State Granted Tuition Waivers
For Gender Equity in Athletics:
Fair or Foul?

IHELG Monograph
05-08

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IHELG
20th Anniversary
1982-2002
State Granted Tuition Waivers for Gender Equity in Athletics:

Fair or Foul?

2002, marked the 30th anniversary for Title IX, but the legislation that was passed to provide equal access to all educational opportunities for women was under attack. These attacks were aimed at the athletic opportunity in education that Title IX created. Earlier that year, the U.S. Secretary of Education convened the Opportunity in Athletics Committee to collect information, analyze issues, and obtain broad public input “directed at improving the application of current Federal standards for measuring equal opportunity for men and women and boys and girls to participate in athletics under Title IX” (Hawes, 2002, p. 1). In February 2003, the committee released its report but it is met with criticism.

While the national debate simmers about how to best enforce and comply with Title IX, the University of Washington and other State of Washington higher education institutions have made sweeping and substantial progress in complying with the letter and spirit of Title IX. This unprecedented compliance with athletic gender equity in our state has been achieved chiefly because the State of Washington legislature has authorized institutions to grant gender equity tuition waivers. This paper aims to show that this policy, not only ensures compliance with federal and state laws, but that it presents an untapped opportunity for the university to guide athletics in a way that is more consistent with educational mission. In this paper we: 1) describe the implementation of gender-equity tuition waivers in athletics at the University of Washington, 2) explore the evolution of Title IX and Blair v. Washington State University that contributed to this policy, 3) evaluate the purpose of gender equity tuition waivers, and 4) explore future applications of this policy.
The State of Washington Tuition Waiver Program
and the University of Washington

The State of Washington legislature authorizes tuition waivers at each higher education institution and establishes a maximum for waivers across all categories. At present tuition waivers in all categories is 21% of the institution’s operating funds. Since the 1991-92 academic year, the legislature has authorized tuition waivers for gender equity in intercollegiate athletics (ICA). The State’s Higher Education Coordinating Board delegates authority to each institution to implement the policy and comply with the State’s gender equity statute. Under this policy, ICA gender-equity tuition waivers cannot exceed 1% of the total tuition waivers granted by the individual institution. At the University of Washington the Board of Regents have the responsibility of overseeing the distribution of the ICA gender-equity tuition waivers.

During the 2002-03 academic year, the University of Washington distributed $1,262,395 in tuition waivers to the Department of Intercollegiate Athletics, D. Asher (personal communication. December 1, 2002). This figure represents no more than 1% of the 21% in tuition waivers granted across all categories. For the 2003-04 academic year this figure is projected to be $1,358,028. These funds offset costs in the athletic department incurred by athletic scholarships, therefore freeing up dollars for coaching and support staff salaries in women’s athletic programs, updating and maintaining women’s facilities, and promoting women’s athletics at the University of Washington.
What Problems Do The Tuition Waivers Address at the University of Washington?

This tuition waiver policy has been an integral tool, by which the University of Washington has achieved success in meeting gender equity in college athletics. It has become common in many athletic departments to eliminate men’s programs in order to create funding for women’s programs and meet Title IX gender equity requirements. This custom creates a sense of resentment toward female athletic programs. Male athletes feel that the funding generated by their programs is diverted to women’s programs that garner little interest and participation. Tuition waivers eliminate the “us v. them” atmosphere in the athletics and on campus that is an outcome of this practice.

This policy also helps fund women’s participation without relying solely on the resources college football creates for achieving gender equity. In many of the court cases that have challenged Title IX, a common theme is the attempt to exempt football revenues and participation rates when determining gender equity. College athletics is usually seen in three categories: men’s sports, women’s sports, and football. The University of Washington is no different. Tuition waivers are a useful tool for achieving gender equity that protect the unique interests of football and acknowledging its high value.

Despite criticism of college athletics and reform efforts, it’s too late to turn college athletics back. The University of Washington has invested in the infrastructure of college athletics and there is an expectation that “big time” sports will be offered (Bok, 2001). It has become common practice for athletics programs to generate revenue from television broadcasting, corporate sponsorship, alumni, and other donors. By generating funding for the
athletic department in the form of tuition waivers, the pressure to seek additional income from outside sources is reduced.

Federal Legislation:

The Evolution of Title IX & Gender Equity in Athletics

To better understand the impact of the gender equity tuition waiver policy, it is important to understand the history of challenges to Title IX as it applies to intercollegiate athletics. Title IX of the Education Amendments Act of 1972 states, “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 assistance.” When Title IX went into effect on June 23, 1972, athletic programs were not specifically mentioned in the wording of the policy. However, shortly after the passage of this amendment aimed at increasing educational opportunity for women in medical and law school admissions, the application of Title IX in athletics came into question. Later that year, the NCAA challenged the interpretation of Title IX’s application in athletics. This was the beginning of many challenges to Title IX and its application in intercollegiate athletics, and in particular how gender equity is applied to football.

Shortly after the NCAA’s challenge, the Department of Health Education & Welfare (HEW) further clarified how Title IX applied to athletics in its guidelines, published June 19, 1974. The guidelines stated that “although few athletic departments directly received federal funding, sports would be covered by Title IX” (Festle, 1996, p. 166). In this same year, Senator John Tower of Texas introduced to congress an amendment to the Education Amendment of 1972 that would “exempt coverage under Title IX any sports that do or may provide gross receipts, noting that the purpose of his amendment was to preserve the revenue base of
intercollegiate activities [so that] it will provide the resources for expanding women’s activities in intercollegiate sports” (United States Commission on Civil Rights, 1980, p. 7). However, the Javits amendment (in conference), found the Tower amendment exempting revenue-producing sports unacceptable and rejected it. This sent the message that Title IX was to apply to all athletic programs operated by federally assisted educational institutions (p. 7).

By 1979 many institutions were still out of compliance and HEW, via the Office of Civil Rights (OCR) again issued a final policy interpretation on December 11, 1979. This policy interpretation provided a framework for “resolving complaints and provided a definitive statement of the responsibilities under Title IX of institutions receiving financial assistance,” including language directed specifically to intercollegiate athletic programs (United States Commission on Civil Rights, 1980, p. 7). Later, two court cases *Grove City College v. Bell* (1984) and *Cohen v. Brown* (1996) challenged how Title IX should be applied to intercollegiate athletics. After the *Grove City College* case Congress again intervened and passed the Civil Rights Restoration Act, to reiterate that intercollegiate athletics was included in Title IX. In *Brown*, the court found in favor of the plaintiffs, citing the 1979 OCR guidelines for achieving gender equity in athletics. (For a full review of Title IX’s history, see Appendix A).

State of Washington Tuition Waivers:

*Blair V. Washington State University*

In the late 1970s, while the evolution and clarification of Title IX continued on a national level, a lawsuit with significant implications was taking shape in the State of Washington that ultimately led to the ICA gender equity tuition waiver policy in place today. On October 29, 1979, a group of women’s program coaches and female athletes filed a suit against Washington State University (WSU), alleging violation of the State Equal Rights Amendment in the Superior
Court (Blair, 1987). Now known as *Blair v. Washington State University*, the Superior Court ruled in favor of the plaintiffs, finding that funding for women’s athletic programs should be based on the “percentage of women enrolled as undergraduates” (Kaplin & Lee, 1995, p. 564). However, in calculating the formula, the Superior court excluded football revenues. The women appealed this point and the Washington Supreme Court reversed the Superior Court decision to eliminate football revenues. The Supreme Court found that the state’s equal rights amendment ‘contains no exception for football’ and in 1987 remanded the case to the Superior court for revision of the funding formula (Kaplin & Lee). At the time of this ruling, WSU relied heavily on funding from the legislature to support women’s sports and the athletic department did not have the resources to comply with the *Blair* ruling. To upgrade the women’s athletic program and comply with *Blair*, WSU approached the legislature for funding, H. Remick (personal communication. December 1, 2002).

What resulted was the passage of two laws by the state legislature in 1989, (RCW 28.110 and RCW 28B.15.460) to achieve gender equity in all higher education institutions. RCW 28.110, known as the Gender Equity Statute prohibits discrimination on the basis of gender in student services and support, academic programs, and in athletics. RCW 28B.15.460 authorized four-year institutions to grant tuition waivers to achieve gender equity in intercollegiate athletics ([http://www.hecb.wa.gov/eval/gender.html](http://www.hecb.wa.gov/eval/gender.html)).

Why Authorizing Gender Equity Tuition Waivers

Is Good Policy

Granting state authorized tuition waivers for gender equity in athletics is a unique tool used to address clear and substantial disparities in women’s athletic participation opportunities, coaching opportunities and salaries, support staff, and facilities. For example, during the 1988-89
academic year, only 231 women participated in intercollegiate athletics, compared to 471 men at the University of Washington. This represented a women’s athletic participation rate of 32%, yet the campus population was exactly 50% male and 50% female (HECB Report, 1991). After the first 6 years of the tuition waiver program, the number of female athletics rose to 311 in 1998-99 academic year. This represented a 46% female athletic participation rate at the Seattle campus that was 51.8% female and 48.2% male. In just 10 years the athletic department added 80 more participation opportunities, raised the women’s participation rate 16% and brought the proportionality of female athletes to female students to within 5.8% of the female undergraduate student population (Gender Equity Report, 2000).

The impact of tuition waivers has been integral in increasing opportunities and participation rates for women at the University of Washington. Substantial progress has also been made in the areas of coaching, staffing, facilities and other benefits. Two new programs have been added, women’s soccer and softball, which included the addition of facilities and hiring of coaches. Existing coaching positions were upgraded and additional graduate assistants for women’s programs were added. Support staff such as certified athletic trainers, administrative, development, and promotions staff were also added specifically to serve women’s athletics (Gender Equity Report 2000). While the gains have been substantial, they would have not been possible without the tuition waiver program:

“The self-generated funds of Intercollegiate Athletics (ICA) freed up by the waivers were combined with other departmental funds to add the sports of soccer and softball in 1990 and 1991 respectively. Positions were added in media relations, publicity, and athletic training. Facilities have been added for women’s softball and are currently being built for soccer. Such major changes could not have been made using departmental funds alone” (emphasis added, Gender Equity in Athletics, 1996, p. 4).
Clearly the gender equity tuition waiver program has been very successful at the University of Washington, but is this good use of state authorized tuition waivers? The citizens of the State of Washington and the students of the University of Washington place a very high social and emotional value on intercollegiate athletics. Gerdy confirms this high value placed on college athletics in his book, *The Successful College Athletic Program: The New Standard*. He notes, “successful sports programs generate revenue, visibility and prestige for the university—all resources that could well serve university needs” (1997, p. 33). In addition, Gerdy offers three broad justifications for the role of intercollegiate athletics in higher education:

1. Athletics generates revenue, visibility, and prestige for the university,
2. Athletics provides entertainment and serves a unifying function for an increasingly fragmented university community, and
3. Athletics is education (character building) for the students participating (Gerdy, 1997, p. 33-34).

These are worthy justifications for the role that athletics plays in higher education, but they do not directly address why the gender equity tuition program makes sense for the University of Washington. If athletics generates revenue as Gerdy states, why can’t the athletic department simply shift more departmental funds to meet gender equity goals? The answer lies in the evolution of Title IX and *Blair v. Washington State University*. Football is not only a sport that generates “revenue, visibility, and prestige” for the University of Washington, it also is a highly expensive sport. Coaching salaries, scholarships, funding for staff, travel and facilities often exceed what a football program can generate, let alone fully fund the remaining men’s and women’s sports. In addition, football participation is substantially higher than any other sport besides crew. With 85 scholarships allowed in a Division I program and total number of
participants often exceeding 100, achieving proportional participation rates for women consistent with the female student body population is very difficult.

To solve the problem that the high number of participants football creates, many universities either cut men's programs or try to increase revenue for the department. Cutting men's programs to make room for women's programs under gender equity comes at a high price. The resentment caused by an atmosphere of "us v. them" is detrimental to the athletic department and the campus community as a whole. Furthermore increasing revenue in an already highly commercialized intercollegiate athletic environment, only forces universities to rely heavily on corporate funding and move farther from institutional mission and values. The advantages of the tuition waiver program are: 1) it funds opportunity for women and preserves opportunity for men, 2) it protects the value and interests of football, and 3) it reduces the reliance on commercialized sources of funding for intercollegiate athletics. Gender equity tuition waivers do not solve the "chronic corruption" problems in college sports, but they do remove the barriers to increasing women's opportunity. Funding tools like the gender equity tuition waivers also provide a mechanism for the University of Washington to comply with the letter and the spirit of Title IX. However, the real benefit of the tuition waiver program is its capacity for intercollegiate athletics to focus more on educational responsibility and less on generating outside, commercialized revenue sources (Lazerson and Wagener, 1996).

Future Recommendations and Investigations

This paper has examined the gender equity tuition waiver policy and its application at the University of Washington. However, when the State of Washington legislature passed the Gender Equity Act in 1989, all higher education institutions were given authority to grant gender equity tuition waivers. It has been beyond the scope of this paper to address the specific policy
implications for the other 4 year colleges and universities and 2 year community and technical colleges. Because of the widely disparate characteristics across the institutions in our state, the justifications for continuing the gender equity tuition waiver program at all schools is not likely to be the same. Even in the case of Washington State University, a Pacific Ten Conference colleague, the conditions by which they have achieved gender equity are very different than the University of Washington. For example, WSU is under a court order to maintain gender equity standards above those required by the state Gender Equity Act (Higher Education Coordinating Board, 1991, p. 6). Eastern Washington University, Central Washington University, and Western Washington University each have football programs but are not able to generate the same level of revenue, visibility, and prestige that the WSU and University of Washington football programs can. According to the 1991 Higher Education Gender Equity report, “institutions vary widely in the size of their programs, the funding available to trigger and sustain change, and the level of rewards and sanctions for success or failure” (p. 5). Examining each of these institutions individually and how this program could be used to connect athletics to institutional mission is an avenue for future research. We believe the unique circumstances of each campus should be considered during future gender equity tuition waiver policy reviews.

Another item for future research that we have not attempted to present in this paper are the indirect benefits that the men’s programs have received as a result of the gender equity tuition waiver funding. For example, a new soccer facility has been built to accommodate women’s soccer, including plans for future stadium seating and a satellite athletic training room. The field is currently shared by the men’s and women’s soccer programs. Future seating and medical facilities will also be utilized by the men’s soccer program. Additionally, baseball will
also have use of the satellite athletic training facility. Examining these and other capital
improvements for their indirect benefit to men’s programs warrants closer examination.

Although we have not explored some of these additional issues, we believe that the
gender equity tuition waiver policy serves both men and women who participate in
intercollegiate athletics at all Washington state higher education institutions. However, we
believe that this policy provides each institution with a powerful and flexible tool by which to
manage their athletic program in a way that is consistent with their unique educational
responsibilities and mission that has not been fully realized. According to the 2000 Gender
Equity Report, the requirements of the state’s gender equity laws with regard to athletics have
been met with few exceptions. The environment of higher education is constantly changing and
the impact of this constant change is evident in intercollegiate athletics. While most of the state’s
4-year institutions have complied with the Gender Equity Act, there is a trend of female
enrollment that is increasing beyond 50% of the undergraduate population. By 2003-04, women
are expected to reach 56% enrollment across all institutions. These fluctuations in enrollment and
other changes in higher education will continue to present gender equity challenges in athletics.
At the heart of the gender equity tuition waiver policy is the autonomy it affords each institution
while still complying with the letter and spirit of Title IX. For these reasons we argue that this
policy is viable resource allocation policy for the University and the State of Washington.
References


Appendix A: Title IX Evolution & Timeline

- On June 23, 1972, the Title IX statute was established, although it included no reference to athletics.

- In 1972, the NCAA challenges how Title IX is to be interpreted (Pickle, 2002, p. 17).


  “The first and most important of HEW’s decisions was that, although few athletic departments directly received federal funding, sports would be covered by Title IX. The HEW ruled that federal assistance (through such routes as student financial aid, work-study grants, and building and construction loans) gave to sports indirect benefits. This approach by HEW was based on recent court decisions in racial discrimination cases under Title VI, on which Title IX was modeled. These rulings reinforced – the notion that discrimination should be prohibited across the board – not prohibited in some areas of a school but permitted in others” (emphasis added, Festle, 1996, p. 166).

- Senator John Tower (R-Texas) introduced an amendment to the Education Amendment of 1974 to exempt coverage under Title IX any sports that do or may provide gross receipts, noting that the purpose of his amendment was to ‘preserve the revenue base of intercollegiate activities [so that] it will provide the resources for expanding women’s activities in intercollegiate sports’ (United States Commission on Civil Rights, 1980, p. 7).

- “The Tower amendment was replaced in conference by the Javits amendment, which provided only that HEW ‘prepare and publish regulations…that…include with respect to intercollegiate activities reasonable provisions concerning the nature of particular sports.’ The Javits language made clear that the conference committee, and later Congress by its approval, found the amendment exempting revenue-producing sports unacceptable and rejected it. The intent of the Congress was that Title IX was to apply to all athletic programs operated by federally assisted educational institutions. Accordingly, HEW issued a final implementing regulation on May 27, 1975 and since Congress took no action requiring changes in the regulation, it went into effect on July 21, 1975” (United States Commission on Civil Rights, 1980, p. 7).

- Department of Health Education & Welfare (HEW) adopts a regulation to implement Title IX, July 21, 1975.

- In September 1975, “Elimination of Sex Discrimination in Athletics Programs” was distributed to Chief State School Officers and explained how Title IX applies to athletic programs. The HEW advises college and university presidents, chief State school officers and local school superintendents that the 3-year adjustment period allowed in the regulation was not be a “waiting period” (United States Commission on Civil Rights, 1980, p. 8).
With many institutions still out of compliance, HEW issues a proposed final policy interpretation December 11, 1979. The 1979 policy interpretation provides a framework for resolving complaints and a definitive statement of the responsibilities under Title IX of institutions receiving financial assistance. The policy applies specifically to intercollegiate athletic programs, but the policy’s general principle may be clubs, intramural and interscholastic athletic programs. The policy interpretation is in three parts:

1) Institutions that provide financial assistance to athletes should use a proportionate test in making athletic grants-in-aid, so that female athletes will receive financial assistance substantially in proportion to their percentage of female undergraduate at the institution.

2) Each of the program components should be “equivalent, that is equal or equal in effect,” but the components need not be identical for men and women.

3) Institutions effectively accommodate the interests and abilities of members of both sexes (United States Commission on Civil Rights, 1980, p. 33-34).

*Cannon v. University of Chicago*, 1979

The Supreme Court rules that an individual has a right to sue a recipient of federal funds for alleged violation of Title IX, and need not file a complaint with the HEW (or new Department of Education). Individuals can now sue the school or college directly, providing a second avenue in the “pursuit of equality in athletic programs” (United States Commission on Civil Rights, 1980, p. 33-36).


On February 28, 1984, in the case of *Grove City v. Bell*, the U.S. Supreme Court rules that Title IX was applicable strictly to programs that receive Federal funds. Grove City College was a small, private college that did not receive direct federal or state financial assistance, but its students received Basic Educational Opportunity Grants (now known as Pell Grants). Grove City College prided itself on its independence and on principle and wanted to “remain free of government intervention” (Festle, 1996, p. 219). The Supreme Court rules that student aid constituted aid to the college program and not to the financial aid program. In other words, Grove City College must comply with Title IX, but only in its financial aid program (Festle, 1996, p. 220). This ruling significantly limits the Office of Civil Rights’ authority over athletics programs.

In 1989, the Washington State Legislature passes the Gender Equity Statute (RCW 28.110) prohibiting the “discrimination on the basis of gender against any student in institutions of higher education in Washington.” This law specifically prohibits discrimination in student services, academic programs, and athletics, and requires public college institutions to submit a “plan to comply with the requirements of the law” to the Higher Education Coordinating Board (Higher Education Coordinating Board, 2000, p. 1).

Also in 1989, the Washington State Legislature passes a law (RCW28B.15.460) that focuses on gender equity in intercollegiate athletics. This law “authorized the use of tuition and fee waivers” to start in the 1991-1992 academic year in order to achieve gender equity. This law also requires Washington State institutions of higher education to meet “high targets for female participation in intercollegiate athletics in the years that followed” (Higher Education Coordinating Board, 2000, p. 1).

In 1990, the Washington State Higher Education Coordinating Board (HECB) disseminates rules directing the state’s public higher education institutions to keep records that examine their gender equity policies. The institutions were also required to submit biennial reports to the HECB, that focus on the results of the programs designed to improve gender equity (Higher Education Coordinating Board, 2000, p. 1).

In 1992, the first NCAA gender equity study was created. This study displays “significant differences in the treatment of male and female student-athletes” (NCAA News, October, 2002, p. 17).

Cohen v. Brown 1996: To be in compliance with Title IX, the court focuses on the ten factors listed in Section 106.41(c) of Title IX and noted the first of the 10 factors, “Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes.” To be in compliance Brown must satisfy at least one of three tests, the so-called “three prong test” (Kaplin & Lee, 1995, p. 567-568). The court found that Brown failed all three categories of the three-pronged test. Brown submitted a compliance plan to the court, including the prediction that it may have to cut men’s teams to be compliant. The court determined that cutting men’s teams is a “permissible means” of achieving compliance or that Brown could submit another plan. The court cites, “our respect for academic freedom and reluctance to interject ourselves into the conduct of university affairs” (Kaplin & Lee, 1995, p. 200-201).

The HECB Gender Equity in Intercollegiate Athletics: 1996 Report states that there was much improvement in the Washington State institutions with regard to gender equity. It also reports that tuition waivers have been helpful in assisting the higher education institutions’ progress toward achieving gender equity.

In 2001, the Bush Administration conducts public hearings in order to see if changes to the application of Title IX to athletics are needed (NCAA News, October, 2002, p. 17).

The Secretary's Commission on Opportunity in Athletics publishes its report in February 2003. The Secretary of Education, Roderick R. Paige states that the department will only “move
forward” on the 15 unanimous recommendations of the 23 made by the panel. The report is released with criticism by the commission and others, including two commission members, Donna de Varona and Julie Foudy of the Women's Sports Foundation. Ms. Varona and Ms. Foudy release a minority report, with their own set of seven recommendations. Retrieved from: http://chronicle.com/prm/weekly/v49/i26/26a04001.htm#title.
Appendix B: 2003-04 Gender Equity Accounting Summary
(University of Washington Only)

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<tr>
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<td>- $1.3 mil</td>
<td>- $1.3 mil</td>
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Cost to the University: Lost Tuition Revenue

Summary of Gender Equity Tuition & Waiver
(University of Washington Only)

*Target for AY 2003-04

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Total to Date $11,912,409