Title IX Compliance Creates Hurdles for Collegiate eSports Programs

Article
03.01.2019
By Erick Orantes and Aalok Sharma

The esports marketplace is growing rapidly. In a recent equity research report, Goldman Sachs estimated that monetization for esports will expand to $3 billion by 2022. This growth has filtered down from professional leagues to amateur organizations, including numerous colleges and universities. While schools attempt to capitalize on this growth, they face significant challenges when it comes to equal participation among men and women.

In 2014, Robert Morris University created a collegiate level esports team administered by the university’s athletic department. Since 2014, several dozen college programs created similar esports teams to cater to this group of emerging athletes. The demand for a more developed college-to-professional esports pipeline is mounting, as several experts see universities as hospitable foundations to help this industry grow and stabilize as a whole.

However, colleges and universities face significant challenges because of the implications of Title IX of the Education Amendments of 1972. Specifically, Title IX provides that, “[n]o 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.”

Ensuring Title IX compliance has proven challenging for esports, as professional leagues suffer from a stark gender imbalance. Almost 50 percent of video game enthusiasts are women, yet women are estimated to make up only five percent of professional esports athletes. Female athletes frequently face cultural aggravations, pay gaps, cyberbullying and harassment, and hostile team cultures when gaming online. Under Title IX, an equitable and fair apportionment of esports opportunities is necessary for compliance. This illustrates a major hurdle for colleges: how to keep young women playing through high school and
Title IX Compliance Creates Hurdles for Collegiate eSports Programs

college to create more scholarship opportunities for gender equally.

While Title IX makes no mention of collegiate athletics, the Department of Education has interpreted Title IX to require colleges and universities to “provide equal athletic opportunities for members of both sexes.” Moreover, several factors are examined to determine whether a college or university is complying with Title IX. These factors include travel and per diem allowance, scheduling of games and practice times, opportunities to receive coaching and academic tutoring and publicity. The Department of Education has announced guidance, termed the “Three-Part Test,” that ensures Title IX Compliance. Specifically, the test states compliance under Title IX is evaluated by analyzing:

(1) Whether intercollegiate-level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments;

(2) Where the members of one sex have been, and are, underrepresented among intercollegiate athletes, and whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest[s] and abilities of the members of that sex; or

(3) Where 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, and whether 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.

Several courts have utilized the Three-Part Test to determine compliance with Title IX in cases regarding collegiate sports. In general, schools are considered compliant if they can meet any of the prongs of the test. Generally, this means that as long as the number of female athletes is proportional to the total number of female students, the school is in compliance with Title IX.

There are many ways a university can ensure Title IX compliance and promote equality within esports and online gaming culture. Universities may rely on currently existing sports programs as a template to implement esports enrollment and opportunities—after all, almost all Title IX decisions were made with these traditional sports programs in mind.

Many colleges and universities also maintain structural mechanisms to enforce anti-bullying and harassment policies. To further this effort, universities should consider cyberbullying awareness specifically in esports, and actively train teams, coaches and faculty advisors to combat bullying. Moreover, esports clubs should actively focus on recruiting more women by appealing to other collegiate clubs and student-led organizations. Some schools—and professional esports teams—are already taking the lead in attracting high school women by hosting all-girls esports summer camps to create a pipeline for female athletes.
Title IX Compliance Creates Hurdles for Collegiate eSports Programs

Compliance with these policies opens opportunities for millions of women. By complying with Title IX, universities can change an entire industry’s culture by promoting professional female athletes and closing the gender gap in esports. By awarding scholarships proportionally, expanding opportunities and providing equal accommodations for female athletes, professional leagues can mimic these best practices when recruiting more women in their rosters.

ATTORNEYS

Erick F. Orantes
Aalok K. Sharma

RELATED CAPABILITIES

Sports & Recreation