

September 19, 2005

**Dear Athletics Director:**

**As former members of the Commission on Opportunity in Athletics established in 2001 by the Secretary of Education we are writing to you pertaining to the March 2005 Additional Clarification of Intercollegiate Athletics Policy: Three Part Test – Part Three” of Title IX that appeared on the Department of Education website in late March.**

**As you may be aware, the Department of Education issued, without an opportunity for comment, an additional clarification for Title IX which allows institutions to gauge the interests of the under-represented gender, female students in most instances, by conducting an email survey. The Clarification also allows schools to treat a lack of response to the survey as a lack of interest in participating in sports.**

**We would like to share with you our concerns and those that were expressed by the NCAA Executive Committee and divisional boards of presidents, at their April 28, 2005 meetings. In addition, we are including concerns unanimously raised by the NCAA Data Analysis Research Network (DARN) at their May 24-25, 2005 meeting.**

**Along with the presidents and the Data Analysis Research Network, we feel that there are several components of the Additional Clarification that conflict with the goals of Title IX and that are contrary to sound research practices. The methodology for distributing and analyzing the survey and the responses as stated in the Clarification is unsound and inappropriate. Specific concerns are identified in the attached letter from the Executive Committee and report from D.A.R.N.**

**As you may recall in June 2001, then Secretary of Education Rod Paige announced a panel of 15 Commissioners to look at Title IX.**

**For close to 18 months, the Commission heard from tens of thousands of citizens (male and female) with strong views on Title IX. In July 2003, after close to 2 years of hearings and review, Secretary Paige announced that Title IX was working and should not be changed. He further made a commitment to strongly enforce Title IX under existing guidelines. The March 2005 clarification significantly changes how Title IX compliance will be applied and viewed, in a manner that contradicts Secretary Paige's pledge less than 2 years ago.**

**It is also important to note that our Commission voted unanimously to include the following as Recommendation 2 in our February 28, 2003 report to the Secretary:**

**“Any clarification or policy interpretation should consider the recommendations that are approved by this Commission, and substantive adjustments to current enforcement of Title IX should be developed through the normal federal rulemaking process.”**

**The Commission heard criticism that the current interpretation of Title IX was implemented through non-regulatory process. The Commission strongly recommends that any new Title IX policy and procedure be subject to public notice and comment, and that the Administrative Procedures Act be strictly adhered to. When the public is given an opportunity to comment on proposed rules, the new rules can be improved by those comments. Moreover, the new rules are given legitimacy when the process is followed.**

**The Department of Education ignored the recommended procedures advanced by the Commission and issued a clarification in March 2005 without benefit of public notice and comment. As fellow colleagues and past Commissioners of the Secretary's Commission on Opportunity in Athletics who invested significant time in a 2 year review of Title IX, we believe that the latest clarification procedures are flawed and have the potential of undermining the goal of providing equal opportunity for the under-represented gender. We urge you to decline use of the procedures set forth in the March 17, 2005 Additional Clarification set forth by the Department of Education and join us in requesting that this clarification be withdrawn. We ask that**

**you support the DOE's 2003 commitment to strongly enforce the long standing Title IX policies.**

**Sincerely,**

**Cary Groth  
Ted Leland**

