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DROPPING THE GLOVES: FIGHTING FOR VARSITY STATUS UNDER TITLE
IX— THE RISE OF WOMEN’S ICE HOCKEY AT THE UNIVERSITY OF MAINE

by

Emily K. McNair

A Thesis Submitted in Partial Fulfillment
of the Requirements for a Degree with Honors
(Journalism)

The Honors College

University of Maine

May 2016

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Abstract

Ice hockey at the University of Maine is a culture, of sorts. The university has a long tradition of supporting and growing a large fan base around its Division 1 varsity men's ice hockey team. On the opposite end of that, the university's female counterpart, the varsity women's ice hockey team appears to get lost in the fray when discussing the hockey culture at the school. The purpose of this thesis is to tell the story of UMaine's women's ice hockey team. From the creation of the team as a club in the late 1970s, the organization battled through a reboot in the early 80s and eventually took on the university when it made its push to achieve the varsity status it has today. Through contacting former players and researching articles from local news sources, including *Bangor Daily News* and *The Maine Campus*, this thesis serves as an extended journalistic feature story, detailing and retelling the story of the University of Maine women's ice hockey team.

Dedication

This thesis is dedicated to my grandmother, Therese A. Donnelly.

She would have loved to watch me play hockey.

Table of Contents

I.	Abstract	ii
II.	Dedication	iii
III.	Artist's Statement	v
IV.	Women's Ice Hockey Comes to UMaine	1
V.	Professional Women Take on Congress	9
VI.	"Bigger Than Us": Pushing for Varsity Status	21
VII.	"The End of Collegiate Athletics": Title IX's Legislative Development in Sports	26
VIII.	Women's Ice Hockey Reaches Goal Amidst Legal Complaint	38
IX.	Further Clarifying Title IX Under New Administrations	47
X.	Ice Hockey Grows at UMaine and in the United States	51
XI.	Still a Little Gravelly: Paving Roads with Title IX	58
XII.	Seeking Equality Outside of Title IX	61
XIII.	Bibliography	63
XIV.	Author's Biography	68

Artist's Statement

At the start of this thesis process, my intention was to focus on the coverage of women's ice hockey and its representation in the news media. This topic was broad, but it was no less important to me. I'm an avid ice hockey fan, who especially enjoys the women's game. I play recreational hockey on and off campus, and I cover the sport as a journalist. I thought it would be interesting to delve into how female athletes are represented in both popular culture and the news media. Researching this topic proved to be a large, complicated task. Coverage of women's ice hockey players in the news media was broad and inconsistent.

In an attempt to ground my work in a concrete subject, I began looking at ice hockey culture present at the University of Maine. Both men and women's ice hockey programs compete at the Division I level, and I wanted to see the differences in how the university promoted, and the news media covered, the respective squads. It was at this point that my project required a split in methodology: I would have to research and report. The result is a thesis that is *creative* in the sense that long journalism features are creative. It does not contain the rhetorical or storytelling elements of literary journalism, but the story is told in mini-narratives that shift between different topics.

I began my research by mapping how local newspapers covered the women's ice hockey program from its inception in the late 1970s. Within this research, I started to uncover a story. It was one that outlined the women's ice hockey team's transformation from a club team to a group who would fight for varsity status in the mid-1990s. Today the results of that battle are evident. The university has a Division I varsity women's ice hockey team. But the story of how that team and status came to be has yet to be told.

My interest in reporting and researching this story came not only from my own personal curiosity, but it also stemmed from looking at women's athletics in a broader context. My experience as a fan of women's athletics is that the news media pays little interest, unless the teams or individuals are exceptional. General coverage of female athletes often measures their abilities and achievements against male counterparts. Consequently, I was interested to learn if the lack of interest in women's ice hockey at the university stemmed from its less successful on-ice record compared to the men's team or whether there were other factors at work.

If one listens to broadcasts of UMaine's men's ice hockey games, the phrase "winning tradition" is often repeated (regardless of actual success). Broadcasters—including myself—use the phrase as short-hand to understand men's ice hockey at the university. While the actual history of the men's team might not be well-known to those who don't follow the team religiously, phrases like "winning tradition," imply at least a recognizable history. The perception of history is important; it allows a fan base to gather and grow around a team. A shared sense of the past recognizes that the team was not always what it was, and it offers a celebration of what it is now.

Not only is the phrase "winning tradition" practically absent from discussions about women's ice hockey at the University of Maine, that shared sense of history is also nonexistent. While traditions may grow within the small community of women's ice hockey players and their immediate fan base, their story does not reach the larger campus community. Fans can open a media guide for the women's team and locate win-loss records from past seasons and find out how many goals a player scored four seasons ago, but the women's media guides do not offer a narrative of tradition in the same way the

men's team does. It is almost as if the team has always existed and will continue to exist in a vacuum.

This observation pushed me to research and write this thesis. While women's ice hockey at UMaine may not draw the biggest crowds or pull in the most money for the school, these facts do not make the program any less important than its male counterpart. The women's team and its history should not suffer its story not being told simply because they have achieved nothing "remarkable" or "exceptional" through the eyes of dominant male athletics. Simply existing as a women's athletic program in a society with negative stereotypes toward female athletes and within a male dominated field is exceptional enough.

I pulled together an outline of the history of the team by looking through an extensive catalogue of articles from the *Bangor Daily News*. The women's team started as a club in the late 1970s and resurfaced in the mid-1990s when it made an ultimately successful push for varsity status. But the *BDN* outline was loose and full of gaps. In order to close these gaps, I contacted many former players through the University of Maine Women's Ice Hockey Alumni page on Facebook. These women played for the team throughout the 1970s, '80s, and '90s. They were firsthand witnesses to the team's inception, its reboot in the '80s, its varsity push in the '90s, and those who experienced their newly appointed status in the early 2000s. I interviewed these women in order to recover their story. They expressed gratitude that someone wanted to tell their tale, and I was even told that through doing this project, I was now part of their team.

The thesis is structured as an extended feature on the history of women's ice hockey team. The story is broken into mini-narratives that document the team's creation,

its fight for varsity status, and the present day successes of the team. Interspersed between these specific UMaine stories is the history of Title IX, a legal statute that played a significant role in helping the women ultimately achieve varsity status at the university. I chose to include these extended legislative and legal histories not only to offer historical context and understanding of a national law, but also to give a sense of how complicated and complex the obstacles the women at UMaine had to overcome to achieve their ultimate goal.

This thesis restores the little-known history of UMaine's women's ice hockey team. Its purpose is to draw attention to a team that is overlooked in the larger hockey culture that exists at UMaine, while simultaneously calling notice to the fact that it is overlooked. My thesis, though contextualized in the women's ice hockey team at one university, also calls attention to the lack of perceived history not just in collegiate women's ice hockey, but in all levels of women's athletics. Just like the women's ice hockey team at UMaine, female athletes and athletics are bound to have storied pasts. These athletes should not have to fight any harder for their stories to be told. Here is a start at reclaiming that history.

Women's Ice Hockey Comes to UMaine

Hand-drawn, mimeographed copies of flyers began appearing on walls of dormitory buildings throughout the University of Maine campus in the fall of 1978, early September and early in the semester.¹ Primitive in nature, not only in crude appearance but in their production, as well, the flyers advertised an “organizational meeting” of the “Women’s Ice Hockey Club” at the University of Maine. The flyer featured the club name in large block text, scribbled in for color, and a rudimentary drawing of a hockey stick pointing toward a puck with “U.M.O Women’s Ice Hockey” hovering in round, blocky text just below it. “Thursday, Sept. 11 7:00 P.M.” is written in thick font, attempting to look printed and clean, but appearing almost childish in nature. “North Bangor Lounge” sits above a crossed out ‘Memorial’ in “Memorial Union.” The word is dashed over out with a terse diagonal blue line, ‘East’ printed just below it in the same blue ink, indicating a change in venue or a misnaming of the location. “ALL ARE WELCOME!” appears in the same all capital text with a hopeful exclamation point extending higher than the size of the words themselves. Inviting and informational, the flyers provided any interested female with the opportunity to take part in the formation of the Women’s Ice Hockey Club.²

One of those interested females was Alicia Nichols, a “Founding Mother” of the team.³ Nichols recently explained the atmosphere on campus that led to the birth of the

¹ Alicia Nichols, e-mail message to author, December 9, 2015.

² Women’s Ice Hockey Club, “Women’s Ice Hockey Club Organizational Meeting Flyer” (flyer, University of Maine, 1978).

³ Alicia Nichols, e-mail message to author, December 9, 2015.

club. “The UMaine men’s hockey team was brand new,” said Nichols, “Everyone was excited about hockey on campus, and the Alfond was spectacular looking!”⁴

A year earlier in 1977, the Harold Alfond Sports Arena was opened on the university campus and a NCAA sanctioned men’s ice hockey program was formed.⁵ Buzz and interest around hockey was growing, and this new women’s club offered anyone with experience or pure interest a chance to play in a brand new arena. Nichols, having played hockey in high school for the Gardner Massachusetts Royals, knew “immediately” that she wanted to play for the club team as soon as she saw the flyer in Kennebec Hall, her dormitory.⁶

When it came to simply garnering interest into this newly created club, experience and skill level were not determining factors in joining. “We had women who’d never skated, let alone played hockey,” recalled Nichols, “but we were all such a supportive group, we supported and encouraged all teammates to do their best.”⁷

According to Barbara Woodstock Loge, a founding member and organizer of the original club team, most of the players with experience were from Massachusetts and “most of us Mainers never had an opportunity to play the game... There was a lot of learning that went on that first year.”⁸

Creating an organization out of thin air would not be easy; unfortunately, interest and pure love of the game would not fund the club to the extent that they needed. Ice time for practices, travel for games and equipment for the players was not something that

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ "UMaine Women's Ice Hockey: It's Come A Long Way Since 1979." *Maine Alumni Magazine*, 2009.

would not be easily handed over to the club. Players had to outfit themselves with the proper equipment they needed for play. The Student Senate of the University recognized the organization as a club sport and only gave them a meager amount of funds;⁹ a process which included the president of the club team approaching Senate, presenting a planned budget and asking for more money.

Self-funded in almost every means necessary, the women chipped in to pay for much needed ice time along with practice and game day jerseys. Their scheduled practice ice time came at 5:30 a.m., another aspect that was facilitated and prompted by the players themselves, calling the Alfond and finding available ice time that would be offered cheap to them. “The athletic department actually gave us a key to Alfond Arena,” Nichols remembers, “and we waited outside in the freezing cold until the person with the key – it may have been our coach, Mike Vigue, arrived to unlock the building.”¹⁰

The team had been able to recruit a fellow student at the university to coach them. On a strictly volunteer basis, newly appointed coach Mike Vigue, who had skated two seasons with the relatively new men’s Division 1 team at the University from 1977-79, enlisted his fraternity brother, Richard “Gidge” Veilleux, as his assistant.¹¹

The women lugged their heavy equipment across campus, bearing weather and temperature, in the early hours of the morning, to get their chance at ice time at the Alfond. Locker rooms, showers, and training facilities were not made available for the club team, and only served the men’s Division 1 team.¹²

⁹ Alicia Nichols, e-mail message to author, December 9, 2015.

¹⁰ Ibid.

¹¹ "UMaine Women's Ice Hockey: It's Come A Long Way Since 1979." *Maine Alumni Magazine*, 2009.

¹² Ibid.

Players paid for everything, including ice time for practice and whatever equipment they might need, fundraising by selling cookies from local LaBree's Bakery in Old Town, Maine, to their friends and peers out of their dormitories. They sold space for ads in game programs and collected money from teammates for gas when traveling became involved.¹³

The first year served as strictly organizational growing along with learning and player development for those with little to no experience playing hockey. There were few other teams the club could face off against in the area and they had little money to fund travel if there were.

According to Nichols, "from day one" the founding members of the club team knew they wanted to reach varsity status. "We went to the president (University of Maine President Neville Howard) every semester and requested varsity status. Every time, we were told that wasn't happening." Howard eventually granted the team free ice time, but this simply felt like "a meager pat on the head."¹⁴

In the 1980-81 school year, just over a year into the club's creation, members of the squad approached Neville, pushing once again for varsity status. "This time we decided to play a little hardball and bring up the whole issue of Title IX," Nichols says. While this strategy did not land them instant varsity status, or really anything close, Neville did agree to fund team uniforms for the club. It was a small victory, along with the previously granted free ice time, but a step in the right direction in the eyes of the players and a turning point for the club. It was one less thing they had to pay for

¹³ Alicia Nichols, e-mail message to author, December 9, 2015.

¹⁴ Ibid.

themselves and it was one less worry on their minds when all they wanted to do was play hockey.

When games were played against other women's teams they faced off against local programs from Bowdoin College and Colby College. They were able to land themselves a few trips south to play Boston University and Boston College, along with Dartmouth in New Hampshire. "There were very, very few women's college programs, especially close by," Nichols recalls, explaining the need for travel funds when all the teams they could play against required lengthy road trips. When they could, the team played against more local high school and house leagues. "We played the Brewer Midgets (boys ages 14 to 17) and lost 14-0," Nichols shares, "That was truly humiliating." Vigue had once pulled some strings and got them a spot in a hockey tournament that took place just north of the border in New Brunswick, Canada.¹⁵

The successful start up year was short lived. According to Shades King, who played on the team during her first year at the university, after that year the team fizzled out. "Many of the players and the coaches graduated... and it just stopped," King recounted.¹⁶ During this period of time, the team virtually ceased to exist. As the 'Founding Mothers' moved on, they took with them the driving force behind the team and for eight years or so, until a reboot in 1987, women's club ice hockey at the university was a past trend.

It was that former first year player, Shades King, who took it upon herself to bring back the team. Entering graduate school at the University in 1987, King revitalized the club and it paid off. Posting flyers in "every women's bathroom on campus", King

¹⁵ Ibid.

¹⁶ Shades King, e-mail message to author, April 26, 2016

received 40 responses, some individuals called her to express their interest. Twenty five ended up actually playing.¹⁷¹⁸ In a story from *The Maine Campus*, King explained her reasoning for rebooting the team. “I wanted to make sure that women at the university had an opportunity to play hockey,” King told reporter Alan Comeau. She believed it was important for the “major UMaine campus” to have a women’s club hockey team.¹⁹

The rebirth of the team meant uncovering the struggles the earlier members had faced when kick starting it in the late 70s. Funding and player experience, once again, proved to be prominent hurdles for the club. Almost echoing the words of Alicia Nichols, Zoe Harris – secretary for the club at the time – told *The Maine Campus* that many players had never skated on hockey skates before. Internal struggles spouted from this inexperience of not just the sport but of a team atmosphere. Harris recalled recently that communication between teammates would sometimes become strained. The more inexperienced players sometimes took advice from linemates as more being told what to do, rather than just helpful ways to improve. Harris remembered this being challenging at first, but “after a year or two, it got better.”²⁰

When it came to funds, the officers of the team met every week and focused their discussions on fundraising. They sought out sponsors to help fund travel expenses and any equipment they needed. The club took advantage of the crowds drawn in by the men’s hockey team, selling 50/50 raffle tickets at the Alford Arena during games.

Dave Ames, director of recreation at the University, told *The Maine Campus* that the women’s club team held the second highest budget out of all 12 club teams sponsored

¹⁷ Ibid.

¹⁸ Alan Comeau, “Maine Women Take the Ice,” *The Maine Campus* (Orono, ME), 1991.

¹⁹ Ibid.

²⁰ Zoe Harris, e-mail message to author, April 26, 2016.

by the recreation department. According to Ames, the university paid for officials for the games, travel, ice time and team equipment.²¹

Players of the team remember it differently. Stacey Rondeau Livingston, who joined the team in 1991 during its reboot, recently recalled that they “fought for every penny.”²² She estimated that the recreation department gave them “maybe \$2,000 for the season, to cover a \$9,000 budget.”²³ Zoe Harris repeated this sentiment, claiming the team received virtually no money or support from the school.²⁴

Budget concerns and funding, however, took a back seat to the idea of what the team could become. The future of the team and where it was headed was on “each of the member’s mind at one time or another.”²⁵ In the last decade, women’s ice hockey made strides in the United States, especially in New England. As the University of Maine started its club team, schools like Northeastern, Providence and the University of New Hampshire were crafting Division 1 varsity women’s teams.²⁶ Members of Maine’s team knew their team had potential would grow, especially when they saw women expressing interest in attending the university simply to play hockey. Team captain, Kathy Gendron, told *The Maine Campus*, “We are getting new recruits who are dedicated to the sport. . . They are coming to Maine to play hockey.” With no scholarships or incentives to offer these new recruits, Gendron believed the dedication from the new players would keep the club strong and push it forward, even after some of the older players left.²⁷

²¹ Alan Comeau, “Maine Women Take the Ice.”

²² Stacey Rondeau Livingston, e-mail message to author, April 23, 2016.

²³ Ibid.

²⁴ Zoe Harris, e-mail message to author, April 26, 2016.

²⁵ Alan Comeau, “Maine Women Take the Ice.”

²⁶ Ibid.

²⁷ Ibid.

The commitment of incoming players meant meeting the three weekly practices and being available to play in the 12 to 15 games the club had.²⁸ The team had joined the American Women's Collegiate Hockey Alliance shortly after the reboot in '87. With this new league status, the team faced club championship hopes. Adding some of those new recruits to the team helped push the squad to second place in the ACHA Club Championship in 1992, losing to Boston College in the final game.²⁹ "There were at least six to seven beginners still there from the re-start in '88," Harris recalled, reflecting on the early and sudden success of the team in their reboot years.³⁰

League status and second place was not the end goal for the team, however. Their goal was to reach varsity status, to be one of those Division 1 teams they saw being put into place around New England universities. Varsity meant support from the university, which extended far beyond just receiving money for the necessities of the sport. Varsity carried with it a sense of recognition and prowess, along with a strong backing and sense of pride from the university. The team's hope for that status would come from a federal law that called for gender equality in educational institutions. The team's goal of varsity status fell under the jurisdiction of Title IX.

Professional Women Take On Congress

Two decades before women at the University of Maine struggled to craft their image as serious ice hockey players at the school, the United States fought to find its own

²⁸ Stacey Rondeau Livingston, e-mail message to author, April 23, 2016.

²⁹ Zoe Harris, e-mail message to author, April 26, 2016.

³⁰ Ibid.

identity amid war, segregation, and civil unrest. Ice hockey saw its popularity growing and the National Hockey League began whispering ideas of expanding westward, adding more hockey teams and increasing its market. Similarly, the United States government sought to expand itself through amending and enacting laws. These laws and amendments looked to increase the rights of oppressed groups, expand governmental control over businesses and employment, and even declaring a war on poverty.

The early 1960s in the United States saw threats of nuclear war, oppressed groups fighting for basic rights, and the brutal assassination of the nation's president. Landmark legislation, including the Voting Rights Act and the Economic Opportunity Act, passed over the desks of elected officials. The United States found itself internally conflicted, struggling with the push from oppressed groups— African-Americans, women, LGBT—that continued demanding civil and human rights. On July 2, 1964, President Lyndon B. Johnson signed into law the Civil Rights Act of 1964, a bill that originated with President John F. Kennedy's initial push toward civil rights. This law made discrimination based on race, religion, color or national origin illegal in places of business, especially in terms of employment. It also sought to end segregation in schools and other public places such as libraries and community pools. While this law did not cover discrimination on the basis of sex, Executive Orders signed by President Johnson in 1967 focused on that issue. Notably, Executive Order 11375 prohibited discrimination on the basis of sex at all institutions that received money from the federal government.

Two years later, at the University of Maryland, Bernice Sandler was working as a part-time teacher. She taught while working on her doctoral degree in counseling and personnel services. As she neared completion of her degree, faculty positions in her

department opened up; however, Sandler was not considered for a single one. With a bachelor's degree in psychology from Brooklyn College and a master's in clinical and school psychology from the City College of New York, Sandler knew her qualifications were not the issue. She confronted a faculty member about her concerns and was told, "Let's face it, you come on too strong for a woman."³¹

Confused and dejected by this statement, Sandler was unsure of what these words actually meant. Nearly 30 years later she told *About Women on Campus*: "After all there were many strong men in the department."³² She turned to her husband, who labeled these words as 'sex discrimination,' a term Sandler admitted meant almost nothing to her at the time. Sandler was cautious to apply this term to what was happening at the University of Maryland. She was unsure about the women's movement, a topic she felt the news media reported on in an extremely negative manner.³³

Sandler received two more rejections that she believed hinged heavily on her being a woman. Employers told her that she was not really a professional, but rather "just a housewife who went back to school."³⁴ These setbacks motivated Sandler to delve deeper into the idea of sex discrimination. She researched recent laws and acts, hoping to find language or precedent to help make her case against the University of Maryland.³⁵

In her research, Sandler found that sex discrimination in the field of education appeared nonexistent. As part of the Civil Rights Act of 1964, Title VII excluded "educational institutions in their educational activities" from the act's anti-discrimination

³¹ Bernice R. Sandler, "'Too Strong for a Woman'—The Five Words That Created Title IX," *Equity & Excellence in Education* 33, no. 1 (April 2000), <http://www.bernicessandler.com/id44.htm>.

³² The former newsletter of the National Association for Women in Education. Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

coverage.³⁶³⁷ What this provision meant was that school administrators did not have to follow this landmark law. Title VI of the Civil Rights Act prohibited discrimination in federally funded programs on the basis of color, race and national origin, but did not include sex, meaning that students were also not protected from sex discrimination under this law.³⁸

Sandler credits her academic background as the reason why she stumbled upon this breakthrough information. As she read about the Civil Rights Movement she learned what activist groups did to combat segregation in schools and employment. It was during this leg of her research that she came upon Executive Order 11246, an order that prohibited federal contractors from employment discrimination on the basis of race, color, national origin and religion. Sandler's academic background pushed her to the back of the report where she read a footnote that had been attached to the Executive Order. To her surprise, the footnote read that President Johnson had amended Executive Order 11246 with Executive Order 11375, adding discrimination on the basis of sex.³⁹ This addition meant that Sandler now had a legal case against the University of Maryland. Since most colleges and universities received money via federal government contracts, these schools were legally not allowed to discriminate on the basis of sex in anyway, especially employment.

Sandler contacted the Office of Federal Contract Compliance and was put in touch with its director, Vincent Macaluso. Macaluso told Sandler he had been waiting for

³⁶ Bernice R. Sandler, "Too Strong for a Woman"—The Five Words That Created Title IX,"

³⁷ Titles refer to specific clauses in a law or act. They are used in order to find sections of the law or act easily or relate to a particular point.

³⁸ Ibid.

³⁹ Ibid.

someone to file a complaint on the basis of sex discrimination.⁴⁰ Together, the two planned the first complaint against federally funded universities and colleges, along with how to enforce the laws in Executive Order 11375.⁴¹

Two months later, with the help of the Women's Equity Action League (WEAL) Sandler began a national campaign to end sex discrimination in education.⁴² In January 1970, WEAL filed a class action complaint, on behalf of Sandler, against every college and university in the United States with specific charges against the University of Maryland.⁴³ WEAL filed the complaint with the Department of Labor under Executive Order 11246 and amendment Executive Order 11375, and asked for an immediate compliance review of all institutions. This large-scale filing was, as Sandler later described it, an administration filing with a federal agency, which meant that Sandler was not named nor her specific event described. "The charges were filed on behalf of all women in higher education," Sandler said.⁴⁴ WEAL cited an "industry-wide pattern" when it came to sex discrimination in educational institutions. They asked for a review of all the federally funded schools, looking specifically at "admission quotas... financial aid, hiring practices, promotions and salary difference."⁴⁵

Sandler gathered 80 pages of documents showing sex discrimination in educational institutions to accompany the complaint. At the advice of Macaluso, who pointed out that a large appendix to the complaint would be important, she included

⁴⁰ Based out of the Department of Labor and responsible for ensuring all businesses/institutions with federal funds are following all federal laws. Ibid.

⁴¹ Ibid.

⁴² Bernice R. Sandler, "Too Strong for a Woman"—The Five Words That Created Title IX."

⁴³ WEAL is a former women's organization involved in improving the status of women in the United States through legal action and legislation. Candis Steenbergen, *Encyclopaedia Britannica Online*, s. v. "Women's Equity Action League (WEAL)", accessed May 01, 2016, <http://www.britannica.com/topic/Womens-Equity-Action-League>.

⁴⁴ Bernice R. Sandler, "Too Strong for a Woman"—The Five Words That Created Title IX."

⁴⁵ Ibid.

everything she could. Data and articles regarding sex discrimination in educational institutions were limited, but Sandler included studies that examined the number of female faculty and graduate students at multiple schools. She included her own data that she had gathered at the University of Maryland. To identify significant points and make sure they would not go unnoticed, Sandler underlined important passages in the documentation with thick pen to catch the eye of anyone leafing through the pages.⁴⁶

Although news media coverage of the WEAL complaint was scarce, it still managed to ignite women in the academic community, according to Sandler. She believed this interest had much to do with the fact that women could now file complaints against their institutions without having their names being mentioned, just like Sandler. Many female faculty members contacted Sandler to either share personal stories or tell her about the large picture of discrimination in academics. Through these women, Sandler was able to receive information regarding “the number and rank of men compared to women in a few selected departments.”⁴⁷ Sandler then compared this information to the number or percentage of women with doctorate degrees in a particular field. This independent research conducted by Sandler revealed “striking” results: some departments had virtually no female faculty members despite the fact that women received 25 percent of the doctorates received in those fields.⁴⁸ Sandler concluded that the higher the academic ranking, the more prestigious the field or department or institution, the fewer the women.⁴⁹

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

Sandler served as chair of WEAL's Action Committee for Federal Contract Compliance in Education. In this role she was not only the head of the committee, she *was* the committee. In that position she filed charges against 250 institutions. More than 100 charges were filed either by other individuals or organizations including National Organization for Women (NOW).⁵⁰

Sandler knew that simply filing charges against institutions would not be enough to get the federal government to start enforcing Executive Order 11375. She encouraged the woman who provided her with information regarding their institutions to write to their House and Senate representatives. Sandler told them to ask their representatives to speak to the Secretaries of Labor and Health, Education and Welfare in order to request enforcement of the Executive Order. Sandler wanted to put Congressional pressure on two departments and sensitize Congressional staff about the issue of sex discrimination. Her plan worked. The Department of Health, Education and Welfare (HEW) had to assign a full-time position to just handle the mail. HEW received more than 300 letters in a relatively short period of time.⁵¹

In March 1970, Representative Martha Griffiths (D-MI), the first woman elected to Congress from Michigan and a member of WEAL's national advisory board, gave the first speech to Congress regarding sex discrimination in education. In her speech, she criticized the government for not enforcing any of its own laws and regulations, especially when it came to sex discrimination in education. Three weeks after Griffiths' speech, the first contract compliance investigation began at Harvard University. Numerous meetings between national women's organizations—such as WEAL and

⁵⁰ Bernice R. Sandler, "Too Strong for a Woman"—The Five Words That Created Title IX."

⁵¹ Ibid.

NOW—along with the over 300 letters sent to Congress and Griffiths’ speech had culminated with a step in the right direction from the federal government. Not only did the investigation into Harvard University begin, but in June, the Department of Labor issued its first Sex Discrimination Guidelines for federally contracted institutions. Moreover, HEW hired its first female compliance investigator and issued a memo to its field personnel to include sex discrimination in its contract compliance investigations.⁵²

In June and July 1970, Representative Edith Green (D-OR) held the very first Congressional hearings on the education and employment of women. Green, who was also a member of WEAL’s national advisory board, was aware of sex discrimination taking place in academia, and she knew that the laws did little to prevent it. Green chaired the subcommittee that dealt with higher education, but she was tentative to hold hearings due to the lack of data detailing discrimination that was available against institutions, and the fact that no one wished to testify. Sandler provided Green with the WEAL complaint filings, which included all the documentation and data received from other women working at institutions. Sandler also gave Green lists of people who would be willing to testify on behalf of new legislation that combated sex discrimination. With the help from Sandler, Green agreed to draft new possible legislation and hold Congressional hearings.⁵³

Green drafted legislation aimed at amending Title VI and Title VII of the Civil Rights Act of 1964 along with the Equal Pay Act. It moved to cover sex discrimination in federally funded programs under Title VI, employees in educational and academic institutions in Title VII. These titles, though anti-discrimination, did not cover

⁵² Ibid.

⁵³ Ibid.

discrimination based on sex or in educational facilities. In the Equal Pay Act, Green's proposed bill moved to expand coverage to "executives, administrators and professionals."⁵⁴

Sandler testified on behalf of the proposed legislation, as did other women and some men. However, no one from the "official world of higher education testified" despite being welcomed to by Sandler.⁵⁵ In fact, a representative from the American Council in Education told the subcommittee counsel headed by Green that "[t]here is no sex discrimination in higher education." This representative claimed that even if discrimination did exist, it "wasn't a problem."⁵⁶ Green's bill did not interest Congress, and they did not see it as having any major implications for educational institutions.⁵⁷

Representative Green attended every hearing throughout its seven days. She was the only member of the subcommittee to do so. Federal officials skirted around the issue of opposition, claiming they supported the bill's intent, but not its content. Another WEAL national advisory board member, Representative Shirley Chisholm (D-NY) testified on behalf of the bill. Chisholm, the first African-American woman elected to Congress, testified that, throughout her entire history in politics, being a woman was "a far greater handicap" than her skin color.⁵⁸ Chisholm was not the only African-American congresswoman to testify in support of the proposed bill. While most of the testimonies dealt with women employed in education, some female students also testified about counseling and admissions in higher education.⁵⁹

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

At the completion of the hearings, Sandler joined Green's subcommittee staff to assemble a written record of the testimonies. This documentation resulted in a nearly 1,300 page, two-volume set that included 14 studies of women in higher education. This accounting—the first of its kind—became an invaluable source of information about women and sex discrimination in higher education. Green sent a copy of these congressional hearing transcripts to every member of Congress along with prominent organizations and big name individuals in higher education. Green also sent out a copy to the news media.⁶⁰

The widespread distribution of the hearings, in conjunction with the legal charges against popular institutions, generated support for legislation ending sex discrimination. The transcripts of the hearings acted as proof to the naysayers who believed sex discrimination in educational settings did not exist. As the pressure and profile increased, however, colleges and universities began to understand and adapt to how this proposed bill might affect them. Harvard, Princeton, Yale and Dartmouth feared they would have to start admitting women in equal numbers; consequently, these powerful institutions, with the help of their influential alumni, lobbied for exemption from the bill for “private undergraduate admissions.”⁶¹ These institutions claimed—though offered no supporting evidence—that varying ratios in sex were best for learning, and that colleges and universities themselves were the organizations who knew what the best ratios were. The lobby from the institutions was successful, and they were excluded from the bill. Despite this exemption however, Green was able to ensure through the rest of the bill that students of both sexes who were admitted to these institutions would no longer face

⁶⁰ Ibid.

⁶¹ Ibid.

discrimination on the basis of sex. Other exemptions to this bill included military academies and any school that was single-sex.⁶²

Senator Birch Bayh (D-IN), another member of WEAL's national advisory board, managed the Green's proposed bill in the Senate. Sandler recalled in her article that a very small number of people noticed that the bill could possibly affect academic athletics, and the discussion on the floor of the Senate was brief. This discussion was based on whether or not the bill required educational institutions to allow women to play on football teams. Higher education neither lobbied for or against the bill. Sandler believed the higher education community possessed only a "rudimentary understanding of the problem," and as a result thought they had covered all bases that might be an issue: admissions and football.⁶³

The bill went mostly unrecognized outside of higher education, especially in elementary and secondary education community because the bill was "attached to a higher education measure."⁶⁴ Also unnoticed by members of the Department of Labor was the Equal Pay Act amendment to the bill because of its artful wording crafted by Moran Simchak, a member of WEAL who also worked for the Department of Labor. According to Sandler, Simchak worded the bill as if it was a "technical amendment," acting as if the bill would just be making minor, insignificant changes to the act.⁶⁵ The Equal Pay Act amendment looked to add administrators, professionals and executives to

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

its coverage, but went unnoticed by the Department of Labor until after it had already been passed.⁶⁶

Groups of women from various women's organizations, including Sandler approached Green as the vote on the bill drew closer. Green turned down the groups' offer to lobby for the bill. Green told them there was no opposition to the bill, and that the less people knew about the bill the better its chances to pass.⁶⁷

The House of Representatives passed a portion of Green's original bill on November 4, 1971. This portion included the exemptions put forth by the Ivy League institutions such as Harvard, Princeton and Yale. However, the thirty-five member congressional committee meeting which convened in order discuss a new education bill was open to hearing suggestions from Green. She proposed an addition to the educational bill that would ban discrimination on the basis of sex in federally funded educational institutions. She also suggested the penalty for noncompliance with this law would be stripping those institutions of their federal funds. This weakened version of Green's original bill and proposals to the congressional committee became known as Title IX of the Education Amendments of 1972.⁶⁸

While Green proposed changes to the educational bill in the House, Senator Bayh focused his attention on the Senate. Bayh detailed his concerns regarding sex discrimination against women in the educational system in a speech to his fellow senators. Most elected officials agreed that sex discrimination in the education system should end, but did not know how to achieve it. Opponents to laws forbidding sex

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Paula J. Snyder, "A Legislative and Judicial History of Title IX in Athletics" (PhD. diss, Kent State University and Graduate School of Education, Health, and Human Services, 2008): 31.

discrimination believed that any legislation would just be an attempt to implement “gender-related quotas.”⁶⁹ This concern resulted in an attached floor amendment from the House stating that any legislation would not implement or require quotas.

The House and Senate met for months in combined congressional committee meetings in order to work out the differences between each versions of the educational bill. Senator Bayh’s amendment to the Senate version of Title IX did not include the exemptions put forth by the Ivy League schools. From there Title IX was sent to the full Senate where it was approved on May 22, 1972, then later passed through the House on June 8.⁷⁰ President Richard Nixon signed the bill into law on June 23, 1972. The law’s passage went virtually unnoticed in the national news media, and the local Washington papers relegated the news to a few sentences.⁷¹

⁶⁹ Ibid., 32.

⁷⁰ Ibid., 33-34.

⁷¹ Bernice R. Sandler, “Too Strong for a Woman”—The Five Words That Created Title IX.”

“Bigger Than Us”: Pushing for Varsity Status

Stacey Rondeau Livingston graduated from the University of Maine in 1995, but she did not leave her teammates behind for too long. She moved from on the ice to behind the bench, volunteering as assistant coach for the squad. Livingston worked under head coach Brian Curtain and found herself completely in her element while coaching. A year after she took the position of assistant coach, head coach Brian Curtin stepped down in 1996. Curtain’s priorities began to shift. He was beginning a family, and the women’s club ice hockey team was no longer the first thing on his mind. He stepped down as head coach, and Livingston took over the newly vacant position.

During 1995, off the ice and across campus, officials at the University of Maine found themselves scrambling for a nonexistent, unwritten plan to improve gender equity in sports at their school. On May 11, 1995, President Frederick Hutchinson announced an “ambitious, 30-page proposal to address gender-related inequities in its intercollegiate sports programs” titled “Realizing the Dream: A Proposal for Achieving Gender Equity in Athletics at the University of Maine.”⁷² This proposal pledged \$724,000 to women’s athletics over the next three years. This money would go toward all nine of the university’s women’s varsity athletics programs for general operating costs, coaches’ salaries and scholarships.⁷³ At this time, men’s sports at the university received \$2.8 million of the athletic budget, while women’s programs received a little more than \$1 million.⁷⁴ Hutchinson planned on half of this \$724,000 to come from revenue produced

⁷² Mike Dowd, “UM Gender Equity Plan Disclosed Finances Still Unclear, but UMaine Committed,” *Bangor Daily News* (Bangor, ME), May 3, 1995.

⁷³ *Ibid.*

⁷⁴ Mike Dowd, “UM chief pledges \$700,000 for women's athletics,” *Bangor Daily News* (Bangor, ME), May 2, 1995.

by attendance and concessions during events at the Alfond Arena. If the sports teams did well and continued to draw big enough crowds, they could use that funding toward women's athletics.

The increase in revenue and budget for women's athletics also included hopes for new facilities like locker rooms and workout equipment, along with a trainer to work specifically with the women's teams. These provisions seemed like a huge step for women's athletics at the university. For the women's ice hockey team, however, they needed to gain varsity status to recoup these proposed benefits.

Livingston remembered always talking about varsity status with her team. They dreamed about what it would be like and how much easier it would be for them if they had such recognition. The close bond she formed with her players allowed for comfortable discussions on the topic, to the point where the team eventually asked Livingston to help them make the push for varsity.⁷⁵ Livingston agreed and the coaching staff and players met to strategize. Livingston, however, already knew what a push for varsity status would mean—not just for the team but for herself as well.⁷⁶ “You guys realize, I pursue this and I am done as the coach for the team,” Livingston told her players. She knew that pushing for varsity and fighting against the University would not end well for her. “This is bigger than us, it’s about what is right and this is about the future of Maine Women’s Ice Hockey.”⁷⁷ Her rallying cry for the squad carried with it the likely reality of their push. If the team achieved varsity status, the chances of Livingston staying on as head coach were slim. She would become, in the eyes of the University, the assertive coach who would do anything for her team, including fighting

⁷⁵ Stacey Rondeau Livingston, e-mail message to author, April 23, 2016.

⁷⁶ Ibid.

⁷⁷ Ibid.

against her employer on their behalf. Livingston's concern for the future of the team far outweighed her concern of how she would appear to the university. "I was prepared to be the bad guy and take the hit for being the loud mouth coach," she recalled. "Some people thought I was crazy for taking on the university, and at times I thought the same thing."⁷⁸

Fortunately for Livingston, she would not be fighting alone. Contacts throughout the world of women's ice hockey came through for her, including integral support from Digit Murphy.⁷⁹ Murphy was head coach of Brown University's women's ice hockey team, the first collegiate women's hockey program in the United States.⁸⁰ Livingston contacted Murphy with her plan for UMaine, and Murphy put her in contact with Mitzi Witchger.⁸¹ Witchger was a gender equality consultant and founder of Girls Really Expect a Team! (GREAT!).⁸² Witchger worked with academic institutions to address Title IX compliance issues, especially in terms of athletics.⁸³ Livingston used Witchger as a sounding board for herself and the team during their push for varsity.⁸⁴

During the 1996-97 season, four members of the women's ice hockey team approached the athletic advisory board at the University of Maine and made their proposal for varsity status for the following season. "Of course the university was against us making the proposal," Livingston remembered. "It would require them to change, and change the men's ice hockey program."⁸⁵ During this time, Livingston recalled, her husband golfed with Shawn Walsh, the head coach of the men's program. On occasion,

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Martha Mitchell, "Hockey," *Encyclopedia Brunoniana*, (Brown University, Brown University Library, 1993).

⁸¹ Stacey Rondeau Livingston, e-mail message to author, April 23, 2016.

⁸² Kelly Young, "Meet Mitzi: A Women's Fund Woman," *Women's Fund of Central Indiana*, November 18, 2015, <http://www.womensfund.org/blog-and-news/2015/november/meet-mitzi-a-womens-fund-woman>

⁸³ Ibid.

⁸⁴ Stacey Rondeau Livingston, e-mail message to author, April 23, 2016.

⁸⁵ Ibid.

Walsh would say things to Livingston's husband such as, "What is your wife thinking?" Walsh, while being "a kind and gracious man" to Livingston, was always looking out for his team.⁸⁶

While Livingston was head coach, the team had switched leagues and joined the Eastern Collegiate Athletic Conference (ECAC) Alliance Division, a group that consisted of nine Division 1 teams and two club teams. Livingston and her team wanted to stay in this Alliance, but then make the jump to a Division 1 in two years. The team's \$9,000 budget covered the 19 players on the team. Their proposal estimated an operating budget of \$107,000 as a varsity team, based on the budgets of other women's hockey programs.⁸⁷

In an interview given fifteen years later, UMaine's former Director of Equal Opportunity Sue Estler spoke to Holly Vanorse of *VillageSoup*. She said that at the time "the women's ice hockey team couldn't get any attention" in their fight for varsity status at the university. UMaine claimed it did not have the money to support a new varsity team, but after threats of a Title IX lawsuit, their minds changed.⁸⁸

The team's varsity proposal impressed the university's athletics advisory board's chairman Dr. John McDonough, also the director of the School of Engineering and Technology. "I really can't speak for the board, but I think the time has come [for the team's varsity status]," he said. "It may be just a matter of working out how to do it."⁸⁹ McDonough hoped the board could lead President Hutchinson in the right direction to make the best decision on the matter.

⁸⁶ Ibid.

⁸⁷ Joe McLaughlin, "UM Women's Hockey Asks Varsity Status," *Bangor Daily News* (Bangor, ME), February 21, 1997.

⁸⁸ Holly Varnose, "Title IX helps genders clear hurdles," *VillageSoup*, May 27, 2011.

⁸⁹ Joe McLaughlin, "UM Women's Hockey Asks Varsity Status."

McDonough later said the board had actually recommended that Hutchinson grant the team varsity status for the following season. While finances were a significant concern for the advisory board, they figured it would somehow work itself out in the end. When asked by *Bangor Daily News* reporter, Larry Mahoney, where the money would come from, McDonough said, "I have no clue, but a \$6 million endowment would fund the program forever."⁹⁰ By the 1998-99 season, they hoped to increase the program's budget to \$180,000 to include a coach's salary, equipment, travel expenses, and, for the first time, scholarships for players. They would start with only four scholarships the first season, but then more would be phased in as the seasons progressed. The goal was to reach 18 scholarships by the 17th season.⁹¹ McDonough also offered plans for a new locker room for the women, an installment that would cost over \$200,000.⁹²

The recommendation from the advisory board was promising for the women's ice hockey team. Despite the finance uncertainty and vagueness of where the funds would be coming from, the approval from the board seemed like legitimate support from the university. This support was long awaited and perhaps far overdue for a team that once felt as if they had no backing from the school.

⁹⁰ Larry Mahoney, "UMaine Women Receive Support Hockey Club Could Become Varsity," *Bangor Daily News* (Bangor, ME), March 21, 1997.

⁹¹ Ibid.

⁹² Ibid.

“The End of Collegiate Athletics”: Title IX’s Legislative Development in Sports

Although it was a small part of the Education Amendments of 1972, Title IX has become its most well-known component, and its name has become shorthand for the collective set of amendments. Title IX mandates that “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 educational program or activity receiving Federal financial assistance.”⁹³ Title IX prohibited academic institutions that were federally funded from discriminating individuals on the basis of sex along with offering legal protection to those individuals facing discrimination. Title IX allowed the federal government to cease funding to academic institutions that continued to discriminate.

In the more than 40 years since the signing of Title IX, the law has become associated closely with athletics existing within education. Despite the written law never making any mention of sports and athletics, three years after its passage the Department of Health, Education and Welfare released final regulations for the law, focusing exclusively on athletics in educational institutions that received federal funding. The law’s association with athletics stemmed from the groups like the National Collegiate Athletic Association (NCAA) and the American Football Association who opposed the mandates created by Title IX. Despite facing discrimination in the sporting world, women in athletics were not initially associated with Title IX. In fact, the Association of Intercollegiate Athletics for Women (AIAW) formed in 1971 order to control and administrate women’s collegiate sports because the NCAA did not accept women’s

⁹³ United States Department of Labor. “Title IX, Education Amendments of 1972,” accessed April 26, 2016, <http://www.dol.gov/oasam/regs/statutes/titleix.htm>.

teams.⁹⁴ The subsequent duel between NCAA and AIAW for control over women's college sports and NCAA's lobbying to Congress to exclude athletics from Title IX increased interest in the law on behalf of AIAW.⁹⁵

In June 1974, the Department of Health, Education and Welfare released proposed regulations for Title IX. Secretary of Education Casper Weinberger allowed a four-month comment period that he said would give the public, schools and educators ample time to consider the law before the regulations went into effect. After receiving more than "9,700 comments concerning Title IX's regulations," (90 percent of which pertained to athletic associations) it was clear that Title IX's application to athletics was a hot button issue.⁹⁶

That same year, Texas Senator John Tower proposed an amendment to Title IX in anticipation of the release of the final regulations of the law. This amendment asked for an exemption of "revenue-producing intercollegiate athletics." Senator Tower hoped that sports that brought in money for the institution would not be affected by the Title IX regulations.⁹⁷ Tower's reasoning behind this proposed amendment was that Congress, after his own self-appointed investigation, had not originally intended Title IX to be applied to intercollegiate athletics. He also insisted that applying Title IX to revenue-producing sports would hurt the overall institution, meaning that if those sports were unable to make money for the school, the school would, in turn, no longer be able to provide, monetarily, opportunities for women in collegiate sports.⁹⁸

⁹⁴ Richard C. Bell, Ed.D, J.D., "A History of Women in Sport Prior to Title IX," *The Sports Journal*, March 14, 2008, <http://thesportjournal.org/article/a-history-of-women-in-sport-prior-to-title-ix/>

⁹⁵ Amanda Ross Edwards. "Why Sport? The Development of Sport as a Policy Issue in Title IX of the Education Amendments of 1972." *Journal of Policy History* 22, no. 03 (July 2010): 308-309.

⁹⁶ *Ibid.*, 310.

⁹⁷ *Ibid.*, 308.

⁹⁸ *Ibid.*

While the Senate agreed with Senator Tower's amendment, in a subsequent conference committee meeting composed of senior members from the House and Senate to resolve disagreements on particular legislation, the amendment was rejected. Instead, an amendment proposed by New York Senator Jacob Javits was passed. According to Margot Polivy, an attorney for AWIW at the time, Senator Javits had written the amendments on an envelope in the hallway just outside the conference committee.⁹⁹ The Javits Amendment ignored Tower's proposal and instead required Title IX regulations to "include 'reasonable provisions' concerning intercollegiate athletics." It also required the Secretary of HEW to propose regulations for Title IX "within thirty days of the passage of the [Education] Amendments [of 1974]."¹⁰⁰

Signed by President Ford on May 27, 1975, the HEW regulations claimed that Title IX did in fact apply to athletic programs in schools. They required every academic institution receiving federal funds to perform a "self-study" during the school year "in order to assess current status and plans for compliance."¹⁰¹ Also, the regulations gave secondary and post-secondary academic institutions a three-year grace period where they could assure the federal government that they were in compliance with equal opportunity in their athletics.¹⁰²

These regulations felt pushback from administrators of institutions who began to recognize the monetary implications the new law would have. NCAA Executive Director Walter Byers believed that men's athletic programs would suffer the most if schools were forced to support women's programs at the same financial level, simply because

⁹⁹ Ibid., 319.

¹⁰⁰ Ibid., 318.

¹⁰¹ Paula J. Snyder, "A Legislative and Judicial History of Title IX in Athletics." 42.

¹⁰² Ibid.

women's programs brought in less money. Byers told Congress that he believed Title IX could bring about the end of collegiate athletic programming.¹⁰³

The regulations brought with them the creation of the contact sports exemption. Under Title IX's 'Application of the Policy – Selection of Sports,' a separate-but-equal policy is enacted when dealing with contact sports. Under this regulation, contact sports included boxing, wrestling, rugby, ice hockey, football, and basketball. When it comes to contact sports, both sexes are not required to be able to participate in a specific sport. However, to make up for this separation, a similar opportunity must exist for the underrepresented sex. While Title IX does not require integration of teams or provide the exact same choice for both men and women, if a team or program excludes specific sexes, then another team or program must be established for that excluded sex to try out or participate in. For example, if females are prohibited from trying out/playing for the football team, another team/program must be established for those excluded females to partake in. This separate-but-equal policy was established exclusively for contact sports. When it comes to non-contact sports, an individual of the opposite sex could be integrated into a team if they possessed "sufficient skill" and could compete with the team."¹⁰⁴ This contact sport exemption set a basis for understanding which sports would be affected most by Title IX. It was likely that HEW was responding to the NCAA concerns about Title IX negatively affecting top college sports like football.

In 1979, the Office of Civil Rights released a blueprint for the final interpretation on Title IX; it included specifications for how educational institutions could be in

¹⁰³ Ibid., 42-43.

¹⁰⁴ United States Department of Labor, "Title IX, Education Amendments of 1972."

compliance with the law.¹⁰⁵ This Policy Interpretation, titled “Title IX and Intercollegiate Athletics,” included three general areas: athletic financial assistance, benefits and opportunities for athletes, and accommodation of student interests. To be in compliance with financial assistance, an academic institution needed to offer the same scholarship awards and funds to members of both sexes. In order to comply with athletic benefits and opportunities, both sexes needed to received equal treatments in nine specified areas:

1. Equipment and supplies
2. Scheduling of games and practices
3. Travel allowances
4. Coaching and tutoring
5. Coaching compensation
6. Locker rooms and facilities
7. Medical and training
8. Dining and house
9. Publicity¹⁰⁶

According to Title IX, these nine specified areas would equalize the playing field for athletes of both sexes. In athletics, these areas have proved to be important not only to the individual athletes, but also to teams and the coaching staffs. Equipment such as uniforms, protective attire, and any specific sport related paraphernalia is crucial to the advancement of a team, especially on the field. Things like coaching, tutoring, facilities, housing and medical attention is another important aspect of team development, particularly outside of the sport itself. These aspects of Title IX show the extent to which the law wished to cover, meaning it meant to apply to more than just the actual sport. The athletes participating in the competitions were the most important aspects of the games,

¹⁰⁵ An agency based out of the Department of Education focused on “ensure[ing] equal access to education and promote[ing] educational success.” “Office of Civil Rights,” *U.S Department of Civil Rights*, accessed April 23, 2016, <http://www2.ed.gov/about/offices/list/ocr/index.html>.

¹⁰⁶ Paula J. Snyder, “A Legislative and Judicial History of Title IX in Athletics.” 256.

and Title IX's emphasis on their well-being illustrated that perspective, especially in these nine areas.

Catering to the human aspects of Title IX, and not just focusing on the specific sports or athletics, student interest became an important factor in determining compliance. Title IX set forth a belief that in order to comply with the law, student interests had to be met. Meeting student interest meant that an institution's student population had a significant say in what they wanted to see, athletically, from their college or university. In order to legally meet student interests and abilities a three-part test was implemented:

1. Providing athletic participation opportunities that are substantially proportionate to the student enrollment
2. Demonstrating a continual expansion of athletic opportunities for the underrepresented sex
3. Accommodating the interest and ability of underrepresented sex¹⁰⁷

If institutions that received federal funding met at least one of these criteria, it would legally be in compliance with the law in terms of athletics. One part of the test did not hold statute or hierarchy over the others, and the Office of Civil Rights did not prefer using one more than the others. The three-prong test offered multiple ways an academic institution can be in compliance with Title IX.

While these criteria seem overwhelming in their syntax and requirements, the meaning of them can be interpreted into simple requirements for the schools. In Prong 1, 'substantially proportionate' means that the athletic opportunities for both sexes, and athletic levels, should be comparable to the ratio enrollment of the overall institution. For example, if a school has an enrollment of 50 percent male students and 50 percent female students, athletic opportunities should be about the same. Athletic opportunity would be

¹⁰⁷ United States Department of Labor, "Title IX, Education Amendments of 1972."

measured through participation, meaning the number of athletes from both sexes, physically participating in the offered programs. Prong 2 requests a continuing effort to expand programs and equalize athletic opportunities for both sexes, especially the underrepresented sex, which in most cases are females. Institutions can be in compliance with this prong by adjusting to the interests of their female athletes. Finally, Prong 3 calls for full accommodation of student interest and ability. This part exists almost in contrast to Prong 2, meaning if an institution cannot show growth and expansion in its programs, they must show that their female athletes have been accommodated with the current program(s) in place. To do this, a university must need to prove either through surveys or testing that the interests of their female athletes have been met. If a legal case against a university under this prong, burden of proof is placed on the complainant bringing the case forward.¹⁰⁸ For example, if a female athlete enrolled in an institution does not believe her athletic interests have been accommodated, she must be able to prove how. Proof could be shown through independent studies of other female athletes and the athletic programs at the current institution.

In 1976, Grove City College, a private liberal arts school in Grove City, Pennsylvania received an ‘Assurance of Compliance’ under Title IX from the Department of Health, Education and Welfare. This ‘Assurance of Compliance’ required an agreement from the college not just to not partake in discriminatory actions, but also to abide by all governmental and federal regulations from that point forward. This ‘Assurance of Compliance’ was issued after Grove City College had refused both federal and state financial assistance. Despite this refusal, several students attending Grove City College did receive Basic Educational Opportunity Grants (BOEGs)—modern day Pell

¹⁰⁸ Paula J. Snyder, “A Legislative and Judicial History of Title IX in Athletics.” 48.

Grants—from the Department of Education. Because Grove City College students accepted and used these federal funds, HEW ruled that the college was, indirectly, in receipt of federal funds and needed to comply with all federal regulations, not just Title IX.¹⁰⁹

Grove City College feared they would not be able to remain a solvent and cost-effective private college in the face of these government regulations (i.e., having to spend money in order to remaining up to par with regulations); therefore, they declined to sign the ‘Assurance of Compliance’ thus sparking the ensuing case against the college.¹¹⁰ Secretary of Education Terrell Bell brought the case before Congress in 1984. Congress decided that because only a certain department of Grove City College—the financial aid and admissions offices—received federal funds, only that program would be subject to federal regulation. The United States Supreme Court ruled that because the athletic department alone at Grove City College did not receive funds from the federal government, it did not need to comply with Title IX. In the subsequent, concurring opinion issued by Supreme Court Justice Lewis F. Powell Jr. pointedly mentioned that Grove City College showed “not the slightest hint of any failure to comply with Title IX” except the refusal to sign the ‘Assurance of Compliance’ issued by the HEW.¹¹¹ While Grove City College had no history of sex discrimination in admissions or employment, their refusal to sign the ‘Assurance of Compliance’ was enough to warrant a Supreme Court case. While discrimination did not play a role in this case, the ruling still set precedent for how later Title IX issues involving funds would need to be determined.

¹⁰⁹ Ibid., 50-51.

¹¹⁰ David M. Lascell, "Grove City College v. Bell: What the Case Means Today." *The Grove City College Journal of Law and Public Policy* 1, no. 1 (2010): 2.

¹¹¹ Grove City College v. Bell, 465 U.S. 555, 578 (1984).

What the ruling changed for Title IX was the coverage and application of the law in some institutions. If only certain departments and programs within an institution received federal funds, then only that specific department would need to comply with regulations. If these departments did not include athletics, then, by the ruling, athletic departments were not forced to comply. This ruling made it almost impossible to enforce Title IX compliance in athletics programs because many of those programs did not receive federal funds.

The ruling on *Grove City College v. Bell* resulted in a negative precedent for subsequent cases. While the ruling was theoretically great for Grove City College because it meant their athletics program did not need to comply with the strict Title IX law, the ruling resulted in an outlook that favored universities, rather than students. For example in 1986, six female student athletes from West Texas State University filed against the university on the ground of sexual discrimination in their athletic programs. The United States District Court for the Northern District of Texas ruled that Title IX was only to be applied and followed by programs that received federal funds and since the athletic programs at the university did not, they were not legally obligated to comply.¹¹²

The Circuit Court refused to decide whether West Texas State University's athletic program was required to follow Title IX laws. However, they did agree to allow appellants to "develop the record on the receipt of financial assistance by the athletics department."¹¹³ This allowance meant that they could present further information and proof of federal funds being used by the athletics programs. The District Court granted the defendant's motion for summary judgment, meaning that the lawsuit would be settled

¹¹² Paula J. Snyder, "A Legislative and Judicial History of Title IX in Athletics." 51.

¹¹³ *Ibid.* 52.

before going to trial. The District Court citing the decision in *Grove City College v. Bell*, reinforcing the precedent that any program under an institution not receiving federal funds did not need to comply with Title IX. This motion was appealed but the Circuit Court affirmed the District Courts earlier ruling.¹¹⁴

Grove City College v. Bell was reversed three years later with the passage of the Civil Rights Restoration Act of 1987. Despite a veto from President Ronald Reagan, the United States Congress voted into law the act that resulted in new amendments to Title IX, along with other anti-discrimination laws. The Senate voted with a 73-24 vote in favor of the bill, while the House voted similarly with 292-133. This 2/3 majority in both chambers resulted in President Reagan's veto to be overridden.¹¹⁵ The amendments helped define the "program or activity" wording of the original law, saying that if any program or activity within an institution received federal funding then the entirety of the institution, programs and activities, *must* be in compliance with Title IX law. The reasoning behind this decision was that many academic institutions received federal funds in a variety of ways and there was always a high chance of an institution receiving funds in one way or another.¹¹⁶

Shortly after the reverse ruling of *Grove City College v. Bell*, the Supreme Court faced many more cases dealing with Title IX. In these cases, the Supreme Court ruled in favor of Title IX and ended up expanding coverage for the law. An example of this coverage expansion happened in the 1992 case of *Franklin v. Gwinnett County Public Schools*, where a young female athlete sued the school district for damages resulting from

¹¹⁴ Ibid.

¹¹⁵ William J. Eaton, "Congress Rejects Rights Bill Veto: President Suffers Major Defeat as Republicans Help Enact New Law," *Los Angeles Times*, March 23, 1988.

¹¹⁶ Paula J. Snyder, "A Legislative and Judicial History of Title IX in Athletics." 53.

the sexual harassment by a male coach.¹¹⁷ While dismissed in District Court under the precedent that Title IX did not “authorize monetary damages,” the Supreme Court overruled, deciding that in a case of intentional discrimination, Title IX called for monetary damages being award along with immediate action being taken against the offender, in this case, the male coach. These rulings meant that not only were institutions liable to pay monetary damages, but they were also responsible for individuals employed by the institution who participated in sexual discriminatory actions toward athletes.¹¹⁸

The Franklin v. Gwinnett ruling expanded coverage and interpretation of Title IX. It set the precedent that institutions being charged with discrimination on the basis of sex were going to be held financially responsible to the victims. Lawsuits that result in a physical payout from an institution show a much more immediate and noticeable consequence. This threat of financial consequences to institutions for either turning a blind eye to or not being aware of sex discrimination is logically, more likely to produce a change in behavior. Not only did the institutions have to pay monetary damages, they also had to be held responsible for the actions of their employees, meaning that they had to suffer the reputational damage, as well.

As the federal government began cracking down on Title IX compliance at institutions, releasing regulations and interpretations of the law, women saw their opportunities in athletics increase. Title IX grew to include athletics at all levels. The inclusion of sports expanded Title IX’s coverage, identifying the sorts of programs and activities and how they too needed to be in compliance with the law. Because of this expanded inclusion, female athletes now had the law on their side when fighting for

¹¹⁷ Ibid., 54.

¹¹⁸ Ibid.

equality in various athletic departments or programs. If a female athlete did not feel her athletic interests were being met at an institution, she could threaten a Title IX lawsuit.

Women's Ice Hockey Reaches Goal Amidst Legal Complaint

In June of 1997 the *Bangor Daily News* reported on a citation filed against the University of Maine, along with 24 other schools, by the National Women's Law Center (NWLC), a women's rights group that advocates through policy and litigation and is based in Washington, D.C. The NWLC asked the United States Department of Education to force these schools, including UMaine, "to increase its number of female athletic scholarships, or lose the millions of taxpayer dollars they benefit from every year."¹¹⁹ The 25 institutions cited in the complaint included marquee schools like Duke University, Brigham Young University and College of William and Mary. It also included New England schools including the University of New Hampshire, Boston College, Boston University and Northeastern University.¹²⁰ Marcia Greenberger, co-president and founder of NWLC claimed that while the University of Maine could not be considered the worst of the 25—simply because the center had no previous records from other schools to compare—the situation was still serious enough to "warrant immediate action."¹²¹

Greenberger claimed that UMaine was far below the norm compared to other institutions when it came to athletic opportunities for female athletes. As far as the center could tell, UMaine was not providing its female athletes as much of a chance as its male athletes. "The University of Maine, even if they were making progress, still has a long way to go," Greenberger said. "Especially, since Title IX has been in effect for 25 years."¹²²

¹¹⁹ Paul Kane, "Discrimination Claimed at UM Women's Group Says Female Athletes Underfunded at 25 Schools," *Bangor Daily News* (Bangor, ME), June 3, 1997.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² Deirdre Fleming, "UMaine Is Not Fazed by Title IX Problems," *Bangor Daily News* (Bangor, ME), June 3, 1997.

Despite the progress being made by UMaine according to the numbers, the center determined the university was the second worst school as far as disparity between female athletes and allocation of scholarship funds for these athletes. In the 1995-96 school year, women made up 40 percent of all athletes at the University of Maine, but received 26 percent of scholarship funds. These percentages translated to \$459,000 out of the \$1.78 million allocated for athletic scholarships for the '95-96 school year. The average female athlete at UMaine received \$1,991 less than the average male athlete. At the national level, the average percentage of scholarship funds received by collegiate women athletes was 38 percent. There was only one other institution on the list of 25, South Carolina State University, that had a larger disparity than the University of Maine when it came to proportionality of funds and athletes.¹²³

Greenberger held UMaine and the other 24 institutions to the standard of improving funding for women's athletics without cutting any men's programs. In the most recent clarification document regarding Title IX released by the Department of Education, cutting men's programs was not required, but was a choice the institution could make. The clarification document, titled *Clarification of Intercollegiate Athletics Policy Guidance: The Three Prong Test*, suggested that "cutting or capping men's teams will not help an institution comply with part two or part three of the test" because these prongs measured continuing response to interests of the athletes.¹²⁴ The legal complaint filed by the NWCL, however, did not require that the university had to reach Title IX compliance without eliminating men's programs, despite Greenberger's wishes. This

¹²³ Paul Kane, "Discrimination Claimed at UM Women's Group Says Female Athletes Underfunded at 25 Schools."

¹²⁴ "Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test," *U.S. Department of Education – Office of Civil Rights*, October 15, 2015, <http://www2.ed.gov/about/offices/list/ocr/docs/clarific.html#two>

loophole had become the option that other universities used to be in compliance with Title IX. For example, the University of Michigan not only cut its men's gymnastics program and refused to grant varsity status to its men's soccer team in order to stay in compliance with the law and keep scholarship funds balanced.¹²⁵ UMaine and the 24 other schools had 135 days to resolve the complaint before an investigation would be brought forth by the Office of Civil Rights. If within those 135 days, the university refused to comply the NWLC would "keep open the possibility to sue."¹²⁶

In that same month, the University of Maine granted the women's ice hockey program varsity status, a decision that brought the school closer to achieving compliance with Title IX. President Hutchinson had not yet made the public announcement, but Livingston told the *Bangor Daily News* that she had known "about two weeks."¹²⁷ The delay in the public announcement was so that Hutchinson could tell coaches, faculty and athletes.¹²⁸ Although they now had varsity status, money would continue to be a significant obstacle for the team and the university when it came to implementing this new program. The Athletic Advisory Board had actually proposed an increase in budget for the program to \$462,000 in five years from the originally proposed \$180,000 estimated by Livingston and the program during their initial request for varsity status.¹²⁹

Livingston recalled that her memory of the announcement was fuzzy, but she believed the team first heard it at the Alford Arena, before the news media was informed. "We were very excited that it went through," she said. That initial excitement quickly

¹²⁵ Ibid.

¹²⁶ Deirdre Fleming, "UMaine Is Not Fazed by Title IX Problems."

¹²⁷ Deirdre Fleming, "New Team Clouds UM Scholarship Issue Women's Ice Hockey Would Add at Least 20 Female Athletes," *Bangor Daily News* (Bangor, ME), June 4, 1997.

¹²⁸ Ibid.

¹²⁹ Ibid.

passed, however, and the team struggled with the realities ahead of them. As Livingston had made clear to her team when the process started, she knew her days with them would be numbered as soon as they hit varsity status. As she believed, speaking out against the university would not bode well for her. She knew she'd be seen as the "loud mouth coach" and her reputation would be tarnished.¹³⁰ She would not be able to retain her position as head coach, despite interviewing for the job. However, Livingston was not surprised or even upset, because she went into the interview knowing the possibility of her getting the job was "zero to none."¹³¹ Given those odds, Livingston was just happy the team achieved one of their goals. She remembered being "young [and] overwhelmed that we did what we did," but most of all, she said, she was just tired of fighting.¹³² Livingston set aside personal goals for the betterment of the team, and she felt achieving varsity status validated all the work and sacrifice—the meager funds for jerseys or the predawn ice time—the current and former players had put in. "My job was done after seven long years of fighting," Livingston said.¹³³

Despite the team's struggle to adjust to the new reality of losing their head coach, Livingston believed their status approval showed the advisory board's commitment to women's athletics.¹³⁴ Sue Estler expressed the university's plans for the team to be a fully funded scholarship program, just like the men's team. "A commitment to women's ice hockey certainly would speak of the feasibility of our gender equity plan," Estler said.

¹³⁰ Stacey Rondeau Livingston, e-mail message to author, April 23, 2016.

¹³¹ Ibid.

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Deirdre Fleming, "New Team Clouds UM Scholarship Issue Women's Ice Hockey Would Add at Least 20 Female Athletes."

“The Women's Law Center wants overall compliance. It would provide additional slots. It will move beyond what we anticipated in the gender equity plan.”¹³⁵

Female athletic participation percentage had already fluctuated in the 1996-97 school year from the original statistics brought forth by the NWLC in their citation in June of 1996. The NWLC had cited that UMaine women athletes only received 26 percent of total athletic scholarship dollars, despite making up 40 percent of total athletic participation.¹³⁶ Scholarship funds improved for women athletes from a 26 percent to a 32.9 percent, while participation dipped below 40 to 38.3 percent. The decrease in participation was due in part to the disbandment of the women’s tennis team that was not garnering enough participation and interest from athletes.¹³⁷ However, the implementation of a women’s varsity ice hockey team, which added about 20 more female athletes to the university’s roster, would boost overall participation to 43 percent. This increase would not affect the funds going toward scholarships for women athletes, just increase scholarship opportunities. Estler believed that an increase in participation would put the university “in better shape in the proportion of dollars going to women” because it would increase the “opportunity for scholarship dollars” which they would “continue to generate through private giving.”¹³⁸

Adding the women’s team would require adjustments to the 1995 gender equity plan, “Realizing the Dream” that Sue Estler had written for the university. Estler said that university officials had already considered those adjustments, specifically regarding the distribution of scholarship funds. One projected adjustment sees the scholarship funds

¹³⁵ Ibid.

¹³⁶ Paul Kane, “Discrimination Claimed at UM Women's Group Says Female Athletes Underfunded at 25 Schools.”

¹³⁷ Ibid.

¹³⁸ Ibid.

given to women athletes jump up to 44 percent by 2000, and participation of women athletes reaching at least 38 percent.¹³⁹

In mid-June of 1997, the *Bangor Daily News* reported on the release of a two-year progress report on the University's plan to reach compliance with Title IX by 1998. This progress report expanded on the 1995 gender equity plan the university released, "Realizing the Dream." The release of this progress report was followed by the official announcement of the university's women's ice hockey team being granted varsity status, which would increase women athlete participation and scholarship opportunities.¹⁴⁰

In the release, the university emphasized that this progress report was in no way related to the federal citation made against the school by the NWLC. Deborah Brake, senior counsel of the NWLC, was unimpressed with the report and argued the university was not acting quickly enough. "The gap should have been closed 25 years ago," Brake told the *Bangor Daily News*.¹⁴¹ She went on to say that she could not understand waiting until the '98-99 school year to give scholarships to the women's ice hockey players.¹⁴² "Title IX is a problem now," she said.¹⁴³ According to Brake, budget constraints were an issue but gender equity was much more pressing.¹⁴⁴

Responding to Brake's complaint, Sue Tyler, the university's director of athletics responded, "You don't put in a full set of scholarships all in one year."¹⁴⁵ Tyler explained

¹³⁹ Ibid.

¹⁴⁰ Deirdre Fleming, "'UMaine Striving for Gender Equity National Women's Group Says Changes Are Too Slow," *Bangor Daily News* (Bangor, ME), June 25, 1997.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Deirdre Fleming, "UM's Work Cut Out to Meet Goals," *Bangor Daily News* (Bangor, ME), June 26, 1997.

to the *Bangor Daily News* that scholarships are not handed out to anyone who is not a “highly regarded athlete” and that they are used in the recruitment process.¹⁴⁶

Despite the continued pressure from the NWLC, university officials, such as Tyler, stood by the recent report and remained proud. In the release, Tyler and the university boasted about the school’s commitment to enhancing gender equity without eliminating athletic opportunities for either sex. Senior Associate Athletic Director Dino Mattessich echoed these comments, telling the *Bangor Daily News*: “The key from an operating budget standpoint is to make sure we are enhancing women's sports through the levels they need to be enhanced. It's not about reducing the men's budgets.” The report also contained a revised budget that projected growth for women’s sports and “cost containment” for the men’s programs. From the point of view of men’s basketball coach Paul Kostacopoulos, this cost containment simply meant, “Tighten[ing] our belts and be[ing] more creative in how we spend money.”¹⁴⁷

For the women’s ice hockey team, a budget of \$56,000 was set for the 1998-99 season when the scholarships would start being offered. Moving into the millennium, those numbers were projected to increase to \$130,000, and then \$193,00 by 2001. These funds, Sue Tyler said, would be generated through fundraising, revenues from other athletic programs, and corporate sponsorships. The university had seen improvements on behalf of the university in those mentioned areas and looked to take advantage of that.¹⁴⁸

In an ironic twist, the University of Maine actually hoped to bank on the recent success of another women’s program in order to generate funds for these proposed

¹⁴⁶ Ibid.

¹⁴⁷ Deirdre Fleming, “UMaine Striving for Gender Equity National Women's Group Says Changes Are Too Slow.”

¹⁴⁸ Ibid.

budgets. The women's basketball team won three consecutive America East conference titles in the 1994-95, 1995-96, and 1996-1997 seasons, setting the school record for most wins (27) in 1995-96.¹⁴⁹ This on-court success translated to the team accounting for 19 percent of all the generated revenue by athletic programs. This revenue percentage was more than the total revenue accumulated by football, men's basketball, and baseball combined. With their third straight America East title in '96-97 season, the women's team increased fan attendance from the previous years.¹⁵⁰ The university banked on this continued success in order to fund the upcoming women's ice hockey program.

The 1997 report and revised budget also looked to adjust the university's substantial proportionality problem, meaning it hoped to address one of the three key Title IX prongs. Adjusting the substantial proportionality prong would put the university in compliance with one of three tests under Title IX. In the 1995 gender equity plan, "Realizing the Dream," the university projected a jump in percent numbers for women and men athletes receiving scholarships. This jump was from a 28/72 percent ratio to a 37/63 percent ratio. These numbers represented the ratio of women to men athletes receiving scholarship funds, meaning in 1995 when "Realizing the Dream" was released, 28-percent of women athletes received scholarships in comparison to 72 percent of male athletes receiving scholarships. These percent ratios would need to be much closer in order to be legally in compliance with Title IX. Not only was the university looking to equalize this ratio, but they also wanted to see an increase in women athletic participation, meaning they wanted more female athletes. UMaine's projected participation percent was 43 percent, lower than the 46-percent of undergraduate women

¹⁴⁹ "2015-16 Maine Women's Basketball News," *GoBlackBears.com*, March 11, 2016, <http://www.goblackbears.com/sports/w-baskbl/2015-16/news>.

¹⁵⁰ Deirdre Fleming, "UM's Work Cut Out to Meet Goals."

on campus.¹⁵¹ These percentages were based on how many females were enrolled in the university (46 percent of the total enrollment were women) and how many were participating in athletics (43 percent of total athletes were women).

Adding women's ice hockey served not only the purpose of increasing UMaine's numbers in participation and scholarship funds, but it also showed a commitment to continuing Title IX compliance. The approval and subsequent granting of varsity status could have been an attempt to push back at the NWLC complaint filed against the university. In the official released progress report, the university made note of pointing out that the NWLC complaint, the releasing of the university's report and granted varsity status of the women's ice hockey team were all mutually exclusive events. They wanted to emphasize that by releasing the progress report and granting women's ice hockey varsity status, they were not directly responding to the Title IX compliance complaint. Timing, however, is never perfect and leads one to believe otherwise

¹⁵¹ Ibid.

Further Clarifying Title IX Under New Administrations

Taking office in 1993, President Bill Clinton not only publicly expressed his support of Title IX, but acted upon those beliefs via the Executive Office. Change in political leadership brought with it a change in view and opinion of the Title IX law. Clinton's support for the law came when he ordered all the heads of executive departments and agencies that handed out federal funds to academic institutions to report "within 90 days" on how Title IX could continue to be effectively enforced.¹⁵² He also attended a celebratory event for the 25th anniversary of Title IX.¹⁵³

In 1993, the Equity in Athletics Disclosure Act made annual reports mandatory for institutions that received federal funding. The House and the Senate brought the act forth. The act required all coeducational post-secondary institutions "with athletic programs and receiving federal funds to be prepared to disclose, upon request, documentation of information regarding their intercollegiate athletic programs."¹⁵⁴ The bill also set a compliance deadline of October 1, 1996, and required annual reports from the institutions.¹⁵⁵ The deadline gave these institutions a timeframe in which they needed to become in full compliance with Title IX law, if they were not already. Implementing annual reports and the disclosure of information at any time required the institutions to maintain compliance. These new conditions under the act served the purpose of enforcing Title IX regulations and made the institution responsible for proving their compliance to the federal government.

¹⁵² Paula J. Snyder, "A Legislative and Judicial History of Title IX in Athletics." 55.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

In 1996, a document was released by the Department of Education, titled “Clarification of Intercollegiate Athletics Policy Guidance: The Three Prong Test.” This document served to explain further the Title IX guidelines. The document focused on the ‘substantially proportionate’ prong of the three-part test, explaining that it provided, over the other prongs, a “safe harbor” if the institutions were able to demonstrate it.¹⁵⁶ The document also set a precedent that teams and programs could be cut or capped in order to become in compliance with Title IX, if the institutions wished to do so.¹⁵⁷ The consequence of this interpretation was that if an institution lacked the monetary ability to create an equal team or program for the underrepresented sex, then the original team or program could simply be cut. The document also required institutions to count the specific number of athletes when calculating participation from different sexes. This specification meant not basing numbers off theoretical roster spots on a team, but rather the actual number of athletes that were playing on a team.

Outside of Title IX legality, women’s sports saw success in the late 1990s. During the 1996 Summer Olympics held in Atlanta, Georgia, U.S. women’s soccer, basketball, softball and gymnastics all brought home gold medals, while many individual female athletes medaled in swimming, and track and field. These were women who grew up playing organized sports due to Title IX and its implementation.

Just as views on Title IX had shifted entering the ‘90s, political opinions on Title IX changed once again entering into the new century. The change in political leadership from the Clinton Administration into the much more conservative administration of President George W. Bush led to increased questioning of continued relevance of Title

¹⁵⁶ Ibid., 55-56.

¹⁵⁷ Ibid., 56.

IX. Administrative complaints that argued that Title IX had a negative effect on male college athletics caused President Bush to reconsider the law's future. Secretary of Education Rod Paige, established a 'Commission on Opportunities in Athletics' with the point of collecting information, analyzing issues and obtaining public opinion regarding the law.¹⁵⁸ The Department of Labor did not recommend any changes to the compliance expectations for Title IX, regardless of the complaints. However, the Labor Department did send out yet another clarification document to academic institutions. This clarification reiterated that all three-prongs of the original test were acceptable in proving compliance. It also reminded institutions that compliance did not require cutting or eliminating teams and programs. In fact, the clarification document strongly discouraged cutting or eliminating teams in order to comply with Title IX.¹⁵⁹

Two years later in 2005, the Department of Education released yet another clarification on the compliance with Title IX. This document focused on the portion of the three-prong test that dealt with student interest and how exactly institutions could accurately determine interests among their students. The 2005 clarification offered several ways in which an institution could gather this information: verbal and written requests for varsity teams, intramural and sport participation, and even e-mail surveys.¹⁶⁰

In early 2000s, the U.S Department of Justice released the Title IX Final Common Rule. This rule was patterned after the Department of Education Title IX regulations from 1975. It focused on regulations that had been implemented by 21 federal agencies, including NASA, the National Science Foundation (NSF) and the Department of

¹⁵⁸ U.S. Department of Education, "Secretary's Commission for Opportunity in Athletics, *Open to All: Title IX at Thirty*," Washington, D.C., 20202

¹⁵⁹ *Ibid.*, 59-60.

¹⁶⁰ *Ibid.*, 60.

Energy.¹⁶¹ What this common rule established was the need for a ‘Title IX coordinator.’ This coordinator would be responsible for operating Title IX compliance efforts, fielding questions regarding the law, implementing necessary regulations, and handling grievances along with other duties. Institutions and agencies that received federal funds would not only need to appoint a Title IX coordinator but they would also be required to provide contact information of the coordinator to all at the institution. Ideally, according to the law, the person appointed to Title IX coordinator should also be the one who handles Section 504 complaints—complaints that dealt with discrimination based on disabilities.¹⁶² However, this is not always the case. At some institutions, outside of a Title IX coordinator for the academic campus, there is an overseer of Title IX specifically for athletics.

¹⁶¹ United States Government Accountability Office, "Gender Issues: Women's Participation in the Sciences Has Increased, but Agencies Need To Do More To Ensure Compliance with Title IX," GAO-04-639 (July 2004) www.gao.gov/new.items/d04639.pdf.

¹⁶² "Federal Coordination and Compliance Section," *Department of Justice*, last modified on November 01, 2001. <https://www.justice.gov/crt/federal-coordination-and-compliance-section-152>

Ice Hockey Grows at UMaine and in the United States

Stacey Livingston saw the importance of implementing a varsity women's ice hockey team at the university, not just for her team but for future women ice hockey players. She foresaw the financial benefits the team would bring to the university, telling the *Bangor Daily News* that a new team would "fuel the present hockey craze in the state" and would eventually end up in a "new stream of ticket sales."¹⁶³ Livingston's enthusiasm for the team was bigger than just financial growth for the university: she saw the evolution of women's hockey reaching global participation levels, especially after its appearance in the 1998 Winter Olympics. Livingston predicted: "There will be a great explosion and girls will play who never thought they could."¹⁶⁴

On November 1, 1997, the University of Maine's women's ice hockey team took to the ice for the first time as a varsity squad. Just two weeks earlier, the school hired Rick Filighera as their first head coach of the new varsity squad. Filighera was a native of Buffalo, N.Y, and had previously coached the women's ice hockey team at Rochester Institute of Technology. His new team did not have any scholarship players; its roster was comprised of returning club players and an assortment of newcomers. With nine skaters of varying experience, three goalies and six beginners, or players who had no experience playing the game, Filighera believed they had enough talent to be moderately successful in the new league they had petitioned for inclusion. As a club team, the women had been a part of the Eastern College Athletic Conference (ECAC) Alliance, a league formed for schools that did not offer scholarships to their players. But as a newly appointed varsity squad, UMaine looked to make the jump into the ECAC League for

¹⁶³ Deirdre Fleming, "'UMaine Striving for Gender Equity National Women's Group Says Changes Are Too Slow.'"

¹⁶⁴ Ibid.

teams that did offer scholarships. This new league included teams such as Northeastern University, Boston College, Providence College, and the University of New Hampshire. UMaine was successful during their time in the ECAC Alliance, posting a record of 11 wins, 4 losses and 2 ties the previous year, which qualified them for the ECAC Alliance playoffs. Filighera and his team knew that the quality of play in the ECAC League would be higher now that they were competing at a Division 1 level. “We’re maybe not be at the same strength as they [we] were a year ago,” Filighera the *Bangor Daily News*. “We’ll make sure we make realistic goals for this season.”¹⁶⁵

The players reveled in the excitement and newness of their varsity status. “We’re part of the athletic community,” fifth-year senior Alana Ahearn the *Bangor Daily News*. “Instead of just playing for ourselves, we’re playing for our university.” Others enjoyed and welcomed the perks. Junior Amy Oliver confessed it was great to enter exclusive parts of the university that were reserved “for varsity athletes...like the study room.”¹⁶⁶

Under Filighera, the team finished their first varsity season still in the ECAC Alliance. Just as they had proposed to the university when seeking varsity status, it would be a year before the team made the jump to the ECAC League. The team finished the season with a winning record of 9-6-1, and an overall mark of 12-6-2.¹⁶⁷ The team notched a total of 76 goals in 20 games, 38 of the goals coming from junior forward Alison Lorenz from Brewer, Maine.¹⁶⁸

¹⁶⁵ "UM Women Take to Ice Varying Skating Experience Marks New Varsity Team," *Bangor Daily News* (Bangor, ME), November 1, 1997.

¹⁶⁶ Larry Mahoney, "UMaine Women Set to Skate," *Bangor Daily News* (Bangor, ME), November 14, 1997.

¹⁶⁷ "University of Maine 1998-99 Women's Hockey Media Guide," (University of Maine, 1999), 4.

¹⁶⁸ *Ibid.* 9.

The team's winning record took a hit when the phase in to the ECAC League began. In their second varsity season, and new membership into a Division 1 league, the women faced off against seasoned squads from Harvard, Boston College, Princeton, and Dartmouth. To mitigate the stiffer competition, the team played more games during this season, which gave them an opportunity to adjust to the higher level play in the league.

Outside of New England, collegiate women's ice hockey was growing across the nation. The success of the United States women's ice hockey team, who brought home gold from Nagano, Japan in the 1998 Winter Olympics, garnered significant interest nationally. The NCAA hoped to capitalize on that new widespread interest with the implementation of the women's ice hockey tournament. In March of 2001 the NCAA held its first ever women's Frozen Four tournament in Maricucci Arena on the campus of the University of Minnesota. And on March 25, 2001 they crowned the University of Minnesota-Duluth its first national women's ice hockey champion. The success of this tournament proved that hockey was not just growing in New England and at the University of Maine, but throughout the country. Teams like the University of Wisconsin and University of Minnesota had just recently launched full-fledged Division 1 programs. The proliferation of programs not only added to the sport's popularity, but it also made more teams available to play outside of the East Coast. The addition of 18 western collegiate women's ice hockey programs to the 35 eastern programs that already existed resulted in more opportunity.¹⁶⁹

While still playing the ECAC League, the UMaine women's team continued to see improvement from themselves and their teammates. Under Coach Filighera, the

¹⁶⁹ Gary Thorne, "Frozen Four for Women Shows Growth," *Bangor Daily News* (Bangor, ME), November 29, 2000.

Black Bears recorded a seven-game undefeated streak in their 2001-02 season, which tied their previous record set in 1998. The team also made their first ever playoff appearance in the ECAC quarterfinals on March 9. Although they lost the game 5-3 to the eventual league champions, Providence College, their first Division 1 playoff appearance was historically significant.¹⁷⁰

In the 2002-03 season, the University of Maine women's ice hockey team joined Hockey East Association. In this first season under a new league, the team notched a third seed in the Women's Hockey East Tournament. They eventually fell to the University of New Hampshire, a top-10 nationally ranked squad, but the Black Bears' second straight playoff appearance was proof that women's hockey could thrive at the University of Maine.¹⁷¹

Things continued to look up at the university when in August 2002 the Office of Civil Rights completed its five-year investigation of the institution. In conjunction with this office, the NWLC dropped their complaint against the university. According to Peter Warner of the *Bangor Daily News*, Maine was just one of the original 25 schools that had its complaint against them dropped.¹⁷² "The challenge, of course, to keep that up," Evelyn Silver, the University's director of equal opportunity and Title IX coordinator, told Warner. She believed the school was right on target with being in compliance with the substantial proportionality prong of Title IX. The original NWLC complaint had been filed in 1997. It was during this year that UMaine was beginning to implement their 1995

¹⁷⁰ "University of Maine 2003-04 Women's Hockey Media Guide," (University of Maine, 2004), 5.

¹⁷¹ "University of Maine 2002-03 Women's Hockey Media Guide," (University of Maine, 2003), 5.

¹⁷² Pete Warner, "Complaint On Gender Equity at UM Dropped School Making More Progress," *Bangor Daily News* (Bangor, ME), November 9, 2002.

gender equity plan, “Realizing the Dream.” Silver said that the suit just brought focus to what the University was already starting to do.¹⁷³

According to the numbers at the time, in the 2001-02 school year, women made up 43.8 percent of UMaine’s total athletes and received 44 percent of total athletic funds. In monetary language, women athletes received \$1,227,847 out of the total \$2,790,562. This was a far cry from the 1995 numbers when women made up about the same percentage of athletic population of 43 percent, but received only 26 percent of funds.¹⁷⁴

Silver told the *Bangor Daily News* in 2002 that the university achieved successful compliance status without eliminating any of the men’s programs.¹⁷⁵ By concentrating fundraising efforts for women’s scholarships and the implementation of new programs, such as soccer, ice hockey and volleyball, Maine was able to close the gaps in the ratio of women athletic participation and the amount of money the women athletes received.¹⁷⁶ Compliance to Title IX and the law was a “moving target” according to Silver, but the university had “come a long way.”¹⁷⁷

While UMaine reveled in their Title IX compliance, the women’s ice hockey team started to struggle after six years under Head Coach Rick Filighera. In the 2002-03 and 2003-04 seasons, the UMaine women’s team saw their winning record slip away, despite its playoff appearance in 2002-03. They fired their head coach, Filighera in early 2004, and hired Guy Perron, a former player on UMaine’s men’s ice hockey team. It was also during this academic year that the Alford Arena under went renovations to build the Shawn Walsh Hockey Center. The Walsh Center housed separate men’s, women’s locker

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

rooms, a visiting team locker room, a Hall of Fame, and various concession stands. The women's team struggled a bit during their first year under Perron, finishing the season with a 14-15-3 overall record.¹⁷⁸ But they returned to their winning ways just the following season with a 17-9-6 record.¹⁷⁹

Off the ice, Title IX compliance continued to progress for UMaine. In 2007, the university received an A rating from the Women's Sport Foundation in terms of Title IX compliance. The NCAA received a C rating. John Cheslock from the Center for the Study of Higher Education at the University of Arizona wrote the report and focused on the proportionality prong of the Title IX test. At the University of Maine, women made up 49 percent of the general student population and made up 47.3 percent of the school's varsity athletes. This gap of 1.7 points left them much lower than the NCAA point gap average of 13. Other Division 1-AA institutions, like Maine, had an average gap of 13.2 points.¹⁸⁰

Unfortunately, outside Title IX requirement, the large female athletics presence did not correlate to an equal level of interest in these sports at the University. With the exception of the women's basketball team, few of the university's women's athletics drew large crowds.¹⁸¹ Lack of game coverage and promotion of the women's ice hockey games was one theorized reason why their games drew so few people. Despite free admission to the games and players that the *Bangor Daily News* described as

¹⁷⁸ "University of Maine 2005-06 Women's Hockey Media Guide," (University of Maine, 2006), 17.

¹⁷⁹ "University of Maine 2006-07 Women's Hockey Media Guide," (University of Maine, 2007), 7.

¹⁸⁰ "Title IX's Progress," *Bangor Daily News* (Bangor, ME), June 15, 2007.

¹⁸¹ *Ibid.*

“approachable and personable,” interest in the women’s sport at the university was not what past players such as Livingston had once predicted.¹⁸²

¹⁸² “Girl Power Play,” *Bangor Daily News* (Bangor, ME), February 10, 2006.

“Still a Little Gravelly”: Paving Roads with Title IX

In 2015, at the University of Maine, Lynn Coutts filled the position of compliance overseer. The university appointed Coutts, a former head softball coach and student athlete at UMaine, to be senior associate director of athletics. Along with Title IX, Coutts oversees financial aid, student-athlete conduct, sports medicine, and sports performance and equipment. Coutts also serves as the liaison between the large academic campus of the university and the athletic department.¹⁸³

As a former athlete—and one who grew up questioning why a law needed to be in place for equal treatment of men and women—Coutts understood the importance of Title IX. When Coutts was a student, the university was more concerned with meeting the three prongs of the Title IX test, rather than educating themselves and their students on the law. She explained to me that she has seen areas of growth, especially moving from student to coach to senior associate director. Much of this growth has come in the form of finances, meaning that the school has enough money to provide for their athletes what they need to. These things include equipment, travel, and facilities.

For Coutts, Title IX was never just about the legality of it all.¹⁸⁴ “It’s a law,” she explained, “but it’s also the right thing to do.”¹⁸⁵ In her new position, taking on the role in July 2015, Coutts wants to educate more people about Title IX and its role in athletics. Outside of the athletics issue of the law, Title IX is implemented throughout campus to protect against sexual assault and harassment. This is where the biggest liability lies for

¹⁸³ “UMaine names Lynn Coutts associate AD,” *Portland Press Herald* (Portland, ME), July 24, 2015. <http://www.pressherald.com/2015/07/24/umaine-names-lynn-coutts-associate-ad/>

¹⁸⁴ Lynn Coutts, interview by author, University of Maine Memorial Gym, March 25, 2016.

¹⁸⁵ Ibid.

the university so it is important that the institution is operating until Title IX and handling things the correct way.¹⁸⁶

Coutts explained how she believes the athletic department of the university, and perhaps every academic institution, was the “front porch.” The department acts as the best form of recruitment for the school, drawing people to the university either through the possibility of playing sports or watching sports. The athletes wear UMaine on their jerseys, promoting the school wherever they go and the athletics department talks up the school when recruiting potential athletes. As the welcoming agent at the university, the athletic department has the most responsibility of Title IX compliance. Coutts came into her position wondering if the university was doing its best to comply with the law. She mentioned the percentage numbers of prong one of the compliance test – the university is currently at a 53 to 47 percentage ratio of male and female population and this is matched by their athletic rosters– but her concern is the broader picture.¹⁸⁷ “I want to dig a little deeper,” Coutts confessed, “to find out how we can leave this place and when I’m done, is it better than when I got here. That’s what my goal is.”¹⁸⁸

Coutts faced a learning curve when she made the jump from coaching to administration, and she now admits how much slower things move when one moves up the professional ladder. As a coach, Coutts explained that things under happened much faster and results were almost immediate, especially when dealing with her athletes. As an administrator now, Coutts has learned that change is a process that takes time. Her athletic and coaching experiences, however, are what help her maintain a hopeful outlook for the university. Her emphasis is on working together and partnership between athletics

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

and the rest of the school, believing that one cannot exist or operate without the other and solidarity will make change easier.¹⁸⁹ “I’m not a big fan of ‘well it’s better than it used to be,’” Coutts said. “That’s probably the worst thing that people can say to me. We paved the road, but I still think the road’s a little gravelly.”¹⁹⁰

The future of Title IX compliance at the University of Maine looks optimistic from the eyes of Coutts. Emphasizing education over just blind acceptance of the law, Coutts knows the biggest reasoning behind Title IX is simply because it is the right thing to do. In her position, Coutts hopes to promote teamwork and community through the entire university and her athletics department. This integration of minds will progress the university, especially through Title IX, which is not just an athletic issue but a larger institution one as well.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

Seeking Equality Outside of Title IX

Old media guides from the women's ice hockey team, contain only a bare bones of the team's history. These guides are filled with general information about the university, the various athletic facilities on campus, and highlight notable alumnae, but the rest of the booklets offer little of the struggles and triumphs of the women's hockey team. The women's guides range from 20-45 pages (depending on the year), while the men's soar to an impressive 100 pages. The men's guides are filled with vibrant photos and individual player biographies that take up whole pages of the booklet. In comparison, the women's guide offers headshots for most players, a quick biography of their hockey experience, including past teams or past seasons at UMaine, and some statistics such as goals or overall points. Returning players get a bit more coverage, but it is still miniscule compared to the men's media guides. In the men's media guides the photos are crisp and clean, while some of the pictures in the women's guide appear pixelated and in bad quality. The last pages of both booklets contain statistics and records, but the men's guides encompass more history. An entire page of the men's media guide is dedicated to former players in the professional league, while another half page is sectioned off just to explain where fans can listen or watch live game coverage. The only mention of history in the women's guide is a brief one-and-a-half page explanation of Hockey East. Professional achievements from former women's players are not mentioned, nor is there anything to commemorate their ice hockey success outside the University of Maine. There is no mention of players like Brittany Ott and Hailey Browne who recently were drafted into the first ever paid, professional women's ice hockey league in the United States, the National Women's Hockey League (NWHL).

The student-run radio station at the University of Maine, WMEB 91.9, does not broadcast women's hockey games, but listeners can find the men's games on the radio.¹⁹¹ The seats at the Alford Arena do not fill up the way they do when the men's team face off against an opponent, the crowd at a women's game mostly consists of families. Young kids and their parents frequent the games, rushing toward the tunnel when the women get off the ice. The players appreciate their fans and often give high fives and sign jerseys for the youngsters. In addition, they are consistently gracious and respectable to reporters who wait to talk to them outside the locker room.¹⁹²

Unfortunately for the UMaine women's ice hockey team, Title IX does not regulate equality through media guide representation or news coverage. The women, and the university, can be happy in their accomplishments, whether it is achieving long-awaited varsity status or compliance with a federal law. But this law only goes so far, especially in terms of equality. While smoother, the road ahead still remains "gravelly." And gravel roads do not bode well for women in skates.

¹⁹¹ The women's games are broadcast online.

¹⁹² Postgame press conferences are not available after the women's games; therefore, if you want to speak to any of the coaches or players, reporters have to catch their attention or hunt them down.

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Author's Biography

Emily McNair graduated from the University of Maine in 2016 with a degree in Journalism. While at the university, she spent a year working for the campus radio station, WMEB 91.9, as a sports broadcaster and color commentator for both women's and men's ice hockey games. Her interest in telling the story of the women's ice hockey team stems from her own passion and love for the sport of hockey. In her last year, she played for and helped re-organize the university's women's club ice hockey team.

Emily is from Somersworth, NH, and plans to return to her home state after graduation from the university. At home, she will pursue her dreams of sports broadcasting and continue playing ice hockey whenever she can.