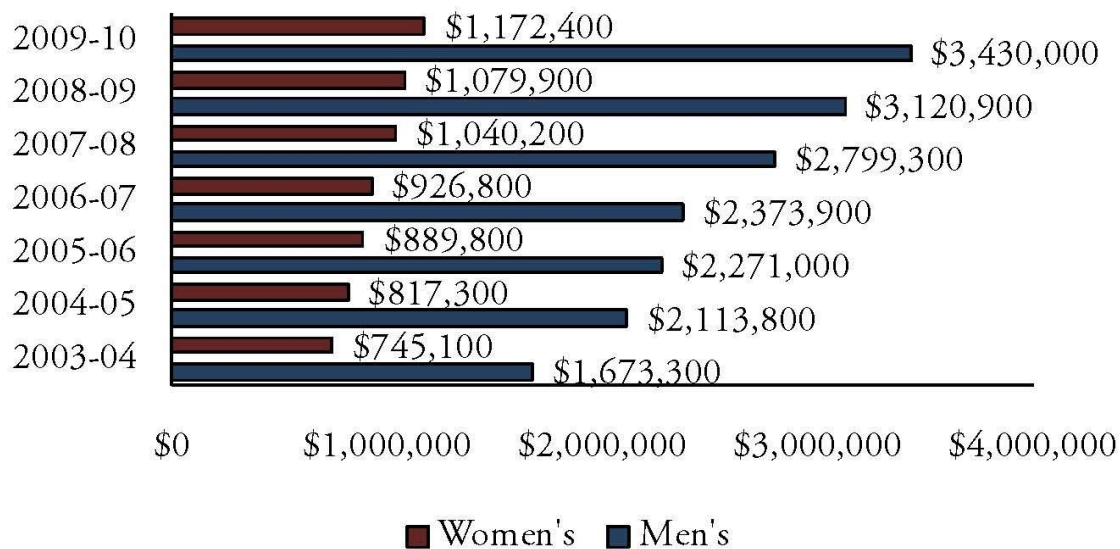
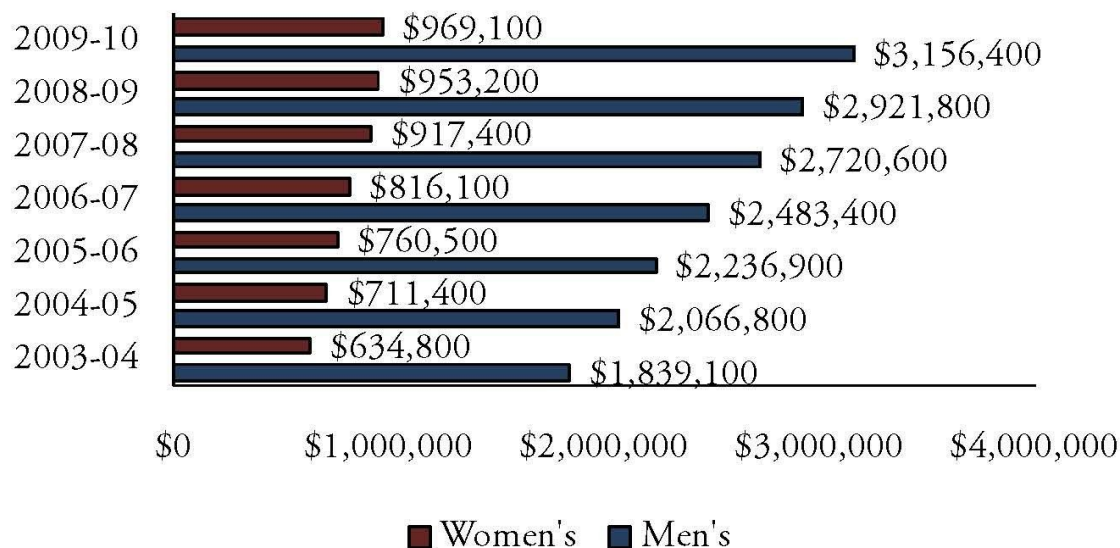


Figure 2.7
Division I-FBS
Head Coaches' Salaries (Median)

Figure 2.8
Division I-FBS
Assistant Coaches' Salaries (Median)

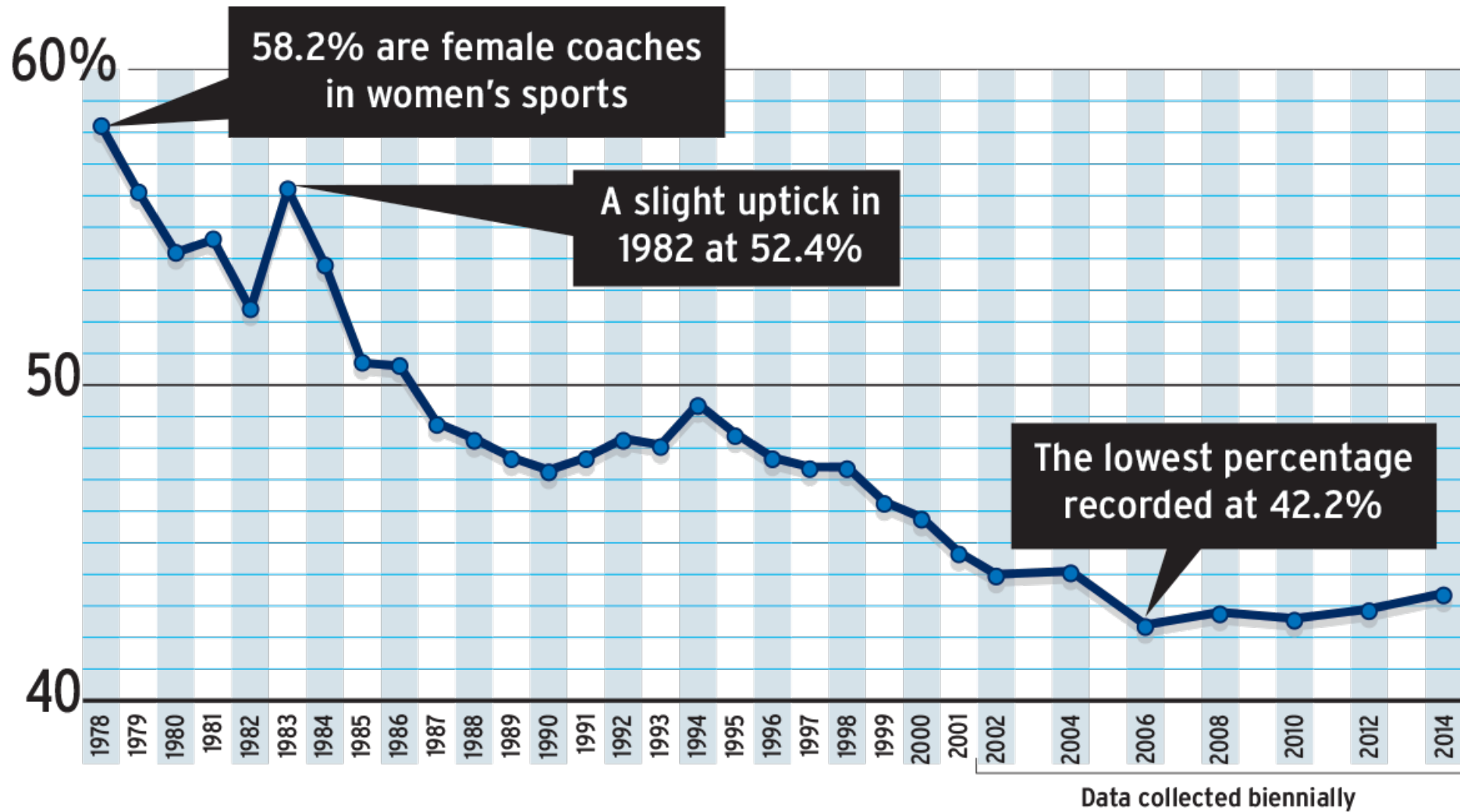


The chart that follows is a dramatic illustration of one of the consequences of the dramatic increase and significance of women's programs in intercollegiate athletics.

At the beginning of the Title IX revolution, 58% of women's teams had women coaches. By 2006 that percentage had dropped to just over 43%. This reflects many circumstances.

As women's programs became much better funded and supported as a result of the requirement of Title IX, coaching women's sports became much more attractive to many men's coaches. Often these men had more experience coaching men's teams previously, and so were able to move to a more attractive position as coach of a woman's team. As colleges and university began emphasizing women's sports, the drive to win gave an advantage to the more experienced men's coaches.

It is also likely that the administration of college sports programs, substantially dominated and controlled by men, may have discriminated in favor of male applicants for coaching positions. The slight increase after 2006 in the percentage of women coaches may indicate an improvement in these circumstances, the development of more experienced women coaches, and the reduction of discriminatory expectations by athletic administrators.



NCAA Data

In the early years of the Title IX process, when institutions found it essential to focus on women's sports programs, introduce new teams for women, and support the operation of women's sports in general, a number of challenges to salary differentials between men and women coaches were brought under the EEOC rules. These challenges forced many athletic programs to more closely manage their compensation programs for men and women coaches to ensure that the institution's compensation practices would meet the requirements for comparable pay for comparable responsibilities.

The following slides provide an outline of the complex process by which salary comparisons were made and determinations of comparability were resolved. In the end, if a woman's salary was found to be inappropriately lower than a comparable man's salary, the institution had to make up the difference both in the future and retroactively.

Smart athletic programs, recognizing these issues, made systematic reviews of the salary circumstances of their coaches and other personnel and when needed, adjusted salaries ahead of any need for a formal complaint to the EEOC. Once programs could see the consequences of not paying comparable compensation, compensation gradually ceased to be a significant issue in the management of men's and women's programs.

Identifying Salary Inequity between Coaches

Identify Comparator:

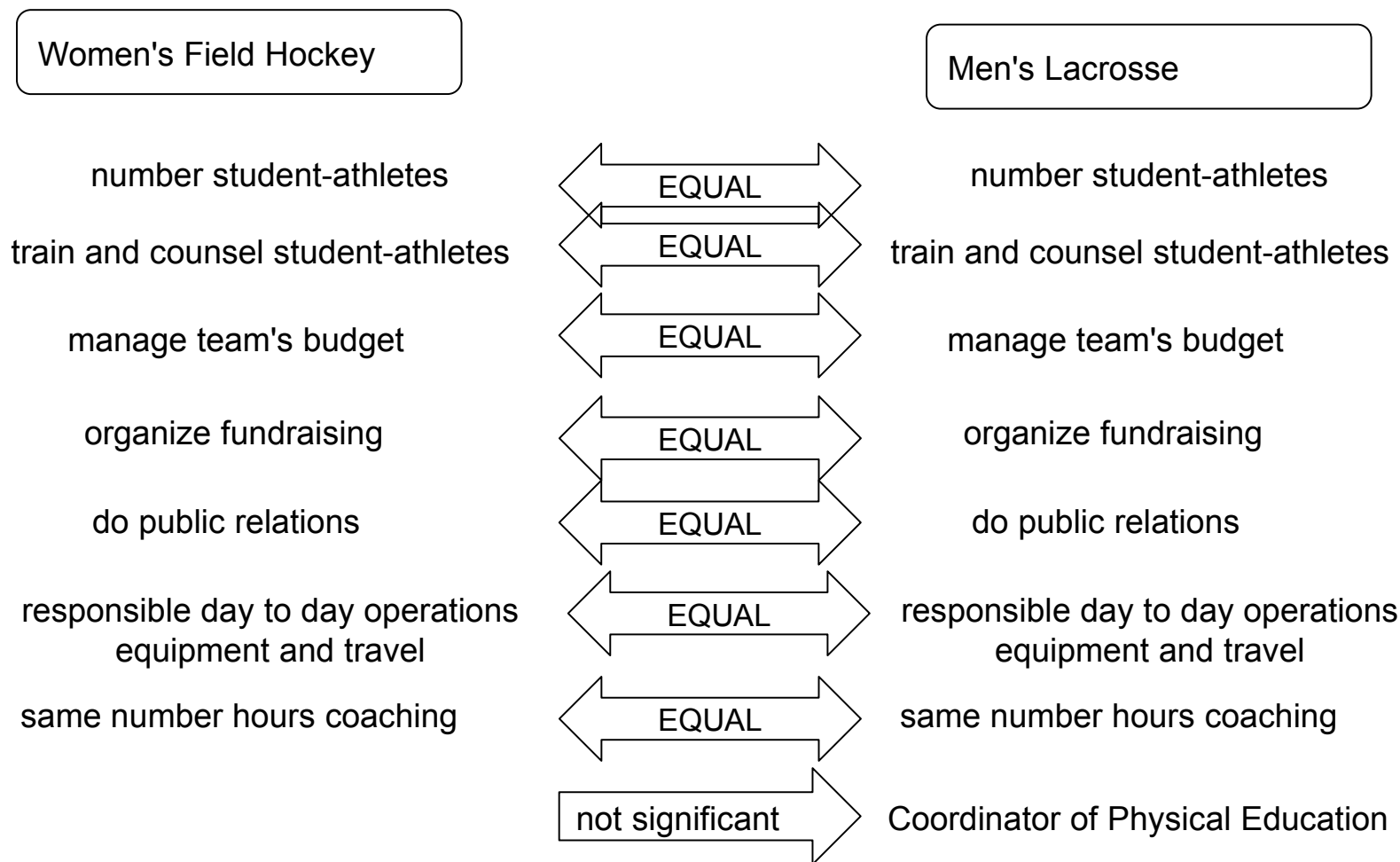
the first step is to identify male and female comparators so that their jobs may be analyzed to determine whether they are substantially equal. In selecting comparators, a plaintiff cannot compare herself or himself to a hypothetical male or female; rather, a plaintiff must show that a specific employee of the opposite sex earned higher wages for a substantially equal job

Are Jobs Equal:

Once the comparators have been identified, the next step is to determine whether the jobs are substantially equal. "What constitutes equal skill, equal effort, or equal responsibility cannot be precisely defined" but "the broad remedial purpose of the law must be taken into consideration."

If Jobs are Equal, then Salaries must be comparable between men and women

Example of How to Evaluate whether Two Coaching Positions that Are Equivalent



Rationale: A woman coaches women's field hockey and a man coaches men's lacrosse. Each team has approximately the same number of athletes. Both coaches train and counsel student-athletes, manage the teams' budgets, organize fundraising, engage in public relations, and are responsible for the day to day operations for their programs such as supervising equipment and arranging travel. Both spend approximately the same number of hours coaching during the school year. The man also has the title of Coordinator of Physical Education, but has only insignificant additional responsibilities. The coaches have substantially equal responsibility in their jobs and as a result should have substantially equal compensation.

Example of How to Evaluate Two Coaching Positions that Are Unequal

Women's Volleyball

Football

Part-time assistant and coaches 20 athletes

UNEQUAL

nine full-time assistants and the team has a roster of 120 athletes.

200 spectators attend each volleyball game.

UNEQUAL

sixty thousand spectators attend each football game,

volleyball games not televised

UNEQUAL

football games televised

At a large university, a man is head coach of football and a woman is head coach of women's volleyball. Both teams compete at the most competitive level and there are substantial pressures on both coaches to produce winning teams. The football coach has nine assistants and the team has a roster of 120 athletes. The volleyball head coach has a part time assistant and coaches 20 athletes. Sixty thousand spectators attend each football game, while 200 attend each volleyball game. The football games, but not the volleyball games, are televised. In comparing the man and woman, the man supervises a much larger staff and a much larger team. In addition, the football team's far greater spectator attendance and media demands create greater responsibility for the man. The football coach has more responsibility than the volleyball coach, and, as a result, the jobs are not substantially equal and there is no grounds to identify a need for compensation adjustment.

Transgender Sports Participants

Sports has traditionally been a highly gendered enterprise, with clear divisions between male and female sports, with a few exceptions for some coed sports. However, with the emergence of societies recognition of transgender individuals who do not conform to a simple binary male/female classification, and with the emergence of a strong constituency supporting the right of transgender individuals to participate in sports that reflect their current gender, all sports regulatory authorities, (college, Olympic, and professional) have had to consider how to manage the inclusion of transgender individuals within the strict traditional definitions of men's and women's sports. Most of this has focused on transgender individuals born male who have changed their identify to female.

The issue for sports is perceived as fairness, with the possibility that individual born and raised as male would, once they changed their identity to female, have an unfair advantage in competition against individuals born female. The issues surrounding these questions are exceptionally difficult as the definitions of fairness are never fully clear. The issues here are as yet unresolved as different jurisdictions have taken different positions that often lead to litigation. This is likely to remain an unresolvable issue, primarily for women's sports, for some time and is driven, as is all things in sports, by the impact of transgender individuals on the winning opportunities for all participants in women's sports programs.

An excellent summary of the issues is available from the reading list in an article by Gillian R. Brassil and Jeré Longman, "Who Should Compete in Women's Sports? There Are Two Almost Irreconcilable Positions," *The New York Times*, August 18, 2020.