



4-2022

Esports and Title IX: Addressing Scholarship Distribution Across Gender Lines in Collegiate Esports Programs

Adam Martin

Brigham Young University, adamjeffrey44@gmail.com

Follow this and additional works at: <https://scholarsarchive.byu.edu/byuplr>



Part of the [Civil Rights and Discrimination Commons](#)

BYU ScholarsArchive Citation

Martin, Adam (2022) "Esports and Title IX: Addressing Scholarship Distribution Across Gender Lines in Collegiate Esports Programs," *Brigham Young University Prelaw Review*: Vol. 36, Article 12.

Available at: <https://scholarsarchive.byu.edu/byuplr/vol36/iss1/12>

This Article is brought to you for free and open access by the Journals at BYU ScholarsArchive. It has been accepted for inclusion in Brigham Young University Prelaw Review by an authorized editor of BYU ScholarsArchive. For more information, please contact ellen_amatangelo@byu.edu.

ESPORTS AND TITLE IX: ADDRESSING SCHOLARSHIP DISTRIBUTION ACROSS GENDER LINES IN COLLEGIATE ESPORTS PROGRAMS

*Adam Martin*¹

I. INTRODUCTION

Over the past decade, college campuses have experienced a significant rise in varsity esports teams including, but not limited to, games such as *Fortnite*, *Rocket League*, *League of Legends*, *Overwatch*, *FIFA*, and *Madden NFL*. Colleges utilize esports programs not only to attract potential students and promote a diversity of interest on campuses, but also to capitalize on a recent and drastic increase in viewership rivaling that of traditional sports. For example, in 2019, 100 million viewers tuned into the League of Legends World Championship finals. In comparison, the World Series, NBA Finals, and Super Bowl garnered 14.1 million, 15.1 million, and 100.7 million viewers across all platforms, respectively.

In contrast to more traditional sports, however, esports are unique in that they present no physical barriers barring men and women from competing both alongside and against one another. Since its implementation in 1972, Title IX has protected people in the United States from discrimination on the basis of sex within any education program or activity receiving federal financial assistance. Naturally, the Education Amendment applies to collegiate athletic programs as well, binding traditional collegiate sporting institutions

¹ Adam Martin is a senior in the business school at Brigham Young University. He plans on attending law school and pursuing a career in both corporate and humanitarian law. He would like to thank his editor, Derrick Peterson.

to devote approximately equal funding and resources between male and female departments. Not only does the law require institutions to provide equal opportunity to participate in sports for men and women, but it also mandates that scholarships be awarded proportionally to participation.

In a recent sample of esports recruiting data from 27 public American universities, male gamers received 90.4% of roster spots and 88.5% of available scholarship funds. Approximately 41% of total gamers in the United States, however, are female.² Universities should sanction esports teams with varsity status and thus adhere to Title IX protections surrounding the allocation of athletic scholarships to ensure that female athletes receive an equal amount of fiscal support as do their male counterparts. Addressing the issues barring female student-athletes from receiving proportionate scholastic aid would not only benefit colleges profiting from esports viewership, but also further the educational opportunities of almost half of the esports population.

II. BACKGROUND

A. Collegiate Esports

In 1972, Stanford University held what is widely accepted as the first known video game competition for the game *Spacewar*. Since then, the appeal of electronic sports has expanded among demographics around the world. In 1991, the game *Street Fighter* popularized a player-versus-player competitive format (until that point, players competed with each other by way of high scores obtained during

2 Jake Seiner, *AP Study: Nearly 90% of Esports Scholarships Going to Men*, AP News (Mar. 12, 2021)

<https://apnews.com/article/esports-gender-inequality-scholarships-men-1823321276db40fea37dc8d9e5410643>

individual playing sessions).³ In the following years, large video game producers such as Nintendo began to hold worldwide competitions for their games. Now, both amateur and professional e-athletes can participate in a myriad of competitions held either online or in person. The most popular games currently include *League of Legends* and *Fortnite*. The industry has grown to the degree that global revenues hit \$1.1 billion in 2019, representing a 27% growth from 2018.⁴ North America accounted for more than a third of all revenue incurred. As esports have gained traction, universities around the world have begun to see increasing engagement among their students as an opportunity to capitalize on student talent. In 2014, Robert Morrison University in Chicago became the first college to announce a varsity esports program.⁵ In 2017, the collegiate esports division of Blizzard Entertainment—known for games such as *World of Warcraft*, *Overwatch*, and *StarCraft*—announced its intentions to hold tournaments for college-level esports teams in which they could win up to \$1 million in prizes⁶.

Currently, there are over 175 colleges and universities that offer varsity esports programs registered with the National Association of Collegiate Esports, otherwise known as NACE (College Gazette, 2021). One of the appeals of esports over traditional athletics to universities

-
- 3 Eric Patterson, *EGM Feature: The 5 Most Influential Japanese Games Day Four: Street Fighter*, EGM Now (Nov. 3, 2011) <https://web.archive.org/web/20170314064721/http://www.egmnow.com/articles/news/egm-featurethe-5-most-influential-japanese-gamesday-four-street-fighter-ii/>
 - 4 Hillary Russ, *Global esports revenues to top \$1 billion in 2019: report*, Reuters (Feb. 19, 2019) <https://www.reuters.com/article/us-videogames-outlook/global-esports-revenues-to-top-1-billion-in-2019-report-idUSKCN1Q11XY>
 - 5 Paul Tassi, *Illinois College Makes 'League of Legends' A Varsity Sport, Offers Scholarships*, Forbes. (June 20, 2014) <https://www.forbes.com/sites/insertcoin/2014/06/20/illinois-college-makes-league-of-legends- varsity-sport-offers-scholarships/?sh=12a3f78e3d35>
 - 6 Y. Wu, *Tespa to expand collegiate esports with \$1 million in scholarships and prizes*, ESPN (Aug. 16, 2017) https://www.espn.com/esports/story/_/id/20360800/tespa-expand-collegiate-esports-1-million-scholarsh+ips-prizes

is the inexpensive nature of the sport itself. For example, compared to football—which requires a stadium, extensive staff, and exorbitant expenses—esports’ highest expenses usually comprise only of equipment and travel. Though historically esports haven’t generated much revenue, recent changes have almost assuredly secured the rising industry’s profitability. In 2018, the Big Ten Conference and Riot Games decided on a two-year deal to support the Fox Corporation’s Big Ten Network’s *League of Legends* league.⁷ TV deals, such as this one, along with merchandising and ticket revenues, represent significant streams of revenue for esports at extremely low cost when compared to other athletic programs. As esports expand, more colleges and universities are going beyond sponsoring clubs to varsity teams and offering courses to teach students how to work in the field. Many such courses focus on business management, team development, broadcasting, and marketing. In fall of 2019, The Ohio State University took its esports program a step further and began offering a bachelor of science degree in esports (Schwartz et al., 2019). As the video game industry increases market engagement significantly year by year, so grows the incentive of colleges and universities to lay groundwork for successful programs on campus.

B. Athletic and Esports Scholarships

With the growth of collegiate esports programs rises the amount of scholarship funds granted to players. When Robert Morrison University (RMU) announced its varsity esports program, it also began offering scholarships to top players. Currently, over 115 colleges and universities offer scholarships for esports. Many utilize their scholarship opportunities to attract and recruit skilled high school students directly from tournaments. Esports scholarships offered currently range in type and value. For example, Miami University in Ohio—the first Division 1 university to offer esports scholarships—initiated their esports program by offering \$4,000 in scholarship funds to the 20

7 Alec Moylan, *How Colleges Benefit From Collegiate Esports*, EsportsTalk (Dec. 15, 2018) <https://www.esportstalk.com/blog/how-colleges-benefit-from-collegiate-esports-10901/>

students that comprise the varsity team. In 2018, New York University (NYU) began offering full-tuition esports scholarships⁸.

While esports scholarships granted by the colleges and universities themselves have increased, other non-profit organizations have sponsored students as well, some with the goal of increasing diversity in esports. Cxmmunity, one such non-profit, partnered with Microsoft and Verizon to host relatively high-budget esports tournaments at historically Black colleges and universities and grants scholarships to the players⁹.

C. The Esports Gender Gap and Title IX

Among other obstacles that women and girls experience in esports environments—as it pertains to both participation and employment—gender-based harassment from other players poses a significant roadblock to prolonged female engagement in esports. Despite the obstacles, approximately 41% of total gamers in the United States are female. However, an alarming, recent sample of esports recruiting data from 27 public American universities showed that male gamers received 90.4% of roster spots and 88.5% of available scholarship funds (Seiner, 2021). The impacts of missing out on such scholarship opportunities and the accompanying academic benefits include fewer female role models in esports, thus perpetuating the cycle for potential female gamers. Accompanying the disparity in scholarship distribution is the gender pay gap among professionals. Jordan Sundstein (better known by his screen name, “N0tail”) is currently the highest earning man in professional esports—his career earnings amounting to approximately \$7 million. By comparison,

8 College Gazette, *The 10 Best Colleges for Gamers & Esports Scholarships*, College Gazette (September 1, 2021) <https://colleg Gazette.com/best-colleges-for-gamers-esports-scholarships/>

9 J. Thompson, *College athletes are doubling as competitive gamers after the COVID-19 pandemic halted some college sports last year*, Insider (Aug. 30, 2021) <https://www.insider.com/college-athletes-are-becoming-competitive-gamers-after-pandemic-2021-8>

Sasha “Scarlett” Hostyn, the highest earning woman, has accrued just over \$300,000¹⁰.

Since 1972, the U.S. Department of Education’s Office for Civil Rights (OCR) has enforced the Title IX of the Education Amendments of 1972. Title IX uses case-by-case evaluation criteria to determine whether an athletic activity is considered a sport. Its three-pronged approach determines whether or not the activity has a governing body, program structure and administration, as well as team preparation and competition. Title IX also:

...protects people from discrimination based on sex in education programs or activities that receive federal financial assistance. Title IX states: No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance (DE, 2021).

In essence, Title IX mandates that men and women be offered equitable opportunities to participate in sports at the collegiate level. An important distinction is that Title IX does not require institutions to offer identical sports but instead an equal opportunity to participate¹¹.

Initiatives like Cxmmunity’s (mentioned above) show the private sector’s desire for diversity in scholarships for esports that is ignored due to lack of Title IX regulations. Interestingly, both RMU’s and NYU’s aforementioned scholarship offerings are merit, not athletic, scholarships, allowing the universities to avoid such federal gender protections and oversight.

Since its implementation in 1972, Title IX protects people in the United States from discrimination on the basis of sex under any education program or activity receiving federal financial assistance. Currently, women do not receive scholarship funds from universities

10 L. Darwin, *At colleges nationwide, esports teams dominated by men*, The Conversation (Mar. 12, 2021) <https://theconversation.com/at-colleges-nationwide-esports-teams-dominated-by-men-154793>

11 National Collegiate Athletics Association, *Q. How Is Title IX Applied to Athletics?*, NCAA Official Site (2021) <https://www.ncaa.org/about/resources/inclusion/title-ix-frequently-asked-questions>

with esports programs proportionate to their overall participation in esports. The Department of Education's Office of Civil rights, which oversees Title IX implementation, currently does not have a concrete definition for "sport." Instead, they evaluate any given activity as a "sport" under Title IX on a case-by- case basis using the following three criteria: whether or not the activity has a governing body, program structure and administration, as well as team preparation and competition. The only question surrounding esports qualifying pertains to whether or not it has a governing body. If a governing body for the esports domain were identified, Title IX protections would be legally guaranteed since esports programs clearly fulfill the latter two criteria. The National Association of Collegiate Esports (NACE) effectively serves the role of a governing body for collegiate esports programs, and should qualify them for Title IX application surrounding scholarship distribution on the basis of sex.

III. PROOF OF CLAIM

A. Biediger v. Quinnipiac University

On April 16, 2009, five Quinnipiac University women's varsity volleyball players and their coach filed a lawsuit against Quinnipiac University in response to the announced decision to cut its women's volleyball team. Represented by the ACLU, the plaintiff asserted that by canceling this program, the University was in direct violation of Title IX of the Education Amendments of 1972¹² and its regulations, meaning that after the elimination of stated women's sports programs and rosters, women would be denied the equal participation in sports and scholarships guaranteed by the law. Quinnipiac University claimed that by replacing the volleyball program with a competitive cheer team, the equal varsity sport and scholarship statutes of Title IX were met. After a trial spanning from June 21 to June 25, 2010, a judge concluded that the University's competitive cheerleading team did not qualify as a varsity sport under the

12 Education Amendments Act of 1972, 20 U.S.C. §§1681 - 1688 (2018).
Title IX (Education Amendments Act of 1972, 2018)

legislation of Title IX and its members could not be counted as athletic participants under the statute¹³. The Judge stated, "Competitive cheer may, sometime in the future, qualify as a sport under Title IX; today, however, the activity is still too underdeveloped and disorganized to be treated as offering genuine varsity athletic participation opportunities for students."¹⁴ In the process of the investigation and trial, additional violations of Title IX were discovered at Quinnipiac University and the court determined that the elimination of the women's volleyball program would exacerbate the already existing problem. Furthermore, the court required the University to form a compliance plan to Title IX regulations within 60 days as well as ensure that any cancellation of women's programs be accompanied with changes that would keep the University in compliance with the stated regulations.

Biediger v. Quinnipiac University exemplifies a challenge to the unequal distribution of athletic scholarships on the basis of sex. The court ruling in favor of the Quinnipiac University Volleyball team is a ruling in favor of women's representation in all collegiate sports under Title IX. The designation of esports as a "gamer" activity is definitely part of the issue when it comes to female participation from the debut. Second, the Judge's ruling on the legitimacy of cheerleading as a varsity sport is particularly pertinent to our claim. The ruling and reasoning of the Judge in this case regarding the definition of a varsity sport according to Title IX provides the legal basis for establishing e-sports as a varsity sport. For an activity at a school to be considered a varsity sport, certain requirements must be met.

B. Definitions of Collegiate Athlete and Varsity Collegiate Sport, According to Title IX

Paramount to the classification of esports as athletics is Title IX's classification of a collegiate athlete. Title IX currently defines inter-collegiate athletes as those:

13 *Biediger v. Quinnipiac Univ.*, No. 10-3302 (2d Cir. 2012)

14 *Id.*

(a) Who are receiving the institutionally-sponsored support normally provided to athletes competing at the institution involved, e.g., coaching, equipment, medical and training room services, on a regular basis during a sport's season; and (b) who are participating in organized practice sessions and other team meetings and activities on a regular basis during a sport's season: and (c) who are listed on the eligibility or squad lists maintained for each sport, or (d) who, because of injury, cannot meet a, b, or c above but continue to receive financial aid on the basis of athletic ability¹⁵.

In order for Title IX to apply to scholarship distribution, the participating program must be categorized as "sport" by the United States Department of Education's Office of Civil Rights (OCR). "The *Biediger v. Quinnipiac University* case established deference to the OCR's intercollegiate athletic activity guidelines defining sport, as outlined" within the OCR's 2008 *Dear Colleague* letter entitled *Guidance for Athletic Activities Counted for Title IX Compliance*.¹⁶ According to the United States Department of Education Code of Federal Regulations (CFR):

[T]o the extent that a recipient [of federal funding] 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 interscholastic or intercollegiate athletics. [Additionally,] 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...¹⁷

As is shown above, the equitable distribution of scholarships to both men and women is tantamount to a school receiving federal funding.

15 US Department of Education, *Guidance on Athletic Activities Counted for Title IX Compliance*, (Sep. 17, 2008)

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20080917.html>

16 *Id.*

17 Education Amendments of 1972, 20 U.S.C. §1681 et seq.

In the policy guidance, the OCR explains that the department does not currently function with a formal definition for what constitutes a collegiate “sport”—it instead evaluates the given activity’s governing body, program structure and administration, as well as its team preparation and competition to determine its intercollegiate or interscholastic athletic status.¹⁸ Currently, the National Collegiate Athletic Association (NCAA) serves as the governing body for most varsity sports. However, the NCAA does not accept esports as an athletic activity under their supervision. According to the NCAA, “a sport shall be defined as an institutional activity, sponsored at the varsity or club level, involving physical exertion for the purpose of competition against teams or individuals within an intercollegiate competition structure.”¹⁹ Despite the NCAA’s reluctance to grant esports athletic status, 175 universities currently offer officially recognized varsity esports programs, many of which function under the universities’ athletic departments.²⁰ Participating students in such programs can receive partial or full-ride athletic scholarships from the schools.²¹ While the NCAA does not wish to function as an OCR-approved governing body for collegiate esports programs, there are organizations that could and do effectively fill this position.

C. The National Association of Collegiate Esports as a Governing Body

The National Associate of Collegiate Esports (NACE) is a nonprofit organization composed of and on behalf of its member institutions.

18 US Department of Education *supra* note 15

19 National Collegiate Athletics Association, *NCAA Emerging Sports for Women Program Process Guide* (Sep. 10, 2021)

https://ncaaorg.s3.amazonaws.com/inclusion/emspports/INC_EmergingSportsFor-Women-ProcessGuide.pdf

20 M. Smith, *Colleges flip the switch on esports*, Sports Business Journal (Apr. 24, 2017) <https://www.sportsbusinessdaily.com/Journal/Issues/2017/04/24/Colleges/esports.aspx>

21 NCSA Home Page, *List of Colleges with Varsity Esports Programs*, (Sep. 15, 2021)

<https://www.ncsasports.org/college-esports-scholarships/varsity-esports>

Its members work together to develop the structures and tools needed for the advancement of collegiate esports in the varsity space. At the time of NACE's formation, only seven colleges and universities offered varsity esports programs. The first collegiate esports summit was held in Kansas City, Missouri, on July 28, 2016. As of June 2019, over 94% of all U.S. varsity esports programs are members of NACE, with more schools exploring the possibility of esports within their curriculum.²² NACE is now the largest national association of varsity esports programs at colleges and universities across the nation. The organization works together to lay the groundwork in areas such as eligibility, graduation, competition, and scholarships. NACE serves more than 170 member schools and 5,000 student-athletes, distributes over \$16 million in esports scholarships and aid each year, holds an annual national convention, and runs its own secure discord server (voice-over software) for coaches, athletic directors, and more. NACE could effectively serve as a governing body over esports, allowing the final stage in Title IX's classification of a "sport" to be satisfied.

In fact, it was also the lack of equity between men and women in esports that caused the NCAA to refrain from getting involved in the esports space. As a result of concerns over the male dominance of esports and the extreme violence of some titles, the NCAA's Board of Governors decided to avoid getting involved in esports on an organizational level in 2019.²³ Additionally, governing bodies devoted to esports could expand, including NACE, which was founded in 2016. Theresa Gaffney, head esports coach at Messiah University, contends that paying NACE fees for its governance helps legitimize collegiate esports in the eyes of inexperienced or skeptical university administrators—one study of NACE's institutional members found that 40% of the esports teams are administered by athletic departments and 40% are administered by student affairs or some other

22 National Academy of Collegiate Esports, *About, NACE* (Sep. 10, 2021) <https://nacesports.org/about/>

23 Andrew Hayward, *NCAA Votes to Not Govern Collegiate Esports*, Sports Business Journal, (May 17, 2019) <https://archive.esportsobserver.com/ncaa-nogo-collegiate-esports/>

student services department. “There’s validation in saying, ‘hey, my program will be a member of NACE,’” Gaffney said. There are also a few other governing bodies in the collegiate esports space, including the Electronic Gaming Federation, the American Collegiate Esports League, and the Riot-Games-owned RSAA.²⁴ These other organization bodies, however, could still count as governing bodies for the purposes of Title IX. There is nothing in the language of Title IX that would prohibit a sport having multiple governing bodies as opposed to one²⁵.

Some universities have opted not to be members of a national governing body in order to enter independently organized collegiate leagues that are based around individual game titles. For example, some of the largest esports programs such as Akron (2019 spring Collegiate Rocket League Champions), University of California Irvine (2018 College League of Legends Champion), and University of Utah (runner-up in the inaugural 2019 ESPN Collegiate Esports Championship) are not members of NACE. This is due to the fact that game publishers own the intellectual property rights to the games being played, and more and more prefer to organize these tournaments themselves.²⁶

D. The Issue of Female Participation

While women certainly deserve an equal share of esports scholarship under Title IX, opponents might bring up the issue of female participation in the first place. In terms of viewership alone, women comprised only 23% of the esports audience in the mid-2010’s. As

24 Alexander Lee, *Collegiate esports companies and organizations prepare for the future following a COVID-19 bump*, Digiday (Sep. 28, 2021) <https://digiday.com/marketing/the-rundown-collegiate-esports-companies-and-organizations-prepare-for-the-future-following-a-covid-19-bump/>

25 Education Amendments Act of 1972, 20 U.S.C. §§1681 - 1688 (2018). Title IX (Education Amendments Act of 1972, 2018)

26 D. Walton, L.M. Lower-Hoppe, M. Horger, *Do Esports Classify as Inter-collegiate Sport? Legal Analysis of Title IX*, Journal of Issues in Intercollegiate Athletics (2020)

http://csri-jiia.org/wp-content/uploads/2020/04/RA_2020_05.pdf

of 2019, the proportion rose to 30%. When it comes to the purchasing of video games, women find themselves on equal footing with men; 48% of women play video games, compared with 50% of men. The self-appointed designation of a “gamer,” however, is not as popular—just 9% of video-game-playing women self-identify as “gamers.”²⁷ Taking a closer look at how many women around college ages are interested in video games is also insightful. Between the ages of 18-29, 57% of women self-identify that they play video games. Comparatively, 77% of men of the same age group also say they play video games. Of those 77%, 33% of men would call themselves “Gamers,” while still only 9% of women would call themselves such.²⁸

Although NACE could effectively serve as a governing body under Title IX stipulations, further evidence reveals that males dominate collegiate esports rosters, with Bauer-Wolf predicting that 90 percent of NACE’s student esports population is male (at the collegiate level, there is limited data on the actual percentage of female “gamers”).²⁹ The issue of female participation, however, is put into perspective by regarding the gendered history of other collegiate sports. In 1975, Brown University became the first college to “grant

27 Andrew Perrin, *5 Facts About Americans and Video Games*, Pew Research Center (Sep. 17, 2018)

<https://www.pewresearch.org/fact-tank/2018/09/17/5-facts-about-americans-and-video-games/>

28 Maeve Duggan, *Gaming and Gamers*, Pew Research Center (Dec. 15, 2015)

<https://www.pewresearch.org/internet/2015/12/15/gaming-and-gamers/>

29 Jeremy Bauer-Wolf, *Video Games: Entertainment or Sports?*, Inside Higher Ed (Feb. 12, 2019)

<https://www.insidehighered.com/news/2019/02/12/new-frontier-college-athletics-video-games>

full varsity level status” to its women’s soccer team.³⁰ At that time, female participation in the sport was still very slight³¹.

For example, in the NCAA’s report on year-by-year sports participation from 1981-1982 – 2017-2018, they reported 22 women’s soccer Division I varsity teams, 10 Division II teams, and 48 Division III teams, for a total of 80 teams of 1,855 athletes in total.³² In contrast, men’s varsity soccer teams numbered 521, with a total of 12,957 athletes in total.³³ In 2017-2018, however, women’s soccer teams numbered 333 Division I teams, 267 Division II teams, and 438 Division III teams.³⁴ Overall, there were 1,038 women’s soccer teams, and a total of 27,811 athletes, only second to Track and Field in terms of participation.³⁵ By comparison, in 2017-2018, the NCAA reported 832 men’s teams over all three divisions and a total of 25,072 male athletes.³⁶ Illustrated below is the change over time between male and female participation in soccer, making it one of the most highly-participated sports among women currently.

According to data released by the NCAA in 2020, women’s soccer players made up 28,310 of the 499,217 student-athletes who participated at its institutions last year, overtaking outdoor track and field competitors as the most common female collegiate athletes in

30 Amy Wimer-Schwarb, *How Women Got a Foot in the Game*, NCAA Champion Magazine, (July, 2019)

<http://s3.amazonaws.com/static.ncaa.org/static/champion/how-women-got-a-foot-in-the-game/index.html>

31 *Id.*

32 National Collegiate Athletics Association, *NCAA Sports Sponsorship and Participation Rates Database*, NCAA (2018) https://ncaaorg.s3.amazonaws.com/research/sportpart/Oct2018RES_2017-18SportsSponsorshipParticipationRatesReport.pdf

33 *Id.*

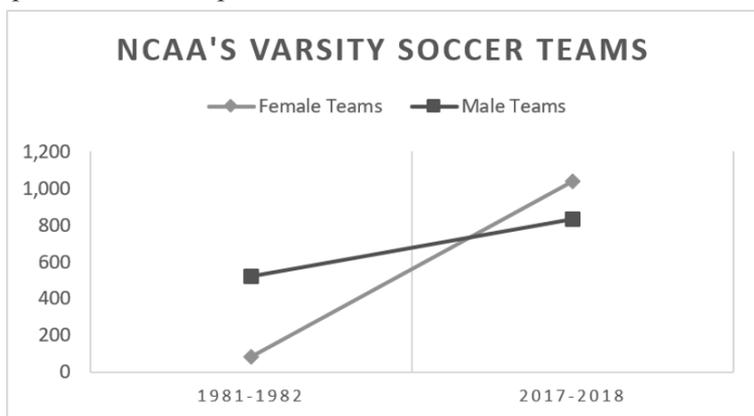
34 *Id.*

35 *Id.*

36 *Id.*

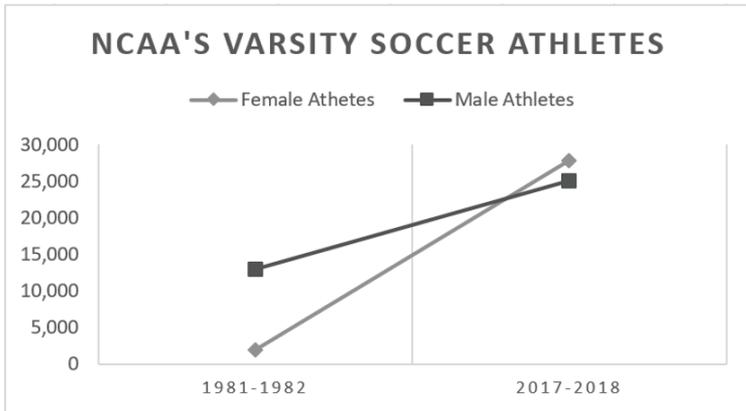
the country with 30,326 last year.³⁷ As for esports, an increase in female participation at the college level is only a matter of time and commitment on behalf of universities and policymakers to ensure equitable opportunities for women, as they currently make up at least 40% of the esports community as a whole. Similar to women's participation in soccer, it is reasonable to assume that women's participation in esports will rise to rival that of men. Because of such projections, adequate protections must be ensured under Title IX.

Some might argue that Title IX's application to esports teams would demand that other "non-traditional" sports receive similar statuses (e.g., chess, LARP-ing, Quidditch). If these inclusions serve to protect women, however, the principle still stands as long as any one of the aforementioned activities fulfills all four of Title IX's requirements for a sport.



*NCAA's Varsity Male and Female Soccer Teams from 1981-1982 – 2017-2018, obtained from NCAA Sports Sponsorship and Participation Rates Report, October 2018.*³⁸

-
- 37 National Collegiate Athletics Association, *NCAA Sports Sponsorship and Participation Rates Database (1956-57 through 2019-2020)*, NCAA (2020) https://ncaaorg.s3.amazonaws.com/research/sportpart/2019-20RES_SportsSponsorshipParticipationRatesReport.pdf
- 38 National Collegiate Athletics Association, *NCAA Sports Sponsorship and Participation Rates Database*, NCAA (2018) https://ncaaorg.s3.amazonaws.com/research/sportpart/Oct2018RES_2017-18SportsSponsorshipParticipationRatesReport.pdf



*NCAA's Varsity Male and Female Soccer Athletes from 1981-1982 – 2017-2018, obtained from NCAA Sports Sponsorship and Participation Rates Report, October 2018.*³⁹

In principle, we should not sacrifice the possibility of equal opportunity over the altar of semantics when the effects of discrimination are just as prevalent as they were with more traditional sports such as soccer only half a century ago.

IV. CONCLUSION

As esports programs continue to expand across the country, legal issues and hurdles are bound to appear, and should be addressed accordingly and in due time. The misrepresentation of women in the realm of esports however, is a particularly pertinent issue that's time has come, and actions can and should be made in order to ensure the Title IX protection in the realm of esports.

Title IX protects people in the United States from discrimination on the basis of sex under any education program or activity receiving federal financial assistance. Currently, women do not receive scholarship funds from universities with esports programs proportionate to their overall participation in esports. The case of *Biediger v. Quinnipiac University* provides solid precedent suggesting that a

case challenging the under-representation of female student-athletes according to Title IX can be not only argued, but won. To meet the standards of The Department of Education's Office of Civil Rights, it must be proven that esportsing programs have an active and functioning governing body. The National Association of Collegiate Esports (NACE) effectively serves the role of a governing body for collegiate esports programs, qualifying them for Title IX application surrounding scholarship distribution on the basis of sex.

If successfully applied, Title IX regulations would encourage the participation of female participants in collegiate esports programs across the country, a phenomenon that would continue the already exponential growth of the sport as a whole. Recruiting in this field will also shift as a result of Title IX protection as teams will be required to seek diversity in sex when looking for participants and athletes eligible for scholarships. As the field diversifies, so will the games involved, creating a sport more reflective of the world in which it exists, in turn opening the door for other marginalized groups to participate in the ever-growing industry. As the October 2018 Study⁴⁰ by the NCAA shows, the amount of women's soccer teams and athletes which was far outnumbered by that of men in 1981-82, has overtaken the number of men's teams by the year 2018. Similar growth should be expected by the amount of female esports athletes in the coming years if the arguments made in this paper are made and enacted on a national level. Esports is on the precipice of massive growth and success in the new digital age. If this is to continue in a legal and just way, equal representation for all should be met and protected by law.

40 National Collegiate Athletics Association, *NCAA Sports Sponsorship and Participation Rates Database*, NCAA (2018) https://ncaaorg.s3.amazonaws.com/research/sportpart/Oct2018RES_2017-18SportsSponsorshipParticipationRatesReport.pdf

