Title IX After 45 Years: Overlooked Disparities in the National Junior College Athletic Association and California Community College Athletic Association

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Junior colleges, unlike colleges in the National Collegiate Athletic Association, have been neglected in the Title IX discussion on disparities in female athletics. Newly compiled data in this article reveals that women who participate in athletics in the National Junior College Association and the California Community College Athletic Association receive fewer athletic opportunities, less athletic expenses, and less athletically-related student aid than males do. Despite these glaring disparities, junior colleges have been absent from the Title IX discussion. However, this article sheds light on such disparities in hopes to compel change for female athletics at the junior college level. Further, in an effort to combat these disparities, this article proposes changes to the Title IX regulations and proposes mandating that junior colleges employ athletic Title IX coordinators. By shedding light on the obvious disparities and by proposing significant changes at junior colleges, this article will make significant steps toward allowing females athletes to enjoy the benefits male athletes enjoy in junior colleges.

INTRODUCTION ............................................................................................ 30
I. TITLE IX: OVERVIEW/PURPOSE ............................................................ 33
   A. PROMINENT AMENDMENTS TO TITLE IX ............................................. 34
   B. APPLICATION OF TITLE IX TO ATHLETICS AND REGULATIONS FOR
      TITLE IX COMPLIANCE ........................................................................... 34
II. THE FORGOTTEN COLLEGE ATHLETIC DIVISIONS: JUNIOR COLLEGES 38
   A. NJCAA AND CCCAA .............................................................................. 38
   B. POSITIVE IMPACT OF TITLE IX IN NJCAA AND CCCAA............... 40
   C. DESPITE THE POSITIVE IMPACT OF TITLE IX, JUNIOR COLLEGES HAVE
      BEEN NEGLECTED AND OVERLOOKED IN THE TITLE IX DISCUSSION
      AND ENFORCEMENT ............................................................................. 42
III. OVERLOOKED DISPARATE IMPACT IN THE NJCAA AND CCCAA ...... 43
   A. METHODS ................................................................................................. 44
   B. RESULTS .................................................................................................. 46
      i. Fewer Female Athletic Opportunities............................................. 46
      ii. Unequal Expenditures and Less Athletically-Related Student
          Aid for Female Athletes................................................................. 48
INTRODUCTION

Imagine this: you are a high school female athlete who has been spending hours, weeks, and even months perfecting your sport with high hopes to compete at a higher-level college athletics. After all of your hard work, you receive an offer to play softball at Midland College,1 a junior college2 in Texas. You immediately accept the offer and are ecstatic to play the sport you love at a higher level. However, your excitement is quickly abated when you arrive at Midland College, and you notice glaring disparities that no one has discussed. The softball facilities, publicity, and amenities are not even comparable to the standard of quality provided for the baseball facilities, publicity, and amenities.3 You immediately notice that the softball field does not have lighting, your locker room is solely a trailer that lacks showers, your turf infield is of low quality, and your softball field lacks publicity banners.4 Further, your softball team has worn outdoor batting cages, you and your teammates sit on benches protected by a chain-link fence, your softball field lacks storage, and the softball field and baseball field does not have comparable spectator seating.5 You also notice disparities regarding power, warm-up spaces, drainage systems, parking, travel and per diem allowances, use of

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1 Midland College is a Division I National Junior College Athletic Association in Midland, Texas. See, Download Custom Data, EQUITY IN ATHLETICS DATA ANALYSIS, https://ope.ed.gov/athletics/#/ (last visited Feb. 10, 2018) (within “Sanctioning Body,” find “NJCAA Division I” and select; then click “CONTINUE;” under 229 institutions found, go to the fourteenth page under institutions, and Midland College is the eighth listed junior college).

2 Junior college. MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/dictionary/junior%20college (last visited Feb. 8, 2018) [https://perma.cc/34V7-P5D4] (“an educational institution that offers two years of studies corresponding to those in the first two years of a four-year college and that often offers technical, vocational, and liberal studies to the adults of a community.”).

3 See Complaint at 1, Ramos v. Midland College, No. MO-17-CV-83 (W.D. Tex. 2017).

4 Id. at 4-5

5 Id. at 5-6.
While many of these disparities have received significant Title IX attention in the National Collegiate Athletic Association (“NCAA”), you are appalled to discover that no one outside of the junior college world has even recognized, discussed, or examined these disparities. Further, you are only one athlete, so you cannot alleviate the disparities by yourself. But these disparities at the junior college level are ignored no more, as in this article, I set out to investigate these disparities using newly compiled data and advance proposals to alleviate the disparities.

In light of the vast amount of scholarship on Title IX within the NCAA, newly compiled data highlights real problems in an overlooked section of collegiate athletics: junior colleges. The lesser known National Junior College Athletic Association (“NJCAA”) and California Community College Athletic Association (“CCCAA”) have severely overlooked athletic disparities, which have not been examined at all in the forty-five years Title IX has been in force. Media, courtrooms, law review articles and journals, and even the National Women’s Law Center have disregarded the disparities that exist at the junior college level. This article sheds light on the very real athletic disparities that exist at the junior college level by introducing newly compiled data, which reveals that women who participate in athletics in the NJCAA and CCCAA receive fewer athletic opportunities and less athletic expenses. In addition, women who participate in the NJCAA receive less athletically-related student aid than males. Despite these clear disparities, the NJCAA and CCCAA have been neglected and overshadowed in the Title IX discussion. Now that the overlooked disparities have come to light in the NJCAA and CCCAA, changes must be made at the junior college level in an effort to make “the playing field . . . level” for female athletes competing at junior colleges.

6. Id. at 7-8.
7. NCAA, What is the NCAA?, www.ncaa.org/about/resources/media-center/ncaa-101/what-ncaa (last visited Feb. 10, 2018) [https://perma.cc/SV3A-84FZ] (“[t]he National Collegiate Athletic Association is a member-led organization dedicated to the well-being and lifelong success of college athletes.”) (Unlike junior colleges, higher education institutions in the NCAA are four-year universities).
8. The story/disparities provided in the Introduction were all largely based on the ongoing case of Ramos v. Midland College in the U.S. District Court for the Western District of Texas. See generally, Complaint, Ramos v. Midland College, No. MO-17-CV-83 (W.D. Tex. 2017).
In an effort to alleviate the ignored disparities at the junior college level, this article proposes changes to the Title IX regulations and proposes mandating that junior colleges employ athletic Title IX coordinators. The proposed changes to the Title IX regulations are: institutions that employ the first part of the effective accommodation test must conduct extensive Title IX analyses every two years to evaluate Title IX compliance in an everchanging junior college environment. In addition, proposing mandating an athletic Title IX coordinator at the junior college level could assist institutions with its extensive Title IX analysis and assist with overall Title IX compliance. These two proposals would immensely help junior colleges with Title IX compliance and hopefully, make “the playing field . . . level” for junior college female athletes.\(^\text{10}\)

Part I of this Note describes Title IX’s overview and purpose. Part I also briefly describes prominent amendments that have occurred to Title IX in the forty-five years it has been in force. Part I concludes by detailing how Title IX is applied to athletics and what some of the regulations for Title IX compliance are.

Part II of this Note describes the forgotten athletic divisions, which are junior colleges. Part II also discusses the two main junior college organizations: the NJCAA and the CCCAA. Part II further discusses the positive impact Title IX has had on the NJCAA and the CCCAA. Finally, part II concludes by describing that junior colleges have been neglected and overlooked in the Title IX discussion.

Part III of this Note discusses the overlooked disparate impact in the NJCAA and CCCAA. Part III also describes the methods and results of the newly calculated data in revealing the overlooked disparities in the NJCAA and the CCCAA. Part III then describes and examines the disparate impacts of: fewer female athletic opportunities, unequal expenditures, and less athletically-related student aid for female athletes. Finally, part III concludes by disputing an argument justifying the inequality of funds between male and female athletics in junior colleges.

Part IV of this Note will propose changes to alleviate the disparate impact that still exists, and how these proposed changes will have a positive impact on Title IX compliance at the junior college level. Part IV will propose two changes: (1) junior colleges, which abide by the first part of the effective accommodation test, must conduct extensive Title IX analyses every two years in order to maximize Title IX compliance at the junior college level, and (2) mandate all junior college institutions to employ a Title IX coordinator or advocate specific to athletics to assist institutions with Title IX compliance. Finally, this Note will conclude by commenting on how the proposals will have a positive impact on Title IX compliance, assist with
gender equality, and in theory, alleviate the ignored disparities in the NJCAA and CCAA.

I. TITLE IX: OVERVIEW/PURPOSE

Title IX was enacted forty-five years ago in 1972 to abolish gender discrimination in educational institutions.\(^\text{11}\) Title IX provides in the pertinent part: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”\(^\text{12}\) Title IX prohibits gender discrimination in three areas.\(^\text{13}\) In the first area, “no one can ‘be excluded from participation in’ any education program or activity.”\(^\text{14}\) In the second area, “no one can ‘be denied the benefits of’ any education program or activity.”\(^\text{15}\) Lastly, in the third area, “no one can be ‘subjected to discrimination under’ any education program or activity.”\(^\text{16}\) Although enacted to focus on educational aspects, and there is no explicit mention of athletics in the language of the statute,\(^\text{17}\) Title IX has had an enormous positive impact for female athletics in high schools, universities, and colleges.\(^\text{18}\) The connection between Title IX and athletics did not occur until courts begun to recognize the importance of athletic participation, and when the Office of Civil Rights (“OCR”) provided specific guidance for Title IX’s application to athletic programs, before Title IX’s application to athletics developed.\(^\text{19}\)

In practice, the vast majority of colleges and universities receive federal financial assistance, thus, the colleges and universities are required to provide equal accommodations for each gender under Title IX.\(^\text{20}\) In regards to athletics, Title IX “requires that schools (1) provide male and female students with equal opportunities to play sports, (2) give male and female athletes their fair shares of athletic scholarship dollars, and (3) provide equal benefits and services (such as facilities, coaching, and publicity) to male and female athletes


\(^{12}\) Id.

\(^{13}\) Paul M. Anderson, Title IX at Forty: An Introduction and Historical Review of Forty Legal Developments that Shaped Gender Equity Law, 22 MARQ. SPORTS L. REV. 325, 328 (2012).

\(^{14}\) Id.

\(^{15}\) Id.

\(^{16}\) Id.


\(^{18}\) See Lily Rothman, How Title IX First Changed the World of Women’s Sports, TIME (June 23, 2017), http://time.com/4822600/title-ix-womens-sports/ [https://perma.cc/SHD6-FEGX].

\(^{19}\) Anderson, supra note 13.

overall.” Since Title IX has no explicit mention of athletics, the Code of Federal Regulations provides the specific prohibition of gender discrimination in athletics:

No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

A. PROMINENT AMENDMENTS TO TITLE IX

In the forty-five years Title IX has been in force, there has not been many prominent amendments to it. In fact, there has only been minor changes to Title IX itself, which added additional exceptions within the statute. On March 22, 1988, Congress passed the Civil Rights Restoration Act in order to “restore the broad scope of coverage and to clarify the application of title IX[.]” The Civil Rights Restoration Act specifically defined “the term ‘program or activity’ for purposes of Title IX.” However, the most discussed amendment regarding Title IX and athletics, is the Javits Amendment, which clarified the application of Title IX to athletics and provided regulations for institutions to comply with Title IX.

B. APPLICATION OF TITLE IX TO ATHLETICS AND REGULATIONS FOR TITLE IX COMPLIANCE

It was unclear how Title IX was applied to athletics until 1974, when Congress passed the Education Amendments of 1974, more commonly known as the Javits Amendment. The Javits Amendment required the Department of Health, Education, and Welfare to draft and publish “proposed regulations implementing the provisions of title IX . . . relating to the prohibition of sex discrimination in federally assisted education programs which

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23. 34 C.F.R. § 106.41(a) (2017).
25. For the minor changes to Title IX, which added paragraphs §1681(a)(6)-(9), see 20 U.S.C.S. § 1681 (LEXIS through Pub. L. No. 115-114).
27. Anderson, supra note 13, at 343.
shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports.” 30 One year after the Javits Amendment, the required regulations were published. 31 These regulations provide, among other things, several factors to consider in determining whether equal opportunities exist in athletics. 32 The factors that may be considered are:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(2) The provision of equipment and supplies;

(3) Scheduling of games and practice time;

(4) Travel and per diem allowance;

(5) Opportunity to receive coaching and academic tutoring;

(6) Assignment and compensation of coaches and tutors;

(7) Provision of locker rooms, practice and competitive facilities;

(8) Provision of medical and training facilities and services;

(9) Provision of housing and dining facilities and services;

(10) Publicity. 33

The regulations further provide guidance that the law prohibits discrimination even to the awarding of scholarships 34 to athletes:

(c) Athletic scholarships.

32. Id.
33. 34 C.F.R. § 106.41(c) (2017). (This section is particularly relevant as Ramos v. Midland College uses 34 C.F.R. § 106.41 as a guideline to establish significant disparities. Amended Complaint at 3, Ramos v. Midland College, No. MO-17-CV-83 (W.D. Tex. 2017)).
34. See Anderson, supra note 13, at 333.
(1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in the interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and § 106.41.35

Soon after the regulations required by the Javits Amendment were published, the OCR provided a series of specific guidelines that related to Title IX’s application to athletics.36 The most prominent protocol published by the OCR was the Policy Interpretation in 1979. This was published as an attempt to “provide further guidance on how an educational organization can comply with Title IX.”37 Within the Policy Interpretation, the final part focuses on “Compliance in Meeting the Interests and Abilities of Male and Female Students.”38 The final part of the Policy Interpretation provides a three-part effective accommodation test, which has been subject to severe criticism and scholarship that suggests amendments to the test.39 The three-part effective accommodation test provides three ways in which Title IX compliance is assessed:

(1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or

(2) Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or

35. 34 C.F.R. § 106.37(c)(1)-(2) (2017).
(3) Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.\textsuperscript{40}

An institution’s compliance with Title IX is based on whether the program meets any one of the tests provided above.\textsuperscript{41} The first part of the effective accommodation test has been deemed the “safe harbor” for those institutions who have distributed athletic opportunities proportionate to the gender composition of their student enrollment.\textsuperscript{42} This part of the effective accommodation test is satisfied when “the gender balance of its intercollegiate athletic program substantially mirrors the gender balance of its student enrollment.”\textsuperscript{43} Thus, an institution that does not want “to engage in extensive compliance analysis may stay on the sunny side of Title IX simply by maintaining gender parity between its student body and its athletic lineup.”\textsuperscript{44} For this “safe harbor,”\textsuperscript{45} an article in the *Sociology of Education* specifies that courts consider a “plus or minus 3 to 5 percentage points as the criterion to determine” Title IX compliance.\textsuperscript{46} However, a settlement with the University of California at Davis and three female athletes in 2009, held the university’s officials to a 1.5 percent standard.\textsuperscript{47} Due to this percentage, the “safe harbor”\textsuperscript{48} is often used to ensure equality for female intercollegiate athletics, although it is becoming more difficult to meet as more females are enrolling in higher education.\textsuperscript{49}
II. THE FORGOTTEN COLLEGE ATHLETIC DIVISIONS: JUNIOR COLLEGES

A. NJCAA AND CCCAA

Everyone knows the NCAA and the Division One institutions; however, few are familiar with a large division of collegiate athletics: junior colleges. There are two main junior college organizations: the NJCAA and the CCCAA. Like most high schools and four-year universities, junior colleges from the NJCAA and the CCCAA receive funding from the federal government. Therefore, both the NJCAA and CCCAA are required to abide by Title IX.

The NJCAA is “the national governing body of two-year college athletics.” The association was formed in 1938 after thirteen two-year colleges petitioned that the NCAA “grant their teams and athletes permission to compete at the NCAA Track & Field Championships.” After the NCAA’s rejection, the thirteen colleges gathered to form an association to “promote and supervise a national athletics program exclusively for junior and community colleges.” The NJCAA was later incorporated in 1949. In 1972, in response to Title IX’s enactment, the NJCAA’s president launched a committee to research the possibility of a women’s division for the NJCAA. The results of the committee found that the NJCAA should organize a women’s division, and shortly after in 1975, the NJCAA became the first major collegiate athletic associations to integrate women’s athletics into its association. The National Association of Intercollegiate Athletics (“NAIA”) did not integrate women’s athletics into its association until 1980, and the NCAA

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51. Id.
53. Id.
55. Id.
57. Id.
followed shortly after in 1981. The NJCAA was also the first athletic association to provide a non-invitational national championship tournament in women’s basketball in 1976. By 1980, the NJCAA “sponsor[ed] national championship events for female student-athletes in basketball, cross country, gymnastics, outdoor track & field, fast-pitch softball, swimming & diving, tennis and volleyball.” Like the NCAA, the NJCAA has three competition divisions, Division I, Division II, and Division III. Those three competition divisions are comprised of twenty-four regions in forty-two states. Overall, within the three divisions and twenty-four regions, the NJCAA governs 461 junior colleges.

Like the NJCAA, the CCCAA is an athletic association for community colleges in California. The CCCAA was founded nearly eighty years ago. The CCCAA is an integral part of California’s community college system. California’s community college system is composed of seventy-one districts and 107 colleges, which enrolls nearly 1.5 million students annually. The CCCAA administers athletic activities of nearly 27,000 men and women student athletes in California, and has an annual budget of nearly $1.7 billion. The CCCAA has post-conference competitions for nearly a hundred regional

58. Id.
59. Id.
60. Id.
65. Id.
66. Id.
67. Id.
and state final events every year.\textsuperscript{69} Throughout the state, there are ten individual sport conferences.\textsuperscript{70}

Another essential part of the CCCAA is the Community College League of California’s Commission on Athletics ("COA").\textsuperscript{71} The COA has the authority to establish the rules and regulations that govern athletic activities.\textsuperscript{72} The CCCAA’s ten individual sport conferences are governed by the COA’s Constitution.\textsuperscript{73} "The COA Constitution documents all governance aspects of the intercollegiate athletic programs, including recruitment, eligibility, college and conference responsibilities, playing rules, competition/ participation, due process, appeals and penalties, contests and seasons of sports, post[-]conference competition and administration, policy change processes, finance, and awards program procedures."\textsuperscript{74} Furthermore, the CCCAA has its own Gender Equity Committee dedicated to improving women’s athletic opportunities.\textsuperscript{75} The Committee provides a Gender Equity Self Review Manual as a resource guide to assist the California colleges with the review of its athletics programs to implement changes in order to comply with Title IX and the principles of gender equity.\textsuperscript{76}

B. POSITIVE IMPACT OF TITLE IX IN NJCAA AND CCCAA

Since Title IX’s enactment, female and male athletes have significantly benefited at the NJCAA and CCCAA levels, as athletic opportunities have greatly increased for both genders. The NJCAA did not start recording participation statistics until the 1989-1990 season,\textsuperscript{77} seventeen years after Title IX was enacted; however, the participant statistics from 1989 until the current season show that male and female athletic opportunities have significantly increased. For the 1989-1990 season, there were only 13,388 female athletes and 30,394 male athletes participating in the NJCAA.\textsuperscript{78} For the 2016-2017 season in the NJCAA, there were 22,785 female athletes and 36,411 male athletes participating in the NJCAA.

\begin{footnotes}
\item[70] Id.
\item[71] Id.
\item[72] Id.
\item[73] Id.
\item[76] Id.
\item[77] See E-mail from Dee Dubois, Administrative Assistant, NJCAA, to Brittany Miller, Student at Northern Illinois University College of Law (Oct. 25, 2017, 12:43 CT) (on file with author).
\item[78] Id. (attachment on file with author).
\end{footnotes}
athletes participating;\textsuperscript{79} therefore, the NJCAA has shown significant increases in athletic participants for both males and females. In addition to increased male and female athletic participants, the NJCAA has seen an increase in the number of male and female teams.\textsuperscript{80} There was not any information regarding male and female teams prior to the 2005-2006 season; however, from the 2005-2006 season, both male and female teams have increased.\textsuperscript{81} In the 2005-2006 season, the total number of male teams was 1,623, and the total number of female teams was 1,522.\textsuperscript{82} For the 2016-2017 season, the total number of male teams increased to 1,729, and the total number of female teams increased to 1,699.\textsuperscript{83} Therefore, the number of athletic participants and total number of male and female teams in the NJCAA has significantly increased since the creation of Title IX.

Furthermore, the CCCAA has seen increases in athletic participants since Title IX’s enactment. Although the CCCAA did not begin recording athletic participation numbers until the 2000-2001 season, there has been increases in athletic participations from the 2000-2001 season to the 2016-2017 season.\textsuperscript{84} For the 2000-2001 season, the number of male athletes was 14,376, and the number of female athletes was 7,537.\textsuperscript{85} From the most recent CCCAA Five-Year Sport Comparison Charts, the number of athletic participants has increased for both males and females.\textsuperscript{86} For the 2016-2017 season, the number of male athletes is 16,465, and the number of female athletes is 9,266.\textsuperscript{87} Therefore, like the NJCAA, the CCCAA has shown significant increases in athletic participants, and this shows that Title IX has had a positive impact at the junior college level.

\textsuperscript{80} Id.
\textsuperscript{81} Id.
\textsuperscript{82} Id.
\textsuperscript{83} Id.
\textsuperscript{87} Id.
C. DESPITE THE POSITIVE IMPACT OF TITLE IX, JUNIOR COLLEGES HAVE BEEN NEGLECTED AND OVERLOOKED IN THE TITLE IX DISCUSSION AND ENFORCEMENT

Despite the fact that 84,927\textsuperscript{88} athletes from the 2016-2017 season competed at the junior college level, junior colleges have been seriously neglected and overlooked from the legal community regarding Title IX. On the other hand, the NCAA has been the center of the legal communities’ attention regarding the Title IX discussion. In fact, the seminal cases involving Title IX have all been from the NCAA level.\textsuperscript{89} In the forty-five years since Title IX has been enacted, there has only been one case at the junior college level, which is new and pending that is involving alleged disparities of female athletes in violation of Title IX.\textsuperscript{90} This case involves a junior college in the NJCAA,\textsuperscript{91} but there has yet to be a case from the CCCAA involving violations of Title IX. Not only have junior colleges been absent in courtrooms, law review articles and journals seem to have completely ignored junior colleges all together when discussing Title IX and athletics. If junior colleges are mentioned in law review articles and journals on Title IX and athletics, it has been in passing\textsuperscript{92} or in a footnote\textsuperscript{93} without a thorough examination. Furthermore, there has been a lack of publications regarding women's participation, money spent on female athletics, recruiting money allocated to female athletics, and female athletic scholarships at the junior college level. Specifically, a recent article from the National Women’s Law Center examining Title IX after forty-five years\textsuperscript{94} and a June 2017 fact sheet regarding gender

\textsuperscript{88} The total number of athletes was calculated from the number of participants from the NJCAA and CCCAA, by adding all of the number of participants together, as provided in Chart A.

\textsuperscript{89} See, e.g., Cohen v. Brown Univ., 991 F.2d 888 (1st Cir. 1993) (holding that the gymnastics and volleyball teams were reinstated to varsity status); Favia v. Indiana Univ. Pennsylvania, 812 F. Supp. 578 (2d Cir. 1993) (ordering the school to reinstate women’s gymnastics and field hockey); Mercer v. Duke Univ., 190 F.3d 643 (4th Cir. 1999) (jury concluding that Duke discriminated against Mercer because of her gender); Bediger v. Quinnipiac Univ., 728 F. Supp. 2d 62 (D. Conn. 2010), aff’d 691 F.3d 85 (2d Cir. 2010) (ordering Quinnipiac to reinstate volleyball after the sport was cut and cheerleading was elevated to varsity sport status).

\textsuperscript{90} See generally Complaint at 1, Ramos v. Midland College, No. MO-17-CV-83 (W.D. Tex. 2017).

\textsuperscript{91} Id.


\textsuperscript{94} See generally Nat’l Women’s Law Ctr., supra note 9.
equity in athletics in colleges and universities, failed to even mention junior colleges. Although nearly 85,000 junior college student-athletes seems like a drop in the bucket compared to more than 460,000 NCAA student-athletes, those junior college athletes are entitled to gender equity through Title IX. The neglected and overlooked Title IX problems in the NJCAA and CCCAA, need to be brought to light and alleviated to bring about gender equality and Title IX compliance to junior college athletics.

III. OVERLOOKED DISPARATE IMPACT IN THE NJCAA AND CCCAA

A common myth about Title IX concerning athletics is that “[o]pportunities are now equal” and that “Title IX has done its job and is no longer needed.” Even though there has been a positive impact from Title IX in the NJCAA and CCCAA, Title IX opportunities at these levels are not equal. Title IX has not done its job completely, and it is still greatly needed. In fact, newly compiled data reveals significantly less female athletic opportunities than male opportunities, female athletics receive significantly less money for expenses, and female athletes receive significantly less scholarships than males at the junior college level. Using the newly compiled data, Chart A below highlights the fewer athletic opportunities females are afforded despite making up more than half of the student body. Further, Chart B below highlights the unequal expenditures and unequal athletically-related student aid. However, despite these obvious disparities between male and female athletics in junior colleges, nothing has been proposed to alleviate the disparities, until now.


96. The total number of athletes was calculated from the number of participants from the NJCAA and CCCAA, by adding all of the number of participants together, as provided in Chart A.


100. See chart A and B infra at notes 120-35 and 151-70.
A. METHODS

Chart A and Chart B were composed from newly compiled data from publicly accessible data. The data for Chart A was compiled from a variety of sources, including the American Association of Community Colleges, the NJCAA website, the California Community Colleges Chancellor’s Office, and the CCCAA website. All of the data regarding athletics, specifically: percentage of athletes, number of participants, and number of teams were from recent data from the 2016-2017 season. All the data regarding percentage of gender in junior colleges was from 2017. The data for the number of participants, the number of teams, and the percentage of athletes for the CCCAA, received from the NJCAA website and the CCCAA website were provided as is; therefore, no statistical analysis was conducted on that data. However, the percentage of athletes for the NJCAA was calculated by statistical analysis, using the data from the number of participants. For the males in the NJCAA, the percentage of athletes was calculated by finding the sum of the number of male and female participants, and then taking the number of male participants and dividing it by the total sum of participants in the NJCAA. The percentage of athletes for females in the NJCAA was found using the same statistical analysis as the percentage of male athletes were calculated. The data for the percentage of gender in junior colleges, provided from the American Association of Community Colleges and California Community Colleges Chancellor’s Office were provided in percentage form; therefore, no statistical analysis was conducted on such data.

All data for Chart B regarding expenses and athletically-related aid was retrieved from the Equity in Athletics Data Analysis website, and the data is from 2016. The Equity in Athletics Data Analysis is provided “by the Office of Postsecondary Education of the U.S. Department of Education.” The data is for inquiries by the public regarding equity in athletics. The “database consists of athletics data that are submitted annually as required by the Equity in Athletics Disclosure Act (EADA)[.]” Often, the data reported as required by the EADA “is frequently used in cases alleging violations of Title IX.” The website provides data on different categories in athletics;

102. No updated data was available from 2017. The most up-to-date data was from 2016.
104. Id.
105. Id.
106. Anderson, supra note 13 at 351.
however, expenses\textsuperscript{107} and athletically-related student aid\textsuperscript{108} are the only two categories that were used for the purposes of Chart B. Within the website, data is provided for all sports and men’s and women’s teams for expenses and athletically-related student aid.\textsuperscript{109} The data can be customized for certain sanctioning bodies, such as the NJCAA and the CCCAA. The data was specifically customized for Chart B to find the expenses and athletically-related aid for NJCAA Division I, II, and III institutions and institutions from the CCCAA.

After the data is customized for each division, the website produces a Microsoft Excel spreadsheet for all of the data that was requested. The spreadsheets that were produced were used to conduct statistical analysis on male and female athletic expenses and athletically-related student aid as provided in Chart B. First, all the data regarding NJCAA Division I athletic expenses were requested. This resulted in a large Excel spreadsheet. From the spreadsheet, the male athletic expenses were found by calculating the sum of all expenses for male sports. Additionally, within the spreadsheet, the female athletic expenses were found by calculating the sum of all expenses for women sports. These sums represent the NJCAA Division I male and female athletic expenses provided in Chart B. Then to find the percentages of male and female expenses, the male and female athletic expenses were used to calculate the total sum of athletic expenses. For the percentage of male expenses, the total sum of male expenses was divided by the total sum of athletic expenses to find the percentage. The percentage of female expenses was also found by taking the total sum of female expenses and dividing it by the total sum of athletic expenses to find the percentage. The male and female

\textsuperscript{107} According to the Equity in Athletics Data Analysis website, expenses are defined as follows: “All expenses attributable to intercollegiate athletic activities. This includes appearance guarantees and options, athletically related student aid, contract services, equipment, fundraising activities, operating expenses, promotional activities, recruiting expenses, salaries and benefits, supplies, travel, and any other expenses attributable to intercollegiate athletic activities.” Dictionary, EQUITY IN ATHLETICS DATA ANALYSIS, https://ope.ed.gov/athletics/#/ (within the website, at the top right-hand corner of the website, there is a “DICT” for dictionary; click on “E” for the index).

\textsuperscript{108} According to the Equity in Athletics Data Analysis website, athletically related student aid is defined as follows:

Any scholarship, grant, or other form of financial assistance, offered by an institution, the terms of which require the recipient to participate in a program of intercollegiate athletics at the institution. Other student aid, of which a student-athlete simply happens to be the recipient, is not athletically related student aid.

\textit{See} Dictionary, EQUITY IN ATHLETICS DATA ANALYSIS, https://ope.ed.gov/athletics/#/ (last visited Feb. 10, 2018) (within the website, at the top right-hand corner of the website, there is a “DICT” for dictionary; click on “A” for the index).

\textsuperscript{109} \textit{See} EQUITY IN ATHLETICS DATA ANALYSIS, supra note 101.
athletic expenses for the NJCAA Division II, III, and the CCCAA were calculated in the exact same manner as the expenses for NJCAA Division I.

Further, the athletically-related student aid was calculated in the same manner as the female and male athletic expenses were. For example, the athletically-related student aid for the NJCAA Division I was requested. The website again provided an Excel spreadsheet. Within the spreadsheet, the male and female athletically-related student aid numbers were found by calculating the sum of all athletically-related student aid for men and women sports. These sums represent the NJCAA Division I male and female athletically-related student aid provided in Chart B. To find the percentages for the male and female athletically-related aid, the total sums for the male and female aid was calculated. Then, the total sum for male and female athletically-related aid was divided by the total sum of male and female aid to find the percentages for male and female aid. The male and female athletically-related student aid for the NJCAA Division II and the CCCAA were calculated in the exact same manner. Finally, once all the sums were calculated and comprised in Chart B, the totals for all male athletic expenses, female athletic expenses, male athletically-related student aid, and female athletically-related student aid were found by calculating the sum of each category from each junior college division.

B. RESULTS

The results from the statistical analysis conducted on the newly compiled data revealed significant disparities between male and female athletics at the junior college level in the NJCAA and the CCCAA. The newly compiled data representing Chart A revealed that female athletes receive significantly less athletic opportunities when compared to male athletics. The newly compiled data representing Chart B further revealed that the NJCAA and the CCCAA provide unequal expenditures between male and female athletics. Additionally, Chart B shows that female athletes in the NJCAA receive less athletically-related student aid than male athletes.

i. Fewer Female Athletic Opportunities

According to the American Association of Community Colleges in 2017, women made up 56 percent of the student body enrollment in community colleges (junior colleges), and men made up only 44 percent of the

110. The NJCAA Division III female and male athletically-related student aid was not calculated as Division III is not allowed to provide athletically-related student aid to students.

111. The NJCAA did not provide specific statistics regarding gender percentages; therefore, the American Associate of Community Colleges was used as a comparison for the NJCAA.
student body.\footnote{112} As Chart A indicates below, even though women make up 56 percent of the student body in community colleges, they only account for 38.5 percent of athletic participants in the NJCAA.\footnote{113} Overall, female athletics have 13,626 fewer participants than males in the NJCAA.\footnote{114} Further, the CCCAA, like the NJCAA, does not have equal participant opportunities for male and female athletes. For Fall 2017, women make up 53.45 percent of the student body enrollment in California colleges, and men make up 45.28 percent.\footnote{115} However, women make up 53.45 percent of the student body in California community colleges, they only account for 36 percent of athletic participants in the CCCAA.\footnote{116} Like the NJCAA, the CCCAA has 7,199 fewer female athletic participants than males.\footnote{117} In addition, the NJCAA provides female athletes with less teams for females to compete on.\footnote{118} In the end, these fewer athletic opportunities for women alone demonstrate that even after forty-five years of Title IX, male and female athletics are truly not “equal.”\footnote{119}

<table>
<thead>
<tr>
<th>2016-2017 Season</th>
<th>Percentage of Athletes</th>
<th>Percentage of Gender in Junior College</th>
<th>Number of Participants</th>
<th>Number of Teams</th>
</tr>
</thead>
<tbody>
<tr>
<td>NJCAA (Men)</td>
<td>61.5%\footnote{120}</td>
<td>44%\footnote{121}</td>
<td>36,411\footnote{122}</td>
<td>1,729\footnote{123}</td>
</tr>
</tbody>
</table>

\footnote{113} Id.
\footnote{114} Nat’l Junior College Athletic Ass’n, supra note 79.
\footnote{116} Id.
\footnote{117} Cal. Cmty. College Athletic Ass’n, supra note 86.
\footnote{118} Nat’l Junior College Athletic Ass’n, supra note 79.
\footnote{119} Fagan & Cyphers, supra note 98.
\footnote{120} Nat’l Junior College Athletic Ass’n, supra note 79.
\footnote{121} Am. Ass’n of Cmty. Colleges, supra note 112.
\footnote{122} Nat’l Junior College Athletic Ass’n, supra note 79.
\footnote{123} Id.
In addition to the NJCAA and CCCAA’s failure to provide equal athletic opportunities, newly compiled data reveals that the two organizations provide unequal expenditures for male and female athletes.\(^\text{136}\) The NJCAA also provides less athletically-related student aid for female athletes.\(^\text{137}\) As indicated in Chart B, all divisions in the NJCAA and the CCCAA allocate significantly less funds (expenses) for female athletics than male athletics. Female athletes in Division I of the NJCAA received only approximately 44% of all expenses spent on athletics in 2016.\(^\text{138}\) Similarly, in Division II of the NJCAA, colleges spent less money on female athletic expenses than on

<table>
<thead>
<tr>
<th></th>
<th>NJCAA (Women)</th>
<th>CCCAA (Men)</th>
<th>CCCAA (Women)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>38.5%(^\text{124})</td>
<td>56%(^\text{125})</td>
<td>22,785(^\text{126})</td>
</tr>
<tr>
<td></td>
<td>1,699(^\text{127})</td>
<td>64%(^\text{128})</td>
<td>45.28%(^\text{129})</td>
</tr>
<tr>
<td></td>
<td>16,465(^\text{130})</td>
<td>36%(^\text{132})</td>
<td>53.45%(^\text{133})</td>
</tr>
<tr>
<td></td>
<td>N/A(^\text{134})</td>
<td>N/A(^\text{135})</td>
<td>N/A(^\text{135})</td>
</tr>
</tbody>
</table>

### ii. Unequal Expenditures and Less Athletically-Related Student Aid for Female Athletes

In addition to the NJCAA and CCCAA’s failure to provide equal athletic opportunities, newly compiled data reveals that the two organizations provide unequal expenditures for male and female athletes.\(^\text{136}\) The NJCAA also provides less athletically-related student aid for female athletes.\(^\text{137}\) As indicated in Chart B, all divisions in the NJCAA and the CCCAA allocate significantly less funds (expenses) for female athletics than male athletics. Female athletes in Division I of the NJCAA received only approximately 44% of all expenses spent on athletics in 2016.\(^\text{138}\) Similarly, in Division II of the NJCAA, colleges spent less money on female athletic expenses than on

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124. Id.
125. AM. ASS’N OF CMTY. COLLEGES, supra note 112.
126. NAT’L JUNIOR COLLEGE ATHLETIC ASS’N, supra note 79.
127. Id.
128. CAL. CMTY. COLLEGE ATHLETIC ASS’N, supra note 86.
129. Management Information Systems Data Mart, supra note 115.
130. CAL. CMTY. COLLEGE ATHLETIC ASS’N, supra note 86.
131. The CCCAA does not provide the number of male and female teams like the NJCAA does.
132. CAL. CMTY. COLLEGE ATHLETIC ASS’N, supra note 86.
133. Management Information Systems Data Mart, supra note 115. The number for percentage of gender in junior college does not add up to 100% as the site says the other 1.27% is unknown.
134. CAL. CMTY. COLLEGE ATHLETIC ASS’N, supra note 86.
135. The CCCAA does not provide the number of male and female teams like the NJCAA does.
136. See chart B infra at notes 151-70.
137. Id.
138. See Download Custom Data, EQUITY IN ATHLETICS DATA ANALYSIS, https://ope.ed.gov/athletics/\#/ (within “Sanctioning Body,” find “NJCAA Division I” and select; then click “CONTINUE;” next to 229 institutions found, click “CONTINUE WITH ALL FOUND;” select “2016” and “Expenses – All Sports and Men’s, Women’s and Coed Teams;” click “DOWNLOAD;” and receive the excel for results) [hereinafter NJCAA Division I expenses].
male expenses. Female athletes at the Division II level received only approximately 45 percent of all expenses spent in 2016.\textsuperscript{139} Lastly, like Division I and II NJCAA colleges, the Division III colleges spend less money on female athletic expenses than on male expenses. Female athletes at the Division III level received only approximately 42 percent of all expenses in 2016.\textsuperscript{140} Overall, at the junior college level, male athletics received $254,906,649\textsuperscript{141} in expenses, and female athletics received only $201,351,685,\textsuperscript{142} which is a significant disparity in fund allocation. Furthermore, the NJCAA Divisions I and II provided less athletically-related student aid for female athletes.\textsuperscript{143} Overall, Division I and II male athletes received 54 percent of the athletically-related student aid. However, unlike Division I and II colleges in the NJCAA, Division III colleges are not allowed to give athletically-related student aid to male or female athletes.\textsuperscript{144}

Like Division I, II, and III colleges in the NJCAA, the CCCAA spends less money on female athletic expenses than on male expenses. In 2016, female athletes in the CCCAA received only approximately 43 percent of all

\begin{itemize}
\item \textsuperscript{139} See Download Custom Data, EQUITY IN ATHLETICS DATA ANALYSIS, https://ope.ed.gov/athletics/##/ (within “Sanctioning Body,” find “NJCAA Division II” and select; then click “CONTINUE;” next to 113 institutions found, click “CONTINUE WITH ALL FOUND;” select “2016” and “Expenses – All Sports and Men’s, Women’s and Coed Teams;” click “DOWNLOAD;” and receive the excel for results) [hereinafter NJCAA Division II expenses].
\item \textsuperscript{140} See Download Custom Data, EQUITY IN ATHLETICS DATA ANALYSIS, https://ope.ed.gov/athletics/##/ (within “Sanctioning Body,” find “NJCAA Division III” and select; then click “CONTINUE;” next to 119 institutions found, click “CONTINUE WITH ALL FOUND;” select “2016” and “Expenses – All Sports and Men’s, Women’s and Coed Teams;” click “DOWNLOAD;” and receive the excel for results) [hereinafter NJCAA Division III expenses].
\item \textsuperscript{141} See chart B infra note 167.
\item \textsuperscript{142} See chart B infra note 168.
\item \textsuperscript{143} See generally Download Custom Data, EQUITY IN ATHLETICS DATA ANALYSIS, https://ope.ed.gov/athletics/##/ (within “Sanctioning Body,” find “NJCAA Division I and II” and select; then click “CONTINUE;” next to 342 institutions found, click “CONTINUE WITH ALL FOUND;” select “2016” and “Athletically Related Student Aid – Men’s, Women’s and Coed Teams;” click “DOWNLOAD;” and receive the excel for results).
\item \textsuperscript{144} See chart B infra notes 153-54 and 157-58.
\end{itemize}
athletic expenses.146 However, females received slightly more money for athletically-related student aid.147 This is not a significant amount of athletically-related student aid; however, of the 104 institutes that provided information for the Equity in Athletics Data Analysis, only two provided athletically-related student aid to athletes.148 Overall, at the junior college level, male athletes received $71,908,622149 for athletically-related student aid, and female athletes received only $61,961,913,150 which again, is a significant disparity for athletic scholarships.

Chart B

<table>
<thead>
<tr>
<th>2016 Season</th>
<th>Male Athletic Expenses</th>
<th>Female Athletic Expenses</th>
<th>Male Athletically Related Student Aid</th>
<th>Female Athletically Related Student Aid</th>
</tr>
</thead>
<tbody>
<tr>
<td>NJCAA Division I</td>
<td>$152,141,595151</td>
<td>$121,876,647152</td>
<td>$60,060,305153</td>
<td>$51,853,390154</td>
</tr>
</tbody>
</table>

146. See Download Custom Data, EQUITY IN ATHLETICS DATA ANALYSIS, https://ope.ed.gov/athletics// [https://perma.cc/ZF5J-HGGX] (within “Sanctioning Body,” find “CCCAA” and select; then click “CONTINUE;” next to 104 institutions found, click “CONTINUE WITH ALL FOUND;” select “2016” and “Expenses – All Sports and Men’s, Women’s and Coed Teams;” click “DOWNLOAD;” and receive the excel for results) [hereinafter CCCAA expenses].

147. See Download Custom Data, EQUITY IN ATHLETICS DATA ANALYSIS, https://ope.ed.gov/athletics// [https://perma.cc/ZF5J-HGGX] (within “Sanctioning Body,” find “CCCAA” and select; then click “CONTINUE;” next to 104 institutions found, click “CONTINUE WITH ALL FOUND;” select “2016” and “Athletically Related Student Aid – Men’s, Women’s and Coed Teams;” click “DOWNLOAD;” and receive the excel for results) [hereinafter CCCAA athletically-related student aid].

148. Id.

149. See chart B infra at note 169.

150. See chart B infra at note 170.

151. NJCAA Division I expenses, supra note 138.

152. NJCAA Division I expenses, supra note 138.


154. Id.
In the NJCAA and CCCAA, female athletes receive fewer athletic opportunities and are allocated less money for athletic expenses. In addition, female athletes in the NJCAA receive less money allocated for athletically-
related student aid. These disparities exist even after forty-five years since Title IX’s enactment. Therefore, female athletics are not truly “equal” to male athletics at the junior college level.

A counterargument can be made that defends this inequality of funds and how the funds are allocated between male and female athletics. For example, that the revenue from sports, such as men’s basketball and football require a higher allocation of the funds to bring in revenue for the athletic department, and this may justify the inequality of fund allocation between male and female athletics. However, this is not the case in the NJCAA and CCCAA. In 2016, in all three divisions of the NJCAA, men’s basketball brought in a total revenue of $58,841,144. However, the three divisions of men’s basketball spent $53,399,506 in expenses. Also in 2016, in all three divisions of the NJCAA, football brought in a total revenue of $34,461,925 and spent $34,171,280 in expenses. Therefore, in 2016, all football teams in the NJCAA made a total profit of $290,645 and all men’s basketball teams made a total profit of $441,638. The slight profit margin of both the football teams and men’s basketball teams is not significant enough to justify a disparity of $43,002,077 between male and female expenses.

172. See Chart B.
173. Fagan & Cyphers, supra note 98.
174. See Title IX Myths and Facts, supra note 99.
175. Download Custom Data, EQUITY IN ATHLETICS DATA ANALYSIS, https://ope.ed.gov/athletics/#/ [https://perma.cc/ZF5J-HGGX] (within “Sanctioning Body,” find “NJCAA Division I, II, and III” and select; then click “CONTINUE;” next to 461 institutions found, click “CONTINUE WITH ALL FOUND;” select “2016” and “Revenues – All Sports and Men’s, Women’s and Coed Teams;” click “DOWNLOAD;” and receive the excel for results) [hereinafter NJCAA Division I, II, and III revenue].
176. Download Custom Data, EQUITY IN ATHLETICS DATA ANALYSIS, https://ope.ed.gov/athletics/#/ [https://perma.cc/ZF5J-HGGX] (within “Sanctioning Body,” find “NJCAA Division I, II, and III” and select; then click “CONTINUE;” next to 461 institutions found, click “CONTINUE WITH ALL FOUND;” select “2016” and “Expenses – All Sports and Men’s, Women’s and Coed Teams;” click “DOWNLOAD;” and receive the excel for results) [hereinafter NJCAA Division I, II, and III expenses].
177. NJCAA Division I, II, and III revenue, supra note 175.
178. NJCAA Division I, II, and III expenses, supra note 176.
179. The total profits were found by subtracting the expenses from the total revenue for the football and men’s basketball teams as found from Footnote 175 and 176.
180. The disparity of expenses from NJCAA Division I, II, and III were found by taking all of the male expenses from those three divisions and subtracting that number from all of the female expenses from those three divisions to find the above number.
In 2016, in the CCCAA, men’s basketball had a total revenue of $7,994,824\textsuperscript{181} and spent $7,776,486 in total expenses.\textsuperscript{182} Further, in 2016, football teams in the CCCAA had a total revenue of $13,175,255\textsuperscript{183} and spent $12,521,137 in expenses.\textsuperscript{184} Therefore, in 2016, all football teams in the CCCAA made a total profit of $654,118, and all men’s basketball teams made a total profit of $218,338.\textsuperscript{185} The minor profit the football and men’s basketball teams generated in 2016 is not significant enough to justify the $10,552,887\textsuperscript{186} disparity in expenses between male and female athletics, as the CCCAA only has 104 institutions.\textsuperscript{187} Thus, the minor profits generated by both football and men’s basketball teams in the NJCAA and CCCAA do not justify the significantly unequal allocation of funds for male and female athletics.

Due to this significant inequality of fund allocation and participation opportunities, changes need to be made to the regulations regarding Title IX in junior college athletics to ensure colleges comply with Title IX. In addition to changes in the regulations, it should be mandated that NJCAA and CCCAA colleges have designated athletic Title IX coordinators or advocates to further Title IX compliance at the junior college level.

IV. PROPOSALS TO ALLEVIATE THE DISPARATE IMPACT IN THE NJCAA AND CCCAA

Allowing two-year institutions to comply with Title IX by solely maintaining substantially proportionate numbers within the athletic program and student enrollment does not eliminate gender discrimination or the disparate treatment in athletics; it just provides an equal number of opportunities for male and female athletes based on student body enrollment. As more females are attending higher educational institutions, it is becoming more difficult for institutions to meet the substantially proportionate numbers.\textsuperscript{188} Therefore, a

\textsuperscript{181}. Download Custom Data, EQUITY IN ATHLETICS DATA ANALYSIS, https://ope.ed.gov/athletics/#/ (within “Sanctioning Body,” find “CCCAA” and select; then click “CONTINUE;” next to 104 institutions found, click “CONTINUE WITH ALL FOUND;” select “2016” and “Revenue – All Sports and Men’s, Women’s and Coed Teams;” click “DOWNLOAD;” and receive the excel for results) (hereinafter CCCAA revenue).

\textsuperscript{182}. CCCAA expenses, supra note 146.

\textsuperscript{183}. CCCAA revenue, supra note 181.

\textsuperscript{184}. CCCAA expenses, supra note 146.

\textsuperscript{185}. The total profits were found by subtracting the total expenses from the total revenue for the football and men’s basketball teams as found from Footnotes 146 and 181.

\textsuperscript{186}. CCCAA expenses, supra note 146.

\textsuperscript{187}. CCCAA expenses, supra note 146.

\textsuperscript{188}. See Kerensa E. Barr, How the “Boys of Fall” are Failing Title IX, 82 UMKC L. REV. 181, 185-86 (2013).
change needs to be made to the “safe harbor” part of the effective accommodation test, specifically at the junior college level. Two-year colleges are particularly unique compared to four-year universities through the NCAA or NAIA. Unlike four-year universities, junior colleges have brand new athletic lineups for each team every two years, as junior colleges are only two-year institutions. Therefore, the interests and abilities of junior college athletes as well as the student body enrollment are frequently changing compared to the NCAA or NAIA. If the interests and abilities are frequently changing, maintaining substantially proportionate numbers within the athletic program and student enrollment will not produce “equal” athletics for male and females.

Recently, there have been proposals to the OCR effective accommodation test in an attempt to create equal opportunities in athletics. One recent article proposed a change by eliminating the first part of the three-part test and replacing it with an evaluation of each individual sport at the universities. Another recent article proposed a change by again eliminating the first part of the three-part test “to focus on interest and providing opportunities that coincide with the assessed level of interest.” Those proposals may be effective for the larger athletic sanctioning bodies such as the NCAA or NAIA. However, those proposals will not be as effective at the junior college level, as the junior colleges are unique. “Focus[ing] on interest and providing opportunities that coincide with the assessed level of interest” at the junior college level would be extraordinarily burdensome. The student body and the athletic lineup of sports at the junior college level are ever changing compared to the NCAA or NAIA. Thus, the level of interest of sports would have to be assessed every two years, creating an excessive burden for junior college administrators. Therefore, the best way to assist Title IX compliance is by making a proposal specifically for the junior colleges that uses the first part of the effective accommodation test as the athletic lineups and student bodies are frequently changing compared to four-year institutions.

193. Id.
Allowing the NJCAA and CCCAA to solely employ the first part of the effective accommodation test, considering the plus or minus three to five percentage points as criterion to determining Title IX compliance,\(^{194}\) is not sufficient to make male and female athletics “equal.”\(^{195}\) Therefore, in an effort to assist institutions that employ the first part of the effective accommodation test for Title IX compliance, those institutions should be mandated to conduct extensive Title IX analyses every two years. These extensive Title IX analyses will force the institutions to take a deeper look into the athletic departments every two years to evaluate and expand female athletics to meet Title IX compliance. During these extensive Title IX analyses, the allocation of expenses, athletic opportunities, financial aid, and athlete treatment will be evaluated for male and female athletics. Thus, the disparities that exist between male and female athletics will come to light every two years and the school will have to act in an effort to alleviate the disparities to comply with Title IX. Therefore, these extensive Title IX analyses will assist those institutions that employ the first part of the effective accommodation test in Title IX compliance in athletics and, in theory, alleviate the fewer athletic opportunities available to females in junior colleges.

Critics of this proposal will argue that forcing institutions that employ the first part of the effective accommodation test to conduct extensive Title IX analyses every two years will be extremely burdensome to two-year institutions. Critics will assert that the burden of time, money, and resources that will need to be expended while conducting these analyses every two years, outweighs any benefit. However, a recent study was conducted evaluating Title IX compliance specifically at two-year colleges in which the majority of senior athletic administrators at two-year colleges asserted that having an “in-depth evaluation of Title IX compliance within the athletic department” was the most effective strategy toward Title IX compliance.\(^ {196}\) The study listed fourteen different strategies that the athletic administrators were supposed to rate on the level of effectiveness, and the in-depth evaluation was rated as the most effective.\(^ {197}\) If the senior athletic administrators at the majority of two-year colleges rated an in-depth analysis as the most effective way\(^ {198}\) to maintain Title IX compliance, those administrators presumably did not assert that conducting the in-depth analysis was too burdensome to com-


\(^{195}\) Fagan & Cyphers, *supra* note 98.


\(^{197}\) *Id.*

\(^{198}\) *Id.*
plete. Therefore, administrators seem to be behind the proposition of conducting in-depth analyses in the athletic department to assist in Title IX compliance.

Not only will having junior colleges that employ the first part of the effective accommodation test conduct extensive Title IX analyses every two years help junior colleges comply with Title IX, adding a Title IX coordinator or advocate to the athletic department can actively assist junior colleges with Title IX regarding athletics. The Title IX coordinator or advocate to the athletic department at junior colleges can effectively assist the junior colleges with the mandatory extensive Title IX analyses. Every institution, regardless if it is a four-year institution or a two-year institution, which “receives some form of federal financial aid is required to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX.” But, under 45 C.F.R. § 618.135(a), which is part of the regulations for Title IX, there is no mention in the text about having a Title IX coordinator specific to athletics. Thus, institutions only have to employ one individual to handle all nondiscriminatory laws. This mandatory Title IX coordinator required by 45 C.F.R. § 618.135(a), has to have a “practical working knowledge of Title IX as it applies across the educational setting,” and “should be able to apply its protections in light of other nondiscrimination laws,” such as Title VII, Title VI, and relevant state antidiscrimination laws.

In other words, the Title IX coordinator that is mandated by federal regulations has to have an immense knowledge of other nondiscrimination laws in addition to Title IX. One Title IX coordinator in an institution would have trouble balancing “Title IX[,] as it applies across the educational setting,” other nondiscrimination laws, and Title IX compliance in athletics. Thus, having a Title IX coordinator or advocate specific to athletics would only have to focus on Title IX as it is applied to athletics, and will dedicate all of his or her efforts to Title IX compliance in athletics. This additional Title IX coordinator will assist the athletic department immensely because

201. Id.
203. Id.
204. Id.
205. Id.
206. Id.
“Title IX regulations as applied to athletics opportunities, financial aid and student-athlete treatment are complex.”

Many larger educational institutions in the NCAA have a Title IX coordinator specific to athletics. Although institutions in the NCAA are different than the institutions in the NJCAA or CCCAA, as the NCAA institutions are four-year institutions, have larger budgets, and more sports; those NCAA institutions thought it was imperative to have an athletic Title IX coordinator to assist with Title IX compliance in athletics. Therefore, like many NCAA institutions, an athletic Title IX coordinator should be added to the athletic department in NJCAA and CCCAA institutions. The athletic Title IX coordinator would be imperative in assisting NJCAA and CCCAA institutions with its Title IX compliance in athletics. They would be able to fully examine Title IX compliance regarding the athletic opportunities to both male and female athletes, expenses expended for male and female athletics, and athletic scholarships provided. They would also be able to examine student-athlete treatment and alleviate disparate impacts, such as the ones alleged in *Ramos v. Midland College*. Further, the athletic Title IX coordinator would be able to assist the institutions with its mandatory extensive Title IX analyses every two years if they employ the first part of the effective accommodation test for Title IX compliance. In theory, an athletic Title IX coordinator will help alleviate the disparities of unequal female athletic opportunities, unequal expenditures, and fewer athletic scholarships allocated to females at junior colleges.

In addition, critics of this proposal will argue that since two-year colleges have lower overall budgets than most larger four-year colleges in the...
NCAA or NAIA, it would be fiscally impossible for two-year colleges to add a full-time Title IX coordinator or advocate to their athletic departments. Two-year colleges do have smaller budgets than NCAA or NAIA colleges. In fact, 35.8% of the two-year colleges that responded to the recent survey had an overall athletic department operating budget of $0-$250,000. Only 12.6% of the responding two-year colleges had an operating budget of greater than $1,000,000. But, out of the fourteen strategies presented in Causby’s study, “creating a full-time position to oversee Women’s athletic programs” ranked eighth as the most effective strategy toward Title IX compliance. Therefore, senior athletic administrators did not think that adding personnel to oversee Women’s athletic programs was ineffective toward compliance at the two-year college level. However, the Title IX coordinator or advocate does not have to be a full-time position or even be a new position that is created. A current employee of the athletic department could take Title IX training regarding athletics, and this would save two-year colleges money by not adding a new full-time administrative position. This would save money for the institutions, and it would have a current member of the athletic department that is familiar with the operating expenses, recruiting expenses, and expenses overall. Thus, employing an athletic Title IX coordinator would not be too burdensome for junior colleges, and an athletic Title IX coordinator would be extremely beneficial to junior colleges. Therefore, junior colleges should be mandated to employ an athletic Title IX coordinator to maximize Title IX compliance at the junior college level.

210. See Nat’l Collegiate Athletic Ass’n, NCAA Division I Intercollegiate Athletics Programs Report, Revenues & Expenses, (2004-2014), at 16, https://www.ncaa.org/sites/default/files/2015%20Division%20I%20RE%20report.pdf (stating that the median expenses for Division I institutions in the NCAA without a football team was $14,322,000, and institutions with a football team was $63,959,000 in the Football Bowl Subdivision and $15,154,000 in the Football Championship Subdivision) [https://perma.cc/3EPF-TGEM]; see also Division II Facts and Figures, NAT’L COLLEGIATE ATHLETIC ASS’N, http://www.ncaa.org/division-ii-facts-and-figures (last visited Feb. 13, 2018) (stating that the median expenses for Division II institutions in the NCAA are $6 million) [https://perma.cc/S6VR-RAJC]; see also Nat’l Collegiate Athletic Ass’n, Division III 2017-2018 Facts and Figures, https://www.ncaa.org/sites/default/files/2018DIII_FactsandFigures_20170906.pdf (stating that the average total operating expenses for Division III institutions in the NCAA with football was $4,265,000 and $2,696,000 without football) [https://perma.cc/5X7-G7REHH].


212. See Causby, supra note 196 at 121.

213. Id.

214. Id. at 107, 110.

215. Id.
CONCLUSION

Title IX has come a long way since 1945, as opportunities for female athletes have substantially improved. However, disparities at the junior college level have been overlooked for far too long. The newly compiled data presented above brings these discrepancies to light. In order to alleviate the obvious discrepancies, significant changes need to be made at the junior college level. Amending the OCR’s three-part effective accommodation test to force junior colleges, which employ part one of the effective accommodation test, to conduct extensive Title IX analyses every two years, will add extra protection to female athletes, as the junior colleges cannot solely maintain substantial proportionality between the student body enrollment and the athletic lineup. This will especially protect female athletes at “safe harbor” junior colleges. Furthermore, mandating junior colleges to employ athletic Title IX coordinators will begin to alleviate the prominent disparities between male and female athletics. The athletic Title IX coordinators can oversee the extensive Title IX analyses that junior colleges will conduct each year and oversee Title IX compliance overall year to year. In theory, these two proposals will start to alleviate these ignored disparities at the junior college level and make “the playing field … level” for female athletes competing at junior colleges.

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