

Neal v. Board of Trustees of California State Universities
189 F.3d 763, (Cal. 1999)
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The Board of Trustees of the California State Universities ("BTCSU") and other defendants appealed a district court order granting the motion of Neal and other plaintiffs for a preliminary injunction. Neal's suit alleged that the decision of California State University, Bakersfield ("CSUB") to reduce the number of spots on its men's wrestling team, undertaken as part of the university-wide program to achieve "substantial proportionality" between each gender's participation in varsity sports and its composition in the campus' student body violated Title IX and the Equal Protection Clause of the U.S. Constitution. The district court determined that Title IX was violated but declined to reach merits for the constitutional challenge. The Supreme Court of California reversed and vacated the injunction.

Title IX was Congress's response to significant concerns about discrimination against women in education and requires schools receiving federal funding provide equal athletic opportunity for members of both sexes. *Cohen v. Brown University* sets forth a three-part test to assess whether a school's athletic program is in compliance with Title IX. A university's athletics program is Title IX compliant if it satisfies one of the following conditions: (1) 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 underrepresented among intercollegiate athletes...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 (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...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. The appellees challenged the first part of this test.

Every court, in construing the policy interpretation and the text of Title IX, has held that a university may bring itself into Title IX compliance by increasing athletic opportunities for the underrepresented gender (women in this case) or by decreasing athletic opportunities for the overrepresented gender (men in this case). The court also held reversal was warranted because the district court failed to defer properly to the interpretation of Title IX put forward by the administrative agency that is explicitly authorized to enforce its provisions, the Department of Education. The Department of Education said the nondiscrimination principle set forth in 20 U.S.C. § 1681(a) did not bar remedial actions designed to achieve substantial proportionality between athletic rosters and student bodies.

The court ruled that an institution in which male athletes are overrepresented can bring itself into Title IX compliance by reducing the number of roster spots available to men. In addition the court dismissed any equal protection claims because Title IX was substantially related to the objective of prohibiting educational institutions from discriminating on the basis of sex.