

**Chalenor, et al. v. University of North Dakota,**  
291 F.3d 1042 (8th Cir. 2002)  
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Plaintiffs, participants and recruits of the wrestling program at the University of North Dakota, appeal a motion for summary judgment granted to Defendant, the University of North Dakota. The question for the United States Court of Appeals for the Eighth Circuit is whether Title IX of the Education Amendments of 1972 ("Title IX") prohibits the Defendant from eliminating its men's wrestling team due to budget constraints and the inequality of athletic participation between the Defendant's male and female athletes. The court affirmed the district court's decision to grant summary judgment in favor of the Defendant.

Title IX prohibits educational institutions receiving federal financial support from engaging in sex-based discrimination. The regulations promulgated to implement the statute state in relevant part: "A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the director will consider, among other factors: whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes." The policy interpretation of this language requires an athletic program to meet one of three standards to accommodate the interests and abilities of members of both sexes. Further, a clarification memorandum was issued to provide guidance and stated in relevant part: "an institution [has] three individual avenues to choose from when determining how it will provide individuals of each sex with nondiscriminatory opportunities to participate in intercollegiate athletics." Finally, courts are required to give deference to an agency's interpretation of its own regulations, if the regulations are ambiguous.

Here, the court found that the regulations were ambiguous. Specifically, the court found that the language which states: "equal athletic opportunity for members of both sexes" and "effectively accommodate the interests and abilities of members of both sexes," was ambiguous. In support of its conclusion, the court referenced the number of lawsuits that ensued immediately after promulgation of the Title IX regulation. Since the language was deemed ambiguous, deference was owed to the agency's interpretation of it. The court found that the Defendant was trying to comply with the statute and its interpretation when it decided to cut the men's wrestling program and that Title IX does not require proportionality, as the Plaintiff correctly argues; however, it does not forbid it either. Further, the gender make-up of the athletic participation is relevant in determining whether a school is in compliance.

Finally, although a private donor offered to fund the men's wrestling program, the court found that the donor was not specific about how much he would provide or how long the funding would continue. Moreover, once a university receives a monetary donation, the funds become public money, subject to Title IX's legal obligation in their disbursement and, further, a university has no obligation to accept the donation.

In construing the policy interpretation and the text of Title IX, a university may bring itself into Title IX compliance by decreasing athletic opportunities for the overrepresented gender when the university is under budget constraints even if there is an outside private donor willing to contribute to the program being cut.