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The Abuse of Roster Management...

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In the late 1990s, many colleges and universities implemented a practice that became known as “roster management.” In order to avoid cutting men’s teams, the schools cut the number of male participants who would be allowed on existing teams to minimum levels. Often, football and men’s basketball did not have these roster limits imposed. By placing maximum squad size limits on men’s teams and subsequently reducing the number of male athletes, institutions simultaneously increased the percentage (but not number) of female athletes in their programs. While this practice would help an institution meet the Title IX Prong One “proportionality” standard, it would not help an institution meet a Prong Two (continuing program expansion) or Prong Three (fully met interest of underrepresented sex) standard.

As more and more women enrolled in college and demanded athletic participation opportunities, institutions using the proportionality standard faced larger opportunity gaps that roster management could not solve. Schools did not want to cut men’s sports but also could not cut any more men from the existing teams without severely impacting their competitiveness. To meet Prong One, they had to add opportunities for women. Adding new sports costs money and places demands on facilities. Schools

that did not want to reallocate the resources necessary to do this looked for ways to increase participation on existing women's teams either in fact or in appearance. The goal for many schools became, "How can we add participation numbers without adding new women's sports?" Some schools set new and higher minimum squad limits for women's teams, with some of those limits being unreasonable with regard to normal team size and optimum coach/athlete teaching ratios.

These unreasonable size expectations for women's teams ran afoul of Title IX requirements. Some schools were found to report female participation based on the minimum squad sizes they created rather than the actual number of female athletes who were participating. Courts ruled that counted athletic participation opportunities must reflect actual opportunities filled by actual students and could not be opportunities that a school claims that it offers but that are not filled by students. For example, a school cannot count 18 softball players when, in fact, it only has 15 actual players even if the school wanted to have 18 players and even if the school told the coach to find 18 players. If only 15 athletes actually exist, then the school cannot count more than those 15 athletes. The U.S. Office for Civil Rights clearly banns the counting of "ghost slots", requiring athletic opportunities to be real, rather than illusory."

Some schools have gotten into the habit of focusing on numbers they are required to submit under the Equity in Athletics Disclosure Act and manipulating those numbers rather than achieving actual gender equity. In doing so, they manipulate their rosters around the date of their first competition. For example, they may have 18 female athletes (underrepresented sex) show up for practice at the beginning of the season, but they do not remove them from the roster after they quit, are not selected for the team, or even when they cease participation prior to the first competition. Or, they intentionally keep them on the team until after the first competition and then cut them to produce a more manageable actual rather than reported roster size of actual participants. In both cases, the EADA female participation number is artificially manipulated to produce more participants than actually participate because the institution intentionally misuses the "first date of competition" instructions for determining number of participants to be reported.

Conversely, some schools drop men (the overrepresented sex) from the sport roster prior to the date of their first competition so that they do not count them on the EADA submission and then add them back to the roster after the date of their first competition. Alternatively, they intentionally keep male athletes out of the first game and do not add them to the team roster until the next day. There is no athletic purpose for doing so. Schools do it to make their numbers look better.

When schools count male and female athletes differently in this way, they breach the purpose and intent of Title IX and, by definition, they discriminate on the basis of sex. They do so to avoid adding new women's sports and, in so doing, they artificially limit women's athletic participation opportunities. This is the essence of sex discrimination and the problem that Title IX was intended to fix.

When I advise schools, I instruct them to compare the number of athletes on each team to the number of athletes reasonably expected to participation on such a team given the nature of the specific sport. For example, most people would understand that since a basketball team can only play five athletes at a time, a varsity team of 25 is so large that no one would expect most of those athletes to ever compete or receive a varsity experience. This same concept applies to all sports. If a school carries 20 women on a cross country team, but the nature of the sport is such that only 12 of those women actually practice and compete, then the "extra" 8 athletes likely do not receive a genuine varsity experience – and likely are not expected to ever compete, especially if they were not recruited and do not receive athletic aid. By

"padding" women's teams, schools not only fail to provide varsity benefits to the "extra" women, they also devalue the varsity experience of all women on the team by spreading limited resources and limited playing time too thin. Women on such "padded" teams receive less coaching because of higher coach to student-athlete ratios, less benefits, and less (if any) playing time compared to men who play on smaller, more reasonably sized squads.

Whenever there are unusually large women's squad sizes but not unusually large men's squad sizes, or unusually large women's squad sizes and smaller than usual men's squad sizes, it is important to investigate the size of the individual teams to learn if there are legitimate athletic reasons for them (e.g., a team has a high number of injured or red shirt athletes that year). If there are not legitimate reasons for such large numbers or if those large numbers persist over many years and many teams, it is apparent that the school is manipulating its women's participation numbers to feign Prong One compliance without actually providing genuine varsity athletic participation opportunities to them. Ultimately, the analysis is very fact specific, but such "red flags" should prompt further investigation of the reported numbers.

When investigating the squad numbers, it is also important to consider how the schools find their athletes. If men's teams fill their rosters by recruiting high school athletes with the athletic ability to play at the school's competition level (e.g., junior college, Division I, Division III), then women's teams should find their athletes in the same way. If, instead, women's coaches must fill their mandatory minimum squad sizes by recruiting students from the dining hall or physical education classes, then this is a sign that the additional athletes may not have the skills necessary for varsity participation. It also is evidence that the school does not provide recruiting or scholarship resources or that it does not intend to provide the additional athletes with the expected benefits of varsity participation. If a team has many "extra" athletes or if the program overall has many "extra" athletes who are not recruited, do not have the same skills as the recruited athletes, and do not receive athletic scholarships, they are likely there to fill an artificial quota and not to contribute to the team. This practice devalues the varsity experience for everyone. A recruited athlete with high level sport skills does not want to waste valuable, NCAA-limited practice time training with students with substantially less skill who will never compete.

Some schools go so far as to eliminate a men's sport season such as the elimination of men's indoor track as a designated team, so it can reduce the number of male participants in the athletics program by not counting the indoor and outdoor team twice (a currently permissible but questionable practice), but allow the men's team to compete in indoor track meets as part of its maximum number of permissible competitions in outdoor track (an interesting NCAA rules historical loophole).

While it is good management practice to set a maximum limit on the number of participants in a varsity sport program based on the normal size of a team related to the rules and the nature of the sport in order to control costs and establish the best possible coach/athlete instructional ratio to support an elite level athletics experience, it is an unacceptable management practice to set different limits for the same men's and women's sport or higher limits for women's sports than men's sports when the purpose of such roster manipulation is purely to meet a participation proportionality goal and doing so results in discriminatory treatment of the underrepresented gender. The intent of the athletics director is all important when it comes to ethical conduct in sport.

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