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# Sixth Circuit Holds Interest & Ability Required to Add Teams, Signals Title IX Athletics Regs Outdated

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Title IX requires schools receiving federal financial assistance to "**provide equal athletic opportunity for members of both sexes**." But can Title IX plaintiffs force a university to create Division I varsity teams based largely on interest surveys? On January 20, 2026, the U.S. Court of Appeals for the Sixth Circuit's answer was no, affirming a post–bench trial judgment for the University of Kentucky ("UK").

Under the **Department of Education's 1979 guidance**, a school is considered in compliance with Title IX's participation-opportunities requirement if it shows that: (1) athletic opportunities are substantially proportionate to undergraduate enrollment; (2) that it has a history and continuing practice of expanding opportunities for the underrepresented sex; or (3) that it fully and effectively accommodates the interests and abilities of the underrepresented sex.

In ***Niblock v. University of Kentucky***, female students alleged UK violated Title IX because it refused to create a women's lacrosse team, field-hockey team, and equestrian team (UK does not have a men's lacrosse team, field-hockey team, or equestrian team). After a three-day bench trial, the district court agreed with the plaintiffs that UK did not provide "substantially proportionate" athletic opportunities for women, and that UK's efforts did not demonstrate a history and continuing practice of expanding opportunities for the underrepresented sex. Nonetheless, the court found that UK had fulfilled the demand for varsity athletics spots by female students who had an interest in, and the skills required for, competing at a Division I level, thereby complying with Title IX.

In arriving at that conclusion, the district court relied on the results of an annual student survey, which indicated that for women's equestrian, 244 students were interested and 122 claimed they could compete, but only 34 reported Division I recruitment. Only 11 cleared athletics requirements and agreed to follow student-athlete rules, and only 9 provided contact information, far below a typical equestrian roster of about 40 athletes. For women's field hockey, 60 students expressed interest, but only 13 reported objective indicators of Division I ability, and only 3 provided contact information, compared to a typical field hockey roster of about 25 athletes. And finally, for women's lacrosse, 136 students expressed interest, but only 19 reported objective indicators of Division I ability, and none provided contact information, against a typical lacrosse roster of about 34 athletes. Based on these results, UK did not have enough female students who wanted to and could compete on the requested varsity teams, and thus the court found no Title IX violation.

The Sixth Circuit affirmed, holding that "Title IX does not require schools to manufacture interest in a team or field teams unable to compete at a meaningful level." Its analysis—like that of the district court—turned on the third prong of the Department of Education's 1979 guidance: whether the institution's program "fully and effectively accommodates" the interests and abilities of the underrepresented sex. It noted that the surveys "by themselves cannot make up for the absence of evidence of individuals who want to play these varsity sports and have shown an ability to do so" on a Division I level and thus focused on the distinction between generalized expressions of interest and the type of evidence needed to demonstrate Division I–level ability and team viability. Plaintiffs relied heavily on UK's annual student athletics-interest survey and related club-sport evidence. But the court credited UK's position that self-reported survey responses—particularly where students did not provide identifying information or objective indicia of competitive

readiness—did not establish that UK could assemble rosters capable of competing at the Division I level.

And the Sixth Circuit agreed that the district court was entitled to treat the survey as imperfect evidence of ability and to instead credit the practical reality that a university cannot field a team from anonymous, unverifiable responses. The court also highlighted roster-size benchmarks in the record and the district court's finding that the numbers of students demonstrating objective readiness (and willingness to be contacted and participate) fell materially short of what would be required to assemble viable, Division I teams in the three sports at issue.

Thus, under "prong 3" of the analysis, even where women are underrepresented in varsity roster spots compared to overall enrollment, plaintiffs still must prove sufficient current student "interest and ability" to create a new Division I team. That showing, the Sixth Circuit said, was not made by the female class plaintiffs.

Two judges wrote separately to go a step further than the majority opinion, specifically calling into question the future viability of the 1979 guidance. The concurring judges observed that, after the Supreme Court's seminal 2024 decision in ***Loper Bright v. Raimondo***, courts no longer afford deference to agency interpretations of statutes and regulations (here, the Department of Education's interpretation of Title IX). They noted that this development could warrant revisiting 1979 guidance in an appropriate case, and they offered preliminary guideposts for how that reassessment might proceed. In particular, the concurrence questioned the "substantial proportionality" prong, reasoning that achieving proportionality may pressure universities to eliminate men's teams, thereby depriving male students of athletic opportunities on the basis of sex. At the same time, the concurrence acknowledged the significant complexity that would accompany replacing the 1979 framework and therefore left any reworking of that guidance for another day.

For higher-education and athletics stakeholders, the decision reinforces that underrepresentation alone is not dispositive in participation-opportunity claims.

Should your institution have questions about the decision or its application to your institution, please do not hesitate to contact the authors of this alert or your Miller Canfield attorney.