

Since 1988, when Congress made clear that Title IX of the Education Amendments of 1972 applied to all programs and activities at educational institutions that receive federal funding, much controversy has surrounded the question of how to determine whether an educational institution has provided equitable athletic participation opportunities to female undergraduates. Much of the debate has focused on the meaning of the three-part test for effective accommodation issued in 1979. In March of 2005, the U.S. Department of Education's Office of Civil Rights issued its third major clarification of the 1979 policy interpretation, addressing how an educational institution may use a survey to determine whether it has fully and effectively satisfied the athletic interests and abilities of female students absent substantial proportionality. This article examines this new clarification and addresses some of the public controversy surrounding its release.