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Long Fights for Sports Equity, Even With a Law

By KATIE THOMAS

In 1998, the University of Southern California was accused of denying its female students a fair chance at participating in sports. Thirteen years later, the federal agency charged with investigating sex discrimination in schools has not completed its inquiry of U.S.C.

In 2008, the same federal agency, the Office for Civil Rights, came across evidence that Ball State University in Indiana was losing a disproportionate number of women's coaches. But the agency opted to let Ball State investigate itself. After a two-week inquiry, during which Ball State failed to interview a single coach, the university concluded that there was no evidence that any of the coaches had been unfairly treated or let go.

The federal law known as Title IX — requiring schools at all levels across the country to offer girls and women equal access to athletics — has produced a wealth of progress since it was enacted almost four decades ago. Almost no one disputes that.

But scores of schools, year in and year out, still fail to abide by the law. For those schools, almost no one disputes this: There is little chance their shortcomings will ever be investigated, and even if they are, few will be meaningfully punished.

According to a review by The New York Times, the Office for Civil Rights allows cases of suspected discrimination to drag on for years, long after the affected athletes have graduated.

The office — whose staff of 600 full-time employees at its Washington headquarters and 12 regional offices must juggle a variety of cases, including those for disability, age and race discrimination — routinely asks schools to investigate themselves and to develop their own plans for fixing problems. Not surprisingly, the process can lead to further delays and little change.

The Office for Civil Rights certainly has the power to enforce the law: any school that is found to be violating Title IX risks losing its federal funds. But that punishment has never

been used since Congress passed the law in 1972. And the office cannot cite any instance in which a case of suspected discrimination against female athletes was referred to the justice department for additional action. The situation has led many to ask how a federal law can be effective if it is not significantly enforced.

Russlynn Ali, leader of the civil rights office, acknowledged that discrimination endures and that enforcement has frequently been lax or delayed. "Some progress," she said, "is not enough progress when it comes to ensuring that this country protects students from discrimination."

Ali, who was appointed by President Obama in 2009, said her office had become more aggressive over the last two years, initiating more investigations and taking on some of the most successful athletic programs in the country. The office, for example, has recently opened investigations of Louisiana State University and Butler University, whose men's basketball team has reached the national title game the last two years.

She said "institutions that folks may have perceived as being off-limits" would be looked at and held accountable. "Nobody gets a free pass," she said.

Janet Judge, a lawyer who advises universities that are involved in Title IX investigations, said she had noticed a difference since Ali's arrival. "Enforcement is at the highest level I've seen in my almost 20 years of Title IX practice," she said.

But it is clear that creating confidence in a new era of aggressive enforcement will take work.

"Unfortunately what we see is that many schools are getting away with providing fewer opportunities to girls because they don't do what they're supposed to unless made to," said Neena Chaudhry, senior counsel at the National Women's Law Center.

Current and former enforcement officials insist they have worked hard to mount meaningful investigations, and they defended the policy of allowing schools to investigate themselves. Most schools, they said, want to correct their problems once they learn they are violating the law.

For every Ball State or U.S.C., there are also examples of cases in which investigations by the office yielded significant results. Earlier this year, Lincoln Land Community College in Illinois added a practice field for the women's softball team, installed two new bullpens, and agreed to give softball and baseball players equal access to batting cages. And Southeastern Community College in Iowa agreed to expand the size of its women's basketball court, and to give the baseball and softball team equal access to lighted fields.

Complaints involving Title IX — and athletics in particular — make up a tiny minority of cases for the Office for Civil Rights, but because of the political weight they often carry, they are among the most time-consuming and closely scrutinized that the office handles, according to interviews with several former civil rights office employees.

“The arena is remarkably politicized,” said Arthur Coleman, who served as senior policy adviser at the Office for Civil Rights during the Clinton administration.

The U.S.C. inquiry illustrates how a complex case and a reluctance to cooperate translated into the longest-running Title IX athletics investigation in the office’s caseload.

Linda Joplin, a member of the California chapter of the National Organization for Women, made national headlines when she filed a complaint in 1998 against U.S.C., an athletic powerhouse whose football team is a perennial contender for the national title. The university is private but is subject to Title IX because it receives federal assistance in the form of grants and student aid. Joplin alleged that female athletes at U.S.C. lagged significantly behind men, and women were being denied their fair share of scholarship dollars and other sports spending.

After the Office for Civil Rights began its investigation, U.S.C. dug in its heels, recalled Patricia Shelton, the longtime lead investigator on the case, who has since retired.

U.S.C. insisted it was doing right by its female students, offering them, for example, the maximum number of athletic scholarships permitted under the rules.

But Shelton, the agency’s investigator, said the university also declined to turn over key financial data that would have shown whether it was spending equal amounts of money on men’s and women’s teams. Kelly Bendell, a lawyer for U.S.C. who has worked on the case since 2000, said the university had complied with all requests for information after initially resisting because of concerns about turning over proprietary financial data.

Disputes over basic information explain only parts of the nearly endless case. Bendell, the lawyer for the university, said the agency conducting the investigation “seemed to drop the matter” for five years, with no contact between it and U.S.C. from 2003 to 2008.

Shelton, the lead investigator, said responsibility for delays rested with her superiors in Washington. She said she repeatedly wrote up her findings, only to be told they were out of date and needed to be resubmitted.

She said she suspected that Washington officials were reluctant to criticize a major athletic program like U.S.C.'s. "There would have been a lot of political fallout," she said. "Why would they want that?"

Over the years, U.S.C. has improved its offerings to women, increasing its scholarship aid to female athletes and announcing plans to add women's lacrosse and sand volleyball teams.

The university says its actions have resolved any dispute with the Office for Civil Rights.

Ali, the head of O.C.R., acknowledged the case could be closed as soon as this fall. But she did not defend how long it had taken.

"This administration has a responsibility to both students and institutions not to let the cloud of these open cases hang over their head," she said.

Joplin, the woman who first brought the case, said the office's slow response has hurt uncounted female students. And she questioned whether the knowledge that an institution has never lost its funds for violating Title IX played a role in U.S.C.'s past failure to comply.

"They're willing to take the funding from the federal government," she said, "but they're not willing to abide by federal law."

The Ball State case did not last 13 years. But it has upset many for other reasons.

In 2008, federal investigators looking into a complaint about sex discrimination in the athletic department at Ball State discovered that a large number of coaches of women's teams had recently resigned or been fired.

The detail caught the investigators' attention, but rather than look into the issue, the office asked Ball State to run its own inquiry into whether the departures were part of a discriminatory pattern.

Schools that find themselves the subject of a complaint can cut an investigation short by signing an agreement with the Office for Civil Rights. In many cases, the agreements do not include specific changes to the programs. Instead, the office asks the schools to investigate themselves and report their findings months, and sometimes years, later.

In the case of Ball State, the office asked the university to investigate itself even though it was being sued by a former tennis coach, Kathy Bull, who was making similar allegations. According to Bull's lawyers, 12 head coaches of Ball State's 11 women's teams have left since 2005, compared with five head coaches of men's teams in the same period.

Less than two weeks after the Office for Civil Rights asked the university to investigate the issue, it reported back that it had found “no evidence” of discrimination. Ball State used the same law firm that was representing the university in Bull’s lawsuit to prepare its report to the Office for Civil Rights. The university did not conduct any new research into the firings, and none of the former coaches were interviewed, according to a deposition of Jo Ann Gora, the university president, by Bull’s lawyers.

“I did not think that was necessary,” she said.

A spokeswoman for Ball State said that the university does not comment on active litigation and that it is cooperating with the Office for Civil Rights. She said the law firm that prepared the university’s report, DeFur Voran, did not violate any rules of professional conduct by representing the university in both the Bull lawsuit and the O.C.R. inquiry. Ali said her office had not approved Ball State’s report and added that federal investigators returned to the campus earlier this year to look into the matter. They plan to make another trip during the fall semester. She said the office prodded the university to provide locker rooms to several women’s teams after it was discovered that female athletes were changing in their cars and a storage shed.

Still, she defended the practice of allowing universities to conduct their own investigations. “The university is in the best position to know — assuming good will — to know what its needs are for hiring and terminating,” she said. “And it’s their obligation to ensure that that doesn’t happen in a discriminatory manner.”

But Marissa Pollick, Bull’s lawyer, questioned whether the office should always assume such good will. “You’re relying on the universities to comply when they have very strong interests not to,” she said.