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The Heart of the Game: Putting Race and Educational Equity at the Center of Title IX

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Article

The Heart of the Game: Putting Race and Educational Equity at the Center of Title IX

Deborah L. Brake* and Verna L. Williams†

Introduction ........................................................................................................199
I. High-School Athletics: Where the African-American Girls Aren’t..............199
   A. The Narrative ..............................................................................................202
   B. Unpacking the Issues ..................................................................................206
II. Teen Sexuality and “Stigma Stories”: Race, Gender, and Educational Equity at the Crossroads of Pregnancy and Sport .......................215
   A. The Narrative ..............................................................................................215
   B. Unpacking the Issues ..................................................................................219
Conclusion ............................................................................................................237

INTRODUCTION

Sink your teeth into their necks! Draw blood!¹

Those words got our attention. Here, for once, was a feature film about female athletes competing like feral warriors at the urging of their coach. No misgivings about being part of the “wolf pack.”² No concerns about what their boyfriends might think. No side plots about parents wanting them to eschew sports for finding a mate. Moreover, here, for once, was an interracial team of girls working together to tear apart their opponents. The film, The Heart of the

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¹ The Heart of the Game (Woody Creek Productions 2006).
² Id.
Game, was invigorating and moving. As feminist scholars, we were captivated.

We have spent much of our respective careers working on gender equity issues in education, either as advocates or scholars, focusing on Title IX of the Education Amendments, which prohibits sex discrimination in federally funded schools. While Title IX has been very effective, particularly with regard to increasing access to athletics for girls and women, much work remains. Specifically, the literature and case law that have developed over the past thirty-five years have essentialized girls and young women: that is, they have failed to take into account the differences among women that affect their experiences in education programs. Those differences mean that, as a practical matter, white girls and women are able to participate in athletics at a far greater rate than girls and women of color. Indeed, girls and women of color in sport are barely visible: we know little about their experiences in sport and why or whether they choose to participate. Surprisingly, there is little theorizing about the intersection of race and gender in athletics. There is even less theorizing about Title IX, gender, and racial justice in the abundant literature on public education reform. The Heart of the Game provides us with a springboard for addressing these issues by featuring an African-American high school basketball player, Darnellia Russell.

In the pages that follow we take an intersectional approach to race and sport, building upon the narrative of Darnellia’s experience that is presented in The Heart of the Game. This girl’s story provides a unique and underutilized lens through which to examine gender and athletics and to evaluate the legal framework for gender equality in sport. In focusing on this narrative, we seek to give voice to black female athletes and to express their concerns in ways the law and scholarship have yet to do. Moving black women’s experiences in sport from the margins to the center is essential to understanding and addressing the

3 Before joining our faculties, we were attorneys with the National Women’s Law Center in Washington, D.C., a public interest organization. See http://www.nwlc.org.
5 See infra notes 6-8 and accompanying text.
6 See Kimberle Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, 1989 U. Chi. Legal F. 139, 145 (stating that the failure to analyze such issues using a multiple axis approach “defeats efforts to restructure the distribution of opportunity and limits remedial relief to minor adjustments within an established hierarchy”); Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 Stan. L. Rev. 581, 585 (1990) (criticizing feminist legal scholars for failing to consider how race intersects with sex).
7 Cf. Patricia Hill Collins, Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment 252 (2d ed. 2000) (observing that black feminist epistemology values concrete experience as a means of gaining knowledge).
8 Jennifer E. Bruening, Ketra L. Armstrong, & Donna L. Pastore, Listening to the Voices: The
gender and racial equality issues in sport. Put another way, in the effort to reform sport, an institution designed around white men's needs, it is necessary to identify and examine the barriers to rewarding sport experiences for all women, particularly those at the margins. Examining narratives such as Darnellia's is necessary to identify qualitatively the benefits and perils of sport for African-American girls and women, and in so doing, to craft wide reaching strategies for changing the sport culture.\(^9\)

In addition, *The Heart of the Game* is an apt narrative because it focuses on high school athletics, a level of sport that has been underexamined in the Title IX discourse. Most litigation, public policy, and legal scholarship have focused on athletics at the college level.\(^10\) For purposes of increasing young women's access to athletics, a focus on sports opportunities in college is too late, particularly in the increasingly competitive environment for women's intercollegiate sports where there are very few opportunities for female college athletes to "walk on" to sports.\(^11\) It takes years and years of competitive play to have the necessary skill to take advantage of the sports opportunities Title IX has created at the college level.\(^12\) Women of color face added barriers to seeking college sports opportunities: they are less likely to benefit from numerous and varied sport offerings that are available at suburban high schools or from the vast network of private league community sports programs in suburban, spread-out areas, which take money, transportation, time, and proximity.\(^13\) Urban schools and schools with high populations of students of color tend to have many fewer sport opportunities and lack financial resources and physical facilities to accommodate large sports programs.\(^14\)

Finally, Roosevelt High School is located in the Seattle School District, which unsuccessfully defended its voluntary desegregation program in *Parents Experiences of African American Female Student Athletes, 76 Res. Q. for Exercise and Sport 82, 84* (March 2005) (observing that black women have been silenced in different aspects of sport).

\(^9\) See id. at 82 (discussing the importance of giving voice to women at the margins).

\(^10\) See, e.g., Jocelyn Samuels, *Reviewing the Play: How Faulty Premises Affected the Work of the Commission on Opportunity in Athletics and Why Title IX Protections are Still Needed to Ensure Equal Opportunity in Athletics, 3 Margins 233, 255* (2003) (arguing that the absence of mandatory data collection at the high school level makes Title IX enforcement difficult in the area of interscholastic sports); Suzanne Sangree, *The Secretary's Commission on Opportunity in Athletics Squandered its Opportunity to Understand Commercial Collegiate Sports: Why They Eliminate Minor Men's Sports and Prevent Title IX From Achieving Full Gender Equality, 3 Margins 257, 278* (2003) (noting that there has been relatively little Title IX enforcement to date at the high school level).


\(^12\) Id.

\(^13\) Id. at 178-82.

\(^14\) Id. at 182.
Involved in Community Schools v. Seattle School District, No. 1. The continuing and pervasive racial segregation of elementary and secondary education raises important issues of educational equity which have received little attention in the context of Title IX and athletics. The push for greater Title IX enforcement in the area of sports has ignored the deeper educational inequalities and educational policy issues that provide the broader context for sports programs. Title IX strategizing has looked at sports with blinders on, as if sports could be made equal while ignoring inequalities in the broader educational system. In fact, these inequalities determine whom Title IX benefits in its push for gender equality in sports.

Using the narrative of Darnellia Russell and the Roughriders of Roosevelt High School, as told in The Heart of the Game, we will look at two issues from the film that raise these larger themes: (1) Darnellia’s opportunities and experiences on the team; and (2) the impact of Darnellia’s pregnancy and motherhood on her status as an athlete. Throughout this discussion, we will examine how race and educational equity issues shape women’s sports experiences. The absence of attention to these issues in the discourse and public policy debates surrounding Title IX undermines the law’s transformative potential and its ability to succeed in enhancing the sports experiences of all women.

I. HIGH SCHOOL ATHLETICS: WHERE THE AFRICAN-AMERICAN GIRLS AREN’T

A. The Narrative

Director Ward Serrill set out to film a year in the life of the head coach of the Roosevelt Roughriders, an all-white high school basketball team, but in the midst of filming, Serrill was struck by the appearance of a black girl, Darnellia Russell, who turned out for the team. He said, “Her street-toughened confidence and quiet defiance captivated me. When I saw her God-given basketball skills, I knew my second main character had arrived.” Russell enrolled in Roosevelt instead of her neighborhood school, rival and predominately black Garfield High School, at her mother’s urging. Her mother believed that the predominately white school would open more doors to her daughter than would Garfield.

16 Ward Serrill, Director’s Comments, 2-3, http://www.heartofthegame.org/web/media/THOTG_DIRECTORS_COMMENTS.DOC.
17 Id.
18 The Heart of the Game, supra note 1.
Attending Roosevelt gives Darnellia access to Coach Bill Resler, who challenges the girls to be competitive and authoritative. He establishes an "inner circle," where the girls resolve differences and build team relationships. Resler creates a space where girls can be physical, something they are loathe to do when they first join; however, as the season progresses, the girls become overtly aggressive and competitive. Resler gives each season a motivational theme that provides an outlet for the players' drive: one year the team is a "pack of wolves" — "anybody I'm guarding dies." The next year, the players are a "pride of lions." The coach exhorts the players to "rip[] apart carcasses," "sink your teeth in their necks!" and "draw blood!" The girls love it. They talk about power, energy, the freedom to be "cutthroat." Even after losing a close game at the State Championship Tournament, the girls find solace in the knowledge that they "fought" and "have honor." Resler's methods imbue the girls with a sense of their own power; they come to believe that, as a team, they can "pounce," "kill," and dominate. The team experience builds girls who will be less likely to accept constraining gender-based roles in the long run, and in the short run, less likely to be led astray by negative peer pressure to engage in drugs or other harmful behaviors.

Darnellia is hungry for what being a Roughrider can and does provide, just as her teammates; moreover, her family and community support her aspirations. For example, her grandmother gushes with pride as she talks about how Darnellia always played with the boys and beat them. Darnellia's middle school coach also notes that she routinely outscored the boys, but acknowledges that her volatility sometimes got her into trouble. For example, at times, she got into fights but, with intervention, could be put back on track. The promise of athletics for Darnellia stands in sharp contrast to the lives some in her family lead: her father, for example, is in prison in Los Angeles. Darnellia resolves to become the first in her family to go to college. Beyond that, she has plans to play

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19 In November 2007, Roosevelt High's new principal, Brian Vance, fired Resler days before the season was to begin. Craig Smith, No Single Incident Caused Resler's Ouster, Seattle Times, Jan. 1, 2008, at C8.
20 The Heart of the Game, supra note 1.
21 Id.
22 Id.
23 Id.
24 Id.
25 Id.
27 The Heart of the Game, supra note 1.
28 Id.
in the WNBA or be a pediatrician: Damellia declares that she wants to “be good” and “do nothing bad” that would derail her plans.29 Damellia’s success in sports gives her confidence to achieve beyond that which is generally expected for a black girl growing up in urban America.30

Still, Darnellia’s life at Roosevelt is not without its challenges. At one point in the film, Darnellia observes that she had “never been around so many white people before.”31 Feeling isolated and no doubt missing her friends at Garfield, Darnellia stops going to school and misses practice.32 Her absences, in turn, create a conflict between Darnellia and another team leader, Hilary, who is white and comes from a privileged family.33 Hilary disapproves of Darnellia’s absences, but complains to other teammates rather than confronting Darnellia directly, which heightens the tension between the girls.34 Coach Resler intervenes to address the situation, but does so in a manner that allows the girls some agency over the situation. As to Darnellia’s frequent absences, Resler tells her she can join the varsity team as a freshman on the condition that she never miss another practice.35 Darnellia agrees after considering the offer for all of the six minutes Resler gave her to decide.36 With respect to the conflict between the star players, Resler allows the inner circle to function. In this meeting restricted to the team, the players sort out the issues among themselves.37 Through their experiences on the team, the girls develop a stronger sense of self and more confidence in their abilities to build relationships and solve problems.38

Darnellia’s difficulties fitting in also affect her academic performance. During her first year, her grades fall below a 2.0, making her ineligible to play in the season’s first three games.39 She works her way to eligibility and plays as a freshman; however, her academic problems persist into her sophomore year,
when she again must sit out the first three games of the season. Resler never gives up on Darnellia. He observes that “her problem is she does not believe how smart she is.” Under this extraordinary coach, Darnellia is able to translate her confidence on the court into the classroom, such that she is able to play throughout her junior year.

Darnellia’s experience with sport, as documented in the film, demonstrates the benefits and challenges involved in participating in athletics at the high school level. With the innovative coaching of Resler, Darnellia has the opportunity to build her confidence and agency both on the court and off, which affects her academic performance. Pushed outside of her comfort zone, Darnellia also forms bonds with her white teammates; their work together across racial lines enables the Roughriders to become contenders for the state championship, far exceeding everyone’s expectations. The Roosevelt experience expanded Darnellia’s horizons in ways that attending predominately black Garfield apparently could not, making her a textbook example of what is right about athletics for young girls.

In other respects, however, Darnellia’s experience highlights ongoing disparities in high school athletics for African-American girls. Not only is Darnellia a minority on the team and at Roosevelt, she also represents the small number of African-American girls participating in sport. At the college level, African-American women are only 10.4% of NCAA Division I female athletes. Black women are heavily concentrated in basketball (25.7%) and track & field (20.4%), with the next-highest rate of participation in volleyball (8.4%). They represent only 3.2% of athletes in all other women’s sports. Indeed, of the many sports that colleges have added in order to comply with Title IX’s mandates, many do not exist in urban areas; recruiting black women to play these sports thus presents a challenge. For example, crew teams are one way of adding large numbers of participation opportunities for women on college campuses; however, in one study, only two of the fifty female athletes on a crew team were African-American. At the high school level, data is more difficult to come by, but all indications are that black girls are greatly underrepresented in interscholastic sports. By one estimate, black girls represent only five percent of all high school athletes. Given Title IX’s great success in increasing the

40 Id.
41 Id.
42 Bruening, supra note 8, at 83 (citing 2003 NCAA data); see also Women’s Sports Foundation, Title IX and Race in Intercollegiate Sport (2003) (reviewing NCAA data on gender and race participation in sports).
43 Bruening, supra note 8, at 97.
44 Donna Lopiano, Gender Equity and the Black Female in Sport, Women’s Sports Foundation,
numbers of girls and young women participating in athletics – boosting girls’ participation in high school sports by 904% and female college athletic participation by 456% since its 1972 enactment – why hasn’t that success translated into more opportunities for young women of color generally, and black girls specifically? As the next subsection suggests, racial disparities persist because Title IX has yet to address the intersectional barriers to athletics posed by race, gender, and class, including the persistent inequalities in public education confronting African-American girls.

B. Unpacking the Issues

Black female athletes are largely invisible and very rarely the focus of films, articles or other literature. Indeed, but for her mother’s insistence that she attend Roosevelt, Darnellia likely would not have been Serrill’s “second main character.” This silence sends the message that African-American women’s sport stories “are not worth researching . . . [or] telling.” When considered within the gendered nature of sport, however, the inattention to black women is unfortunate, but hardly surprising. As the next subsections make clear, the intertwined nature of racism and sexism combine to make athletics unwelcoming to African-American girls. We further consider the inequalities in public education against the backdrop of these forms of oppression, which suggest the need to rethink how Title IX ought to apply in this context.

1. Barriers to Participation

The scant attention paid to African-American female athletes is a byproduct of the gendered and raced nature of sport. As an institution established in schools to promote white male patriarchy, sport is concerned with defining and


48 Bruening, supra note 8, at 85.

developing masculinity. Through a variety of mechanisms ranging from limiting leadership positions to men, to inculcating athletes with a culture that promotes traditional masculine dominance, sport plays a critical role in constructing a binary system in which masculinity is valued in direct proportion to the devaluation of femininity. In such a culture, the term "female athlete" is an oxymoron.

Indeed, in this culture, the girls and women who pursue athletics risk being perceived as gender transgressors. As the film suggests, the pressure to conform to traditional femininity may not be as strong as it has been in the past; however, pressure to conform to the proper gender construct remains. Female athletes are constrained to balance appropriately the traits necessary to excel at sport, such as aggression and toughness, with accepted markers of cultural femininity.

Some female athletes react to this conflict by engaging in efforts to "prove" their cultural femininity (and, by extension, their heterosexuality) by promoting a sexualized or traditionally feminine image, overtly disassociating from lesbianism, preferring male over female coaches, disclaiming any affinity for feminism, and not challenging the prioritization of male over female athletics.

Accommodating some form of traditional femininity, thus, is necessary to compensate for the societal dissonance created by women taking on the role of athlete. In so doing, the female athlete reinforces the underlying hierarchy that privileges masculinity.

Because traditional femininity has not been available to African-American women, one might expect that sport would be more welcoming for these women.

reprinted in Feminism Unmodified: Discourses on Life and Law 120 (1987).

50 Brake, supra note 49, at 83.
51 See id. at 86-87(discussing the conflation of athletic competence with leadership in filling coaching positions).
52 Id. at 92-99 (observing that the culture of masculinity privileges contact sports over sports requiring less physical aggression, celebrates domination of women, in the most extreme cases, through rape and sexual exploitation of women, and exhorts boys and men to distinguish themselves from females through such messages as "you throw like a girl").
53 Id. at 97 (concluding that "femininity is tantamount to failure").
54 Id.
55 The Heart of the Game, supra note 1.
56 In earlier times, traditional femininity constrained women's participation in sport out of concern for their delicate nature, specifically their ability to reproduce. Women were constructed as delicate and fragile and unfit for vigorous physical activity. See, e.g., Deborah L. Brake, The Invisible Pregnant Athlete and the Promise of Title IX, 31 Harv. J. of L. & Gender 101, 112 (2008).
57 Brake, supra note 49, at 108-09.
58 Id. at 109 (citations omitted).
Since slavery times, black women have been constructed as less than female—not true women. They were able to work side by side with black men as slaves, worked outside the home long before white women, and generally were not covered by protectionist laws limiting their working hours.\textsuperscript{59} The construction of African-American femininity does not incorporate notions of fragility, timidity, or gentility; moreover, in not conforming to cultural ideals of white femininity, black women are constructed as deviant, caricatured as “mammies, matriarchs, welfare recipients, and hot mommas [to] justify U.S. black women’s oppression.”\textsuperscript{60} With a distinct construct of femininity defining them, black women have, in a sense, been freed from the constraints imposed on their white counterparts;\textsuperscript{61} however, gender and race nonetheless combine to limit their access to sport.

Patricia Hill Collins explores the difficulty black women have negotiating the minefields of raced and gendered stereotyping particularly now in this post-civil rights era. Recognizing that traditional femininity has not been within reach, black women must work hard to counteract prevailing stereotypes:

[T]he controlling images associated with poor and working-class Black women become texts of what not to be. To achieve middle-class status, African American women must reject this gender-specific version of authenticity in favor of a politics of respectability. They must somehow figure out a way to become Black “ladies” by avoiding these working-class traps. Doing so means negotiating the complicated politics that accompany this triad of bitchiness, promiscuity, and fertility.\textsuperscript{62}

Thus, according to Collins, the “Black lady” construct is essential to upward mobility for African-American women. Additionally, aspiring to “lady hood” is one important means of rejecting the traditional and confining construct of black femininity. In this regard, the prototypic “Black lady” embodies some characteristics of traditional femininity, informed by African-American cultural experiences. For example, the “Black lady” works outside the home, reflecting the reality that “middle-class Black women typically need to work in order to remain middle class.”\textsuperscript{63} The “Black lady” also is attractive and sensual, but she

\textsuperscript{59} See, e.g., Vema L. Williams, Reform or Retrenchment: Single-Sex Education and the Construction of Race and Gender, 2004 Wis. L. Rev. 15, 45, 54-55.
\textsuperscript{61} See also Patricia Hill Collins, Black Sexual Politics: African Americans, Gender, and the New Racism 134 (2004).
\textsuperscript{62} Id. at 138-39.
\textsuperscript{63} Id. at 139.
does not flaunt her sexuality, keeping it respectfully with the confines of heterosexual marriage. While hardly progressive, the "Black lady" trope directly contradicts the prevailing and constraining roles assigned to African-American women, while at the same time providing them with access to the traditional femininity that has been denied them. In this regard, the move toward "Black lady hood" is an intentional move away from the deviance white patriarchy ascribes to African-American women.

Collins illustrates the power of the "Black lady" trope by examining the media strategy used to promote the WNBA players, many of whom are black. For example, in featuring players such as Lisa Leslie, a former model, the League dressed them in "fitted sweat pants and in a form-fitting top that, for some, exposed a hint of their midriffs and an occasional navel." Significantly, this strategy did not just emphasize the players' physical attributes; the media campaign also pointedly linked players with the "ideas of motherhood and family. . . . Pre-taped interview segments aired during games often focus on the family life of the players." In so promoting the WNBA players, the league presented the public with "Black ladies," deserving of respect on the court and off, thanks to their athletic prowess, as well as their professionalism, good looks, and dedication to their families.

A recent media controversy further highlights the significance of attaining "Black lady hood," while shedding light on why the countervailing stereotypes about African-American women may dissuade young women from even attempting to navigate that fine line. Shortly after the Rutgers University women's basketball team had lost the NCAA championship to the University of Tennessee in 2007, radio personality Don Imus called the women "nappy-headed hos." Eight of the ten players on the team were African-American, as was the coach, C. Vivian Stringer. Coach Stringer invoked some of the key aspects of the "Black lady" in responding to Imus's racist and sexist harangue. "Let me put a

64 Id. at 139-40.
65 The word choice is particularly interesting in this context since "lady" has been one of the terms used to distinguish male teams from their female counterparts at educational institutions to "reinforce the femininity and the specialness of what is presented as a distinctly female, modified version of the sport." Brake, supra note 49, at 110.
66 Collins, Black Sexual Politics, supra note 61, at 136. In this context, Collins suggests that the threat to black female athletes is in being considered a lesbian, which, as we explain above however, also is true for white women. For reasons discussed in the text, we explain why the "Black lady" better illustrates the intersectional barriers to sport that are particular to African-American girls and women.
67 Id.
68 Id. at 136-37.
human face on this,' she said. 'These young ladies are valedictorians of their
class, future doctors, musical prodigies and, yes, even Girl Scouts. They are all
young ladies of class. They are distinctive, articulate.' In addition to calling
them ‘ladies' outright, the coach sought to remove the veil of stereotype that had
allowed Imus to reduce the young women and their accomplishment; instead,
Stringer shifted the focus to the players’ intellect, their future contributions to
society, and their conformity to the mainstream values of the nation. Others
adopted her terminology and built upon her depiction of the players in
expressing their outrage at Imus’s remarks. For example, the team’s spiritual
advisor, Rev. DeForest Soaries, Jr. stated as follows: "These young ladies were
passionate, but they were polite. They were vocal, but not vulgar. They were so
expressive and articulate in describing their pain. It was gut-wrenching, soul-
searching and so mature. These are teenagers. They weren’t cursing, they
weren’t sassy. They just sat down and spoke their minds." As this scenario
played out, the Rutgers players increasingly were described in terms that were
diametrically opposed to those typically used to describe young black women,
notwithstanding attempts to suggest that Imus merely had spoken the language
blacks, such as hip hop artists, used themselves.

Ultimately Imus was fired as a result of this incident. While these players
were publicly defended in the face of his negative rhetoric, his derogation of the
Rutgers players suggests the intransigence of stereotypes about black women.
The terminology he employed was so ubiquitous, there was no doubt among
listeners as to its meaning. Moreover, notwithstanding the outcry against Imus’s
actions, he returned to the airwaves after just a few months. Thus, the
controversy was not his professional undoing; it was an unpleasant episode from
which Imus was able to recover by finding a new job and engaging the same
prominent guests to appear on his shows. This episode suggests that if a primary
goal of an African-American girl is to attend college and ultimately become a
"Black lady," becoming an athlete may be a counterproductive and potentially
damaging strategy.

For the African-American females who decide to pursue athletics, racism
and patriarchy in the culture of sport present additional barriers to their

70 Id.
71 Clarence Waldron, After Imus: Black Champion Women, Civility and Decency, Jet, Apr. 30, 2007,
at 6. See also Stanley Crouch, These Ladies Offer a Course in Class, N.Y. Daily News, Apr. 16, 2007,
at 23.
72 Eight months after being fired by CBS Radio and MSNBC as a result of the Rutgers comments,
Don Imus returned to broadcast radio. See Paul Farhi, Don Imus Gingerly Steps Back on Air, Wash.
dyn/content/article/2007/12/03/AR2007120300368.html (last visited Apr. 25, 2008).
continued participation. Consider, for example, that black females frequently are steered into particular sports or positions within sports. Black females are more prevalent in basketball or track. In one study, an athlete reported that her coach said she could never pitch because she was not blonde or blue-eyed; because of her race, she would always be a “thrower,” a term that suggests a lack of skill or sophistication and evokes images of primitive beings – spear throwers. Additionally, as that anecdote suggests, coaches play a significant role in how black girls and women experience athletics. In another study, black female athletes observed that their coaches’ responses to their needs undermined their experience as athletes by “creat[ing] and perpetuat[ing] a culture” that was, at a minimum, inattentive to their needs, and in some instances, reinforced negative stereotypes about them as black women. For example, one athlete recalled that her coach berated her for wearing shorts over a spandex body suit in the weight room, but said nothing to the men who worked out shirtless. By focusing on this athlete’s attire, in addition to asking her to leave the weight room to make room for the men, the coach acted based on stereotypes of black women as hypersexual and therefore distracting to the “real” work of the male athletes. Other African-American women observed that they did not get their fair share of time with the head coach because, as track and field athletes, they had to share the head coach with the men’s team. This arrangement diminished the women’s experience in the sport and their ability to succeed.

For white athletes, white race privilege means never having to “see” race or how it shapes the sports experience. But, as the foregoing suggests, for African-American girls, gender, race, and class converge in ways that make participation in sports a gamble. They risk experiencing the isolation that results from being one of the few girls of color on a team and losing their “Black lady” bona fides. At the same time, the persistence of stereotypes about black women’s proper place in sport constrains the athletic opportunities deemed appropriate for them. African-American girls and young women like Damellia Russell must grapple with how to fit in and how to find their own voice. Athletics provide yet another marker of “difference” that many young women of color may prefer to avoid. These cultural barriers to sport are only exacerbated when considered

75 Bruening, supra note 46 at 96.
76 Id. at 94.
77 Id. at 93.
78 See id. at 93-96.
within the backdrop of continuing inequalities in public education that too often places black youngsters, male and female alike, at a disadvantage.

2. Disparities in Public Education

The second issue that has been absent in the discourse about Title IX and athletics is the overlap between equality in athletics and inequalities in public education. In the context of public education today, particularly in the urban, segregated schools to which so many girls of color are relegated, what is the relevance of equality in athletics?

Consider, for example, the state of Ohio, which, like many states, has been involved in litigation over the funding of its public schools. The Ohio Supreme Court found that students were relegated to dilapidated schools lacking even the most basic resources. For example, asbestos was present in almost 70% of the schools. Students in some schools had to be hospitalized because of carbon monoxide leaking from heaters and furnaces. In other schools, children attended classes in a storage room. In another, students participated in a lottery to get one of the few Spanish textbooks. Significantly, even with the win in the state supreme court, the school system remains out of compliance with the state constitution, remaining, as the court found, over-reliant on local property taxes to fund the state's school system. In circumstances where, in some places, toilet paper is a luxury item, what relevance does athletics have? Moreover, does Title IX hold any promise for addressing inequalities at that level?

The short answer is "perhaps." However, to get to this promise, we have to examine briefly the theoretical underpinnings of the statute. At first blush, Title IX may appear to be yet another tool for achieving formal equality, that is, for ensuring that male and female students are treated alike. In the context of athletics, the statute likely is best known as a tool to ensure that girls and women are treated the same as their male counterparts. Thus, for example, the statute requires federally funded schools to provide female athletes the same or similar access to athletic opportunities as male athletes. However, there are limits to

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80 Id. at 743.
81 Id.
82 Id.
83 Id. at 744.
85 DeRolph I, 677 N.E. 2d at 744.
86 See Katherine Bartlett, Gender Law, 1 Duke J. Gender L. & Pol'y 1, 2 (1994).
87 See 34 C.F.R. § 106.41(C).
formal equality's ability to produce systemic change in the Title IX context. For example, because schools do not have to provide equal resources to male and female teams, the former typically get more since male sports, such as football, require more players and more equipment. When considered against the backdrop of the overarching funding inequalities confronting public education, formal equality would only mean that schools would be free to treat male and female students equally poorly by providing inadequate access to athletics. In a state such as Ohio, as described above, and in poorer school districts especially, that most certainly would be the case.

However, other strains of equality comprise Title IX that may hold promise for true reform. Specifically, the statute also has substantive equality aspects that seek to reform the institutional structures that facilitate inequality. Substantive equality goes beyond formal equality's emphasis on equality of process to focus instead on equality of outcomes. This theory recognizes that "equal treatment leads to outcomes that are unequal because of differences between men and women." Thus, under substantive equality, we can consider the distinctions between men and women in order to address inequalities between the sexes. This form of equality is present in Title IX's requirement that institutions provide equal participation opportunities to male and female students. To determine whether an institution is in compliance with this provision, courts and the Department of Education's Office of Civil Rights, the federal enforcement agency, have used a three-part test for measuring compliance. Pursuant to this test, recipients can show that the percentage of female athletes is close to the percentage of female students at the institution; or that they have a history and continuing practice of addressing the needs of the underrepresented sex; or that they otherwise are fully accommodating the athletic interests and abilities of the school's female students. This test is significant because it does not accept as a given that girls are naturally disinterested in sport: the test "target[s] the structures that have resulted in different levels of athletic interest and participation." In other words, it requires schools to build opportunities so that girls can develop their interests and act on them accordingly. In so doing, the

88 Indeed, commentators have long discussed the limitations of formal equality. See, e.g., Martha Chamallas, Introduction to Feminist Legal Theory 17, 28 (2d ed. 2003).
89 See Brake, supra note 49 at 124-25.
90 Bartlett, supra note 86 at 4.
91 Id.
92 Id.
93 See Title IX of the Education Amendments of 1972; A Policy Interpretation: Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71, 418.
94 Brake, supra note 49 at 49.
three-part test holds institutions responsible for the structural barriers they erect to girls' and women's participation in athletics.\textsuperscript{95}

Interrogating institutional structures makes sense in light of Title IX's broad goal of eliminating gender-based discrimination in education. Within its expansive proscription against sex-based discrimination, Title IX allows institutions to consider sex for purposes of addressing ingrained inequalities, as in the case of the three-part test.\textsuperscript{96} Additionally, the statute has been used successfully to protect students who are harassed for failure to conform to gender norms.\textsuperscript{97} As a result, in light of continuing inequality in public schooling, resulting in part from growing racial segregation,\textsuperscript{98} Title IX should provide an avenue for assessing whether sexism and racism, as intertwined oppressions, are barriers to educational opportunity. To begin this effort, more attention must be paid to public elementary and secondary schools, where so much inequality exists. Title IX's emphasis on eliminating the structural barriers to equality may open the door to a reworking of the three-part test that could address such issues. Additionally, in light of the fact that Title IX is modeled after Title VI of the Civil Rights Act, there may be some room for making similar arguments under that statute. Together, Title IX and Title VI should be broad enough to address the intersecting barriers to racial and gender equality for African-American girls and women in interscholastic sports.

As the foregoing discussion suggests, the intransigence of inequality in public education has a direct bearing on our success or failure in making Title IX's promise a reality for girls of color. Given the proven benefits of sport, in addition to the access to higher education it can provide, bringing Title IX's forces to bear on opportunities at the elementary and secondary level is especially important.

II. TEEN SEXUALITY AND “STIGMA STORIES”: RACE, GENDER, AND EDUCATIONAL EQUITY AT THE CROSSROADS OF PREGNANCY AND SPORT

Midway through the film, Darnellia's struggle to keep her pregnancy and her new responsibilities as a mother from derailing her athletic career takes center stage. The film provides an important opportunity to consider how the quintessential issue of sex equality—pregnancy—also implicates race and

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\textsuperscript{95} Id. at 71.

\textsuperscript{96} Similarly, the statute allows districts to use affirmative action or single-sex classes to remedy past discrimination. 34 C.F.R. § 106.3.

\textsuperscript{97} See, e.g., Theno v. Tonganoxie Unified Sch. Dist. No. 464, 377 F.Supp.2d 952 (D.Kan. 2005) (finding that plaintiff had been harassed because he failed to conform to traditional masculine norms).

\textsuperscript{98} See, e.g., Gary Orfield & Chungmei Lee, Brown at 50: King's Dream or Plessy's Nightmare 2-3 (Harvard Civil Rights Project, January 2004).
educational equity issues, and how these issues intersect with sports. The challenge of accommodating pregnant athletes and mothers in sport ultimately raises key questions about why we have sports in our schools and why we place a high value on sports for youth in our society.

A. The Narrative

We learn early on in the film that Darnellia’s mother, April, was only fourteen years old when she gave birth to Darnellia. This disclosure foreshadows Darnellia’s own youthful pregnancy, which is revealed later in the film. It also shapes Darnellia’s desires and hopes for her own life. She is shown talking hopefully about her dreams, wanting to be the first in her family to go to college. Her extraordinary talent as an athlete brings this dream within reach. She is a superstar on the court. As one of her teammates exclaims in awe, “she has a million colleges at her doorstep.” These words were spoken when Darnellia was a sophomore and a leading scorer for the team. We see Darnellia’s mother proudly listing the numerous colleges that have sent Darnellia letters of interest. The Roughriders win seventh place at the State Championship Tournament in Darnellia’s sophomore year, and the Seattle Times ranks Darnellia one of the top five players in the region. She is the only upcoming junior on the list.

However, events take an unexpected turn in Darnellia’s junior year. Late in the season, during play-offs for the league championship, Darnellia complains about feeling sick to her stomach. She plays anyway and scores twenty-eight points, netting a win for the team. The team is off to the state championship, ranked second in the state. Darnellia again complains of feeling sick but plays in the state championship tournament anyway. The Roughriders play a low ranked team in the first round but suffer an unexpected and heartbreaking loss. The team takes the loss hard, but rallies to win the next three consolation rounds, ending up fifth in the state.

Six weeks after the state championship, Darnellia quits the team and drops out of school, with little explanation to the team or Coach Resler. After a turbulent time in which she briefly moves in with her boyfriend and then returns home, she finally tells Coach Resler that she is four months pregnant. As we have come to suspect, Darnellia was pregnant at the state championship, although she did not realize it at the time. Understandably, Coach Resler worries about her future, wondering, “How can an eighteen year old play basketball, go to school, and be a mommy?”

The following year, after having her daughter, Darnellia returns to school and turns out for basketball late in the season. However, the Seattle school district bars her from playing on the team because of her absences. The separation from the team is hard for Darnellia, who complains of feeling an
"emptiness," and of the difficulty of seeing her teammates play when she cannot. The Roughriders have a good year without Darnellia, beating their rivals, the Garfield Bulldogs, in the last game of the regular season, a winner-take-all game for a berth at the state tournament. The team makes it to state and finishes third overall in the state championship tournament. This would have been Darnellia's senior year, had her schooling not been interrupted by her pregnancy.

Needing an extra year to graduate, Darnellia returns to Roosevelt High as a fifth-year senior. Once again, she turns out for basketball. Although the Seattle School District allows her to compete, this time the Washington Interscholastic Athletic Association (WIAA) rules her ineligible. Under the WIAA rules, students have only eight consecutive semesters of eligibility, starting from their freshman year. Darnellia petitions the WIAA seeking a hardship exception based on her individual circumstances, as permitted under the rules. However, the WIAA rejects her request, viewing her situation as a product of her own choices. Darnellia appeals the initial decision through the WIAA process, arguing that her pregnancy was an unexpected hardship, but the WIAA re-affirms its initial decision. Darnellia determines to challenge the decision in court.

One of many heartwarming moments in the film follows. Coach Resler explains Darnellia's situation to the rest of the team and gives them the option of keeping Darnellia on the team at the risk of forfeiting their wins if the WIAA decision sticks, or playing without her to ensure their WIAA-sanctioned status. The team decides to stand behind Darnellia and keep her on the team. The team's decision exemplifies the positive values of sports: the broadening of self-interest to care for the team as a whole, and the team togetherness and cohesiveness that sports, at its best, promotes.

At this point, the legal story takes on its own subplot, with Darnellia finding a Seattle attorney, Kenyon Luce, to represent her pro bono in her battle with the WIAA. Her attorney files suit in state court in Kings County, Washington. The lawsuit seeks a preliminary injunction, alleging that the WIAA's decision to deny Darnellia an exception under these circumstances discriminates on the basis of sex. In the brief snippet shown in the film, attorney Luce argues that such a decision punishes only girls and not boys, and that it will irreparably harm Darnellia's college prospects. The judge agrees, noting that the circumstances at issue here affect only women, and grants the preliminary injunction. The preliminary injunction forces the WIAA to allow Darnellia to play while the lawsuit is pending. The WIAA files an appeal and vows to defend its decision to deny Darnellia eligibility. Meanwhile, the basketball season carries on, and the

Roughriders play the season in the shadows of uncertainty about whether the WIAA will ultimately disqualify the team from competition because of Darnellia's status.

Public reactions to Darnellia's story and her fight with the WIAA form another subplot to the primary sports drama. We see an excerpt from a local news story about Darnellia which positively portrays her strength and determination in juggling her many roles while battling the WIAA. From this story, we learn that, for the first time, Darnellia's grades are "as good as her game." She speaks to the interviewer of wanting "to do better" because of her daughter. The upbeat mood of the story is dampened, however, by news of the drop-off in colleges' interest in recruiting Darnellia. Although the Roughriders have a 20-2 record, and the Seattle Times again ranks Darnellia Russell as one of the top players in the region, Darnellia received no recruiting letters from colleges in the eighteen months since her baby was born.

Reactions to the Darnellia Russell story from listeners on local call-in radio shows reveal an ambivalent public response. We hear sound bites from three callers. The first fears sending a "terrible message" to children that mistakes have no consequences if Darnellia is allowed to compete. When the host asks whether such a harsh response would just make young women in Darnellia's situation more likely to have an abortion, the caller replies that her mistake was not her decision to have the baby, but her decision to have sex in high school. A second caller is equally unsympathetic, questioning her priorities and asking who is taking care of her baby. A third and final caller appears to be somewhat more sympathetic, observing that "kids make mistakes."

As the basketball season winds down, we learn that the state appeals court upheld the trial court's preliminary injunction in the WIAA appeal. However, the legal limbo is not over for the Roughriders since the WIAA threatens to take the case to trial once the season is over. The remainder of the season unfolds with the players unsure of whether their fabulously successful season will "count" under WIAA rules.

At this point, the film returns to its primary focus all along, the drama of the game and the players and coach who give it their all. The film's final sequence, covering the concluding games of this most unusual season, depicts basketball at its best. After the exhilarating and heartwarming ending, it is hard to imagine a dry eye in the audience. Even the WIAA is moved to drop its appeal and credit the Roughriders with their season wins.

But it is a mixed ending for Darnellia. Despite her success on the court, and even though she graduates from high school with honors, she receives no college

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100 The Heart of the Game, supra note 1. The "extra" scenes on the DVD expand upon this theme.
scholarship offers. This part of the ending is jarring, given Darnellia’s recognized status as one of the best high school girls’ basketball players in the state. A television announcer’s emotional appeal, “there’s gotta be a Division I school that can use Darnellia Russell,” during the televised state finals, lingers in our ears after the movie ends. Instead of attending one of the many Division I schools that tried to recruit her before she became pregnant, Darnellia ends up attending a community college with no basketball scholarship.

B. Unpacking the Issues

The story of Darnellia’s pregnancy and how it derails her sports career implicates deeply ingrained issues of gender, race, and educational equity and their relationship to sports. Although the film does not explore these issues in depth, they are embedded in the story’s subtext. Darnellia’s experience once her pregnancy is revealed cannot be understood apart from the broader story of how race, gender and educational policy shaped the response to her pregnancy and its effect on her career as a student athlete.

1. The Sex Equality Issues Facing Pregnant Athletes

Pregnancy implicates important issues of sex equality in sport, as it does in other settings. To state the obvious, pregnancy disadvantages only female athletes. Male procreative activity not only poses no conflict with men’s athletic careers, but the norms of men’s sports too often encourage a carefree, unfettered male heterosexuality that is likely to result in offspring. Ironically, only when male athletes break from the norm and affirmatively take responsibility for their procreative offspring do they face the risk of a conflict with their athletic lives, as illustrated in a recent district court case, Butler v. NCAA. In that case, Eric Butler, a male football player, fathered a child with his girlfriend and then took time off from college to care for and provide financial support for his daughter after she was born. When Butler returned to college, seeking to continue his football career at the University of Kansas, he was denied an extra year of eligibility under NCAA rules that allow exceptions to the five year limit for reasons outside the athlete’s control and, in a special rule applicable only to female athletes, for pregnancy. When the NCAA denied Butler an exception to

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101 For a discussion of sex equality issues affecting pregnant athletes at the college level, see Deborah L. Brake, The Invisible Pregnant Athlete and the Promise of Title IX, 31 Harv. J. L. & Gender 101 (2008).
102 Cf. Michael Sokolove, Football Is a Sucker’s Game, in Equal Play: Title IX and Social Change 299 (Nancy Hogshead-Makar & Andrew Zimbalist eds., 2007) (discussing the common experience of college football players who have fathered children).
the five-year eligibility limit, he sued the NCAA alleging sex discrimination under Title IX. The district court denied his request for relief, reasoning that the NCAA’s exception for pregnancy did not require the NCAA to specially accommodate male athletes who took time off from their athletic careers to be fathers. Because the court viewed the sex difference embedded in the NCAA regulations as based on the physical difference of pregnancy, and not gender stereotypes about parenting, the court rejected Butler’s claim that the difference amounted to sex discrimination. Unfortunately, the court’s decision reinforces the normative expectation that only female athletes will interrupt their sports careers for pregnancy and parenthood, and that male athletes will continue their athletic careers without consequence if they father a child.

Rather than encouraging male athletes to take responsibility for their sexual activity, the institutional culture and rules of sport often leave male athletes wholly unencumbered in their sexual lives, even encouraging hetero-masculine norms that combine the status of being an elite male athlete with an expectation of sexual access to women. Indeed, a number of cases in recent years have exposed the many ways in which institutions enable male athletes to use their status as athletes to obtain sexual access to women.104

In sharp contrast to the compatibility of athletics and procreative activity for male athletes, for female athletes, participating in conduct resulting in a pregnancy is likely to halt a promising athletic career. Darnellia’s story reveals how pregnancy affects female athletes in deeply gendered ways that extend beyond the physical dimensions of the pregnancy itself. After the WIAA denies Darnellia’s request for a hardship exception to allow her to continue to compete, she brings a lawsuit challenging the eligibility rules as discriminatory on the basis of sex. The trial judge agrees with Darnellia’s lawyer that the association’s refusal to grant a hardship exception to Darnellia under these circumstances operates to the disadvantage of female athletes who alone confront the obstacles to staying in school and playing sports while pregnant and expecting a child.105

104 See, e.g., Simpson v. Univ. of Colo. Boulder, 500 F.3d 1170 (10th Cir. 2007) (reversing and remanding district court’s dismissal of female students’ Title IX suit involving alleged sexual assaults by football players); Williams v. Bd. of Regents of the Univ. Sys. of Ga., 477 F.3d 1282 (11th Cir. 2007) (reversing dismissal of female student’s sexual harassment claim for gang-rape by football players where university officials recruited players despite knowledge of prior sexual misconduct); see also Brake, supra note 49, at 92-107 (discussing institutional complicity in male athletes’ sexual violence against women); Christopher M. Parent, Personal Fouls: How Sexual Assaults by Football Players Is Exposing Universities to Title IX Liability, 13 Fordham Intell. Prop. Media & Ent. L.J. 617, 618-22 (2003) (summarizing incidents involving alleged sexual assaults by football players).

The WIAA eligibility rule is typical of high school athletic association rules setting strict time limits on eligibility for athletic competition, starting the clock running from the time a student first enrolls in high school. Our on-line research found that most state high school athletic associations limit eligibility to eight consecutive semesters beginning from the time the student enters ninth grade, with some version of a hardship exception.\(^{106}\) Most of these hardship exceptions limit "hardship" to only those circumstances that are unavoidable and outside the student's control.\(^{107}\) For example, the WIAA rule limits the exception to "hardship conditions beyond the control of the student that do not exist for the general school population."\(^{108}\) Unless student choice is examined broadly in light of the social conditions which constrain young women's agency in sexual relationships, such restrictions are likely to exclude pregnancy that results from voluntary sexual activity, much like the reasoning the WIAA employed in rejecting Darnellia's application for the hardship exception.

Hence, throughout the country, high school athletes who become pregnant are likely to find their pregnancy cutting short their athletic eligibility, especially if the pregnancy or its aftermath interrupts their education or keeps them from playing sports for a substantial period of time.

Not surprisingly, given its appeal to a non-legal audience, the film is not clear on the source of legal rights Darnellia's case asserts, or whether her case was brought under Title IX or a state sex equality law such as the Washington State Equal Rights Amendment. However, there are obstacles to relying on Title IX to require state high school athletic associations to extend athletic eligibility to accommodate the time lost from school and/or sports due to a student's pregnancy. An initial hurdle is to establish that the state high school athletic association is governed by Title IX if it does not receive federal funds. Most courts have held such associations accountable under Title IX by virtue of their relationship with their member schools that receive federal funds,\(^ {109}\) but some

106 A table summarizing high school eligibility time limits by state appears as an appendix to this article.
107 See Appendix.
108 Id. See Washington Interscholastic Athletic Association Guide to Student Athlete Eligibility, supra note 99.
109 See, e.g., Cmty's for Equity v. Mich. High Sch. Athletic Ass'n, 80 F.Supp. 2d 729, 733-738 (W.D. Mich. 2000) (denying summary judgment motions and finding genuine issue of material fact with respect to whether MSHAA may be liable under Title IX as a controlling authority because all public school are members and have delegated the power to control interscholastic activities to MSHAA); Kemether v. Pa. Interscholastic Athletic Ass'n, No. CIV. A. 96-6986, 1999 WL 1012948 (E.D.Pa. Nov. 8, 1999) (denying motion for summary judgment because PIAA may be an indirect recipient of federal funds by virtue of dues from member schools and member schools ceding control over interscholastic athletic activities to the PIAA); Alston v. Va. High Sch. League, 144 F.Supp. 2d 526
courts have found the lack of direct receipt of federal funds to bar Title IX claims against state athletic associations.\(^{110}\)

Even if Title IX coverage is established, a bigger hurdle may be to convince the court that the denial of a hardship exemption based on pregnancy amounts to sex discrimination. In the few test cases in which female students have challenged their exclusion from the National Honor Society after becoming pregnant, courts have struggled over whether such exclusions discriminate on the basis of sex. For example, the Third Circuit Court of Appeals accepted the argument that excluding a student who becomes pregnant from the National Honor Society because she has engaged in premarital sex does not amount to sex discrimination as long as the school also excludes male students who have engaged in premarital sex.\(^{111}\) The fact that the school would not have known of the girl’s premarital sexual activity apart from her pregnancy did not trouble the court as it should have. Other courts have not been so blind to the gender-based double-standard of honor that applies to student sexual activity and have been more receptive to sex discrimination challenges to such practices.\(^{112}\) These courts have correctly recognized that excluding students who engage in premarital sexual activity effectively treats male and female students very differently, since the only outwardly visible evidence of such conduct, pregnancy, falls exclusively on girls.

However, the fact that these cases have been challenging for courts suggests that Title IX claims against state athletic associations for refusing hardship exceptions based on pregnancy will also likely encounter difficulty. Hardship,

(W.D. Va. 1999) (denying motion for summary judgment on discriminatory scheduling claim because unclear whether member schools gave controlling authority to VHSL); Horner v. Ky. High Sch. Athletic Ass’n, 43 F.3d 265, 272 (6th Cir. 1994) (reversing entry of summary judgment in favor of defendants on claim of inequality of sanctioned sports after finding statutorily prescribed relationship between KHSAA and state board of education and dues paid by member schools to KHSAA indicating that KHSAA indirectly receives federal funds and is subject to Title IX).

\(^{110}\) See, e.g., Yellow Springs Exempted Vill. Sch. Dist. Bd. of Educ. v. Ohio High Sch. Athletic Ass’n, 647 F.2d 651 (6th Cir. 1981) (reversing lower court decision and holding that OHSAA was not a direct recipient of federal funds and therefore not required to comply with Title IX); Johnny’s Icehouse, Inc. v. Amateur Hockey Ass’n of Ill., 134 F.Supp.2d 965, 969-72 (N.D.Ill. 2001) (dismissing discrimination claim brought by sponsor of girls’ hockey teams after rejecting argument that Title IX liability may be imposed on a controlling authority or tax-exempt authority, and finding the AHAI was not a direct recipient of federal funds); Kleczek v. R.I. Interscholastic League, 768 F.Supp. 951, 954 (D.R.I. 1991) (denying preliminary injunction to enjoin school from denying boy permission to play on girls’ field hockey team because even though members of the RIIL were schools receiving federal funds for designated non-athletic purposes, it was unlikely that RIIL received federal funds).

\(^{111}\) See Pfeiffer v. Marion Ctr. Area Sch. Dist., 917 F.2d 779 (3d Cir. 1990).

\(^{112}\) See, e.g., Chipman v. Grant County Sch. Dist., 30 F. Supp.2d 975 (D. Ky. 1998); Cazares v. Barber, 959 F.2d 753 (9th Cir. 1992); Wort v. Vierling, 778 F.2d 1233 (7th Cir. 1985).
like "honor," sounds gender-neutral even as it draws on moral judgments that are very much shaped by gender and, as discussed further below, by race. By reserving "hardship" for deserving students untainted by "fault," these exceptions require value judgments about which circumstances students should be expected to avoid. Young women who bear the physical consequences of premarital sexual activity are expected to avoid such conduct or pay the costs, while premarital sexual activity by young men is tolerated as a part of normal male adolescence. Courts that have trouble seeing how "honor" is gendered when it applies to sexually active teens are also likely to have difficulty seeing the gender implications of refusing the "hardship" exception to pregnant girls.

Nevertheless, the judge in Damellia's case recognized the double standard in denying Darnellia a hardship exception, acknowledging that only female athletes are likely to have their athletic careers cut short by pregnancy. Given this reality, the judge correctly saw the hardship denial as discrimination based on sex. In this respect, not all athletes in Darnellia's shoes may be so lucky.

2. Race and Teen Pregnancy

Pregnancy is generally conceptualized as a "pure" sex equality issue, a biological difference that often operates to disadvantage women, and a difference with which sex equality law must grapple. This framing of the issue is problematic not because it is wrong but because it is incomplete. The effect of pregnancy on educational opportunities, including sports, cannot be understood without examining how race shapes educational and public policy responses to teen pregnancy.

Although the film touches upon the sex equality issues raised by reactions to Darnellia's pregnancy, it does not delve into the role of race in shaping her experience. In this respect, the film's framing of the issue as one of sex equality alone parallels the legal treatment of pregnancy in discrimination law. Sex discrimination law treats pregnancy as a biological difference that affects all women the same. The dominant model in discrimination law, reflected in the Pregnancy Discrimination Act, which amended Title VII, singles out the medical and physical dimensions of pregnancy and requires them to be treated equally to other temporary physical disabilities.113 A competing but much less influential strain in Title VII law emphasizes the uniqueness of pregnancy and its special and unparalleled role in women's reproductive lives.114 Title IX blends both

114 See, e.g., Cal. Fed. Sav. & Loan Ass'n v. Guerra, 479 U.S. 272 (1987) (holding that Title VII, as amended by the Pregnancy Discrimination Act, permits employers to adopt special accommodations for the physically disabling period of pregnancy, even if such accommodations are not provided to persons with other temporary physically disabling conditions).
approaches, requiring equal treatment in relation to other medical conditions and, in limited respects, special accommodation regardless of how others are treated.\textsuperscript{115} However, Title IX stays well within the dominant legal model in treating pregnancy as a gender issue wholly separate from race or class. But while the physical condition of pregnancy may be biologically sex-specific, the stigma and obstacles pregnancy imposes are socially constructed. Race plays an important role in constructing "the problem" of teen pregnancy and the biases and stereotypes that accompany it.

As many scholars have demonstrated, the consequences of pregnancy and the social status of motherhood are strongly influenced by race.\textsuperscript{116} Reactions to teen pregnancy in particular, and the very construction of teen pregnancy as a pressing social problem, cannot be understood apart from how they are shaped by race. Two recent books provide insight into how race has shaped the education of pregnant teens and young mothers. In \textit{Unfit Subjects: Educational Policy and the Teen Mother}, education professor Wanda Pillow provides a comprehensive analysis of how race and gender intersect to frame public policy responses to and debates over teen pregnancy.\textsuperscript{117} Another recent book covers this terrain from a different angle, using an ethnographic anthropological approach to examine the lived educational experiences of pregnant teens and teen mothers. In \textit{Pregnant Bodies, Fertile Minds: Gender, Race, and the Schooling of Pregnant Teens}, anthropology professor Wendy Luttrell describes her in-depth study of the lives of a group of girls who attended a separate alternative school for pregnant teens and teen mothers.\textsuperscript{118} Both books shed important light on how teen pregnancy implicates issues of race, gender and educational equity. The discussion that follows is informed by and largely summarizes their insights.

\textsuperscript{115} Compare 34 C.F.R. § 106.40(b)(2) (recipients may require physician's certification for pregnant students to continue to participate in an education program or activity, but only if they do so for students with other conditions requiring medical attention) with 34 C.F.R. § 106.40(b)(5) (requiring allowance for a reasonably necessary medical leave for pregnancy, childbirth and related conditions, with reinstatement at the same status when the leave began, without regard to how other medical conditions are treated).


\textsuperscript{117} Wanda S. Pillow, Unfit Subjects: Educational Policy and the Teen Mother (2004).

\textsuperscript{118} Wendy Luttrell, Pregnant Bodies, Fertile Minds: Gender, Race, and the Schooling of Pregnant Teens (2003).
a. The Role of Race in Constructing Teen Pregnancy as a Social Problem

Racial stereotypes and ideologies have played a prominent role in shaping the dominant modern understanding of teen pregnancy.\(^ {119} \) Teen pregnancy, as opposed to births to unwed mothers regardless of age, was not widely viewed as a distinct problem for purposes of public policy until the late 1960s and early 1970s.\(^ {120} \) Indeed, the “problem” of teen pregnancy has never been that teens have more pregnancies than other women. The teen birth rate mirrors that of adult women.\(^ {121} \) By 1978, however, public policy discussions were rife with portrayals of teen pregnancy as a “crisis,” even though teen birth rates were at their lowest.\(^ {122} \) This sense of crisis was driven by an increase in pregnancies by white teenagers and an increase in sexual activity among unmarried white teens that began to show up in the data after 1972.\(^ {123} \) Concerns that white teen girls were increasingly engaging in sexual activity outside of marriage, and an increase in the number of abortions obtained by white teens, drove public concern in the early- to mid-1970s.\(^ {124} \)

The early public policy response to these trends was largely sympathetic. Typical public relations campaigns on this issue used pictures of white pregnant teenagers, playing on the common theme of “the girl next door” who made a mistake and was worthy of legal rights.\(^ {125} \) This framing of the problem set the stage for Title IX’s protective treatment of pregnant students, as reflected in the regulation specifically addressing pregnancy, included in the 1975 regulations implementing the statute.\(^ {126} \) The law’s extension of rights to pregnant teens was designed to create an entitlement to education for pregnant teens and teen mothers, with the needs of white girls primarily in mind.\(^ {127} \)

By the 1980s, however, the discourse had shifted.\(^ {128} \) Tied to concerns about

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\(^ {119} \) Id. at 4 (stating that teen pregnancy has a class- and race-based history which shapes the dominant discourses about teen pregnancy today).

\(^ {120} \) Pillow, supra note 116, at 27.

\(^ {121} \) Id. at 181.

\(^ {122} \) Id. at 27. However, increases in the population of teenagers meant that sheer numbers of teen births were higher. Id. See also Luttrell, supra note 117, at 28 (noting that the “epidemic” language about teen pregnancy occurred at a time when teen birthrates were at their lowest, although the general population of teens was higher).

\(^ {123} \) Pillow, supra note 116, at 29. See also Luttrell, supra note 117, at 28 (explaining that at the time teen pregnancy became an “epidemic,” the racial gap was closing on sexuality and unmarried motherhood; white girls were increasingly sexually active outside of marriage).

\(^ {124} \) Pillow, supra note 116, at 28.

\(^ {125} \) Id. at 28-29.

\(^ {126} \) 34 C.F.R. § 106.40.

\(^ {127} \) Pillow, supra note 119, at 32.

\(^ {128} \) Wendy Luttrell’s definition of “discourse” is useful here: it is the “institutionalized and taken-for
welfare abuse and the culture of "the black family," the focus on "our girls" was displaced by "the other girl" as the prototype of the pregnant teenager and teen mother. The problem of teen pregnancy became linked with social welfare policy, and in particular, the push for welfare "reform." This discourse was permeated with ominous stories of pregnant teenagers and teen mothers who would become future welfare mothers, part of a larger problem of unmarried mothers in the African-American community and perceived moral deficiencies in black families. Instead of a girl who made a mistake, the pregnant teenager was depicted as a product of poor morals, unstable families, and a social welfare system that rewarded irresponsible behavior. Her education became a social responsibility rather than an individual entitlement, an obligation to society to avoid future welfare dependency. These concerns were part of what underlay the Family Support Act of 1988 and the 1996 welfare reform legislation that explicitly linked teen mothers' monthly welfare assistance to enrollment in a state-approved school. The focus of such educational programs was on immediate job skills likely to produce low-wage, working class employees who would stay off of welfare. The Act was reauthorized in 2002, still animated by the goal of getting teen mothers into low-wage jobs, with education as the means to an end, not an end in itself.

Public attention to teen births by young women of color also coincided with increased public concern over immigration. The immigration debate focused greater attention on Latina teen pregnancy, with concerns about "overpopulation" and "the browning of America" not far below the surface. Together, these factors animated a construction of African-American and Latina teen girls as overly fertile, a potential drain on society, and the product of culturally deficient morals and values.

By the mid-1980s, the racial politics of teen pregnancy were so entrenched that they were impervious to demographic shifts in the population of teen

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129 Pillow, supra note 116, at 35. See also Luttrell, supra note 121, at 32 (describing the shift in teen pregnancy discourse from the "wrong girl" to the "wrong family" to the "social welfare" problem).

130 Pillow, supra note 116, at 33-35.

131 Id.

132 Id. at 105.

133 Id. at 217-19.

134 Id. at 38, 45, 217-18.

135 Id. at 71.
mothers. In the mid-1980s, sexual activity by unmarried white teens was on the rise and the birth rate increased among unmarried white teens, yet the unmarried black or Latina teen mother remained the prototype that most influenced public policy around teen pregnancy. This prototype, which remains the dominant image for shaping public policy, reflects powerful racial ideologies rather than reality. White girls have the highest rates of unmarried teen pregnancy of all racial groups; however, their higher rates of abortion and adoption make them less visible as teen mothers. Furthermore, black teen mothers graduate from high school at a higher rate than white teen mothers.

Nevertheless, poor African-American and Latina teen mothers remain the central image behind the public concern over "the problem" of teen pregnancy.

b. Race-Stigma and the Good Girl/Bad Girl Dichotomy

Not surprisingly, given the social history of teen pregnancy, some teen mothers are more stigmatized than others. Thinly veiled racial discourses separate the "good girl" who made a mistake from the "bad girl" with weak morals and deficient cultural norms. Members of the latter group — the future "Welfare Queens" — are viewed as presenting a social welfare risk, and are wrapped into the racial discourses that frame debates over welfare "reform." The use of race in these discourses is just below the surface. As Wanda Pillow observes, the "barely coded racialized constructions" of teen mothers allow observers and participants in the conversation to disclaim any racism or race-based differential treatment.

Black teen mothers generally fall on the deviant side of the line, while white teen mothers, at least those from middle-class or better backgrounds, are more likely to be seen as girls who made a mistake. For white teens who become pregnant, their situation is more likely to be seen as redeemable, while black teen mothers are viewed as social pariahs who must be managed and contained. The existence of each prototype simultaneously depends on and fuels the other.

The telling of "stigma stories" about "bad teens" polices female sexuality and reinforces the dichotomy of innocent victim and promiscuous, immoral youth.

136 Id. at 115.
137 Id. at 115. See also Luttrell, supra note 117, at 4 (explaining that pregnant teens today are more likely to be white than African-American, but racial stereotypes still fuel the scapegoating of pregnant teens as a contributor to social ills).
138 Pillow, supra note 116, at 119.
139 Id. at 2-3.
140 Id. at 7.
141 Id. at 9-10.
142 Id. at 174-75.
The division between good and bad teen women also operates to construct a dichotomous male/female sexuality. The "stigma stories" about "bad" promiscuous young women teach the lesson that female sexuality and desire is unnatural and deviant. Male desire is a given in this dichotomy, and it is the job of "good" women to resist these natural male urges.\textsuperscript{143}

In this discursive climate, Professor Pillow advocates the telling of counter-stories that de-legitimize the dominant binary stories of teen mothers.\textsuperscript{144} In many respects, Darnellia's story is such a counter-story, since it reveals the complex experience of being a teen mother, a student and an athlete simultaneously. Contrary to the dominant depiction of teen pregnancy as an infectious disease that ruins lives, Darnellia's identity as a mother ultimately causes her to re-engage with school. Although she briefly drops out when overwhelmed by her situation, she soon returns to school with an unprecedented commitment to succeed, which motivates her to achieve higher grades than she received before becoming pregnant. Darnellia ends up graduating from high school with honors, and attributes her academic success to her desire to provide a good life for her daughter.

This part of Darnellia's experience supports Wanda Pillow's critique of the stigma messages that pervade discussions of teen pregnancy. As Pillow observes, the research linking teen pregnancy and motherhood with negative life outcomes seriously distorts the realities of teen mothers.\textsuperscript{145} The dominant interpretation locates fault with the irrationality of young women who become parents too early, while obscuring the structural problems that make life difficult for poor women with children, regardless of maternal age at childbirth.\textsuperscript{146} Pillow notes that, contrary to the dominant societal message, the majority of women who have children in their teens catch up with their peers who delay childbearing by the age of twenty-five.\textsuperscript{147} In the final analysis, socio-economic circumstances, and not maternal age at childbirth, are more important in limiting lifelong achievement and success.\textsuperscript{148} Likewise, Wendy Luttrell questions the use of research asserting the irrationality of black teenagers who live in poverty and have babies. Luttrell suggests that having children at a young age might be an effective adaptation to economic deprivation, noting that the more years a woman lives in poverty, the higher the risk that more years of poor health will

\textsuperscript{143} Id. at 181.
\textsuperscript{144} Id. at 112.
\textsuperscript{145} Id. at 48-49.
\textsuperscript{146} Id.
\textsuperscript{147} Id. at 116.
\textsuperscript{148} Id. at 117.
compromise her ability to have a healthy baby.\footnote{Luttrell, supra note 117, at 29.}

While teen pregnancy and motherhood undoubtedly do create obstacles to staying in school and succeeding, these are mostly structural obstacles resulting from the societal choices reflected in our educational system, rather than an inherent feature of motherhood. It is overly simplistic to blame teen pregnancy for the educational failure of teen mothers. Many teen mothers were disengaged from school or had already dropped out before becoming pregnant. Indeed, as Pillow points out, becoming pregnant is as likely to cause a teen girl to return to school as it is to cause her to drop out.\footnote{Pillow, supra note 116, at 117-19 (stating that up to sixty percent of teen girls who become pregnant dropped out of school before getting pregnant, and that contrary to popular opinion, getting pregnant as a teenager is as likely to cause a teen to return to school after having dropped out as it is to cause her to drop out).}

The educational attainment of black teen mothers in particular is as high as or higher than that of black teens without children.\footnote{Id. at 120.}

Illustrating these counter-statistics, Darnellia's greatest hardship stemmed from how her school district and the WIAA responded to her pregnancy, rather than from any innate feature of her pregnancy or mothering experiences themselves. Darnellia's story thus pushes back against the dominant image of the irrational and irresponsible teenager whose lack of morals or ambition leads her down the wrong path. The obstacles to success she encountered were not natural or inevitable, but institutional and deliberate. Her success as a student and an athlete, despite the initial resistance of her school and the persistent resistance of the WIAA, are a tribute to her strength, determination and skill.

c. Teen Pregnancy as an Educational Equity Issue: Separate and Racially Educational Opportunities

The film's depiction of Darnellia's decision to leave and then return to school omits many of the details of the educational system's response to her pregnancy and the barriers she may have confronted. We learn nothing about why Darnellia initially dropped out of school, what support services were offered to her, or how her teachers responded to her pregnancy. At the time Darnellia was in school, the Seattle School District had a separate program for pregnant teens and teen mothers located in an alternative school, John Marshall Alternative High School.\footnote{See John Marshall Alternative Graduation Reality and Dual Role Skills Home Page, http://www.seattleschools.org/schools/jmarshall/jmarshalday.html (last visited Apr. 25, 2008).} The film does not mention this program, or whether Darnellia was encouraged or even pressured to leave Roosevelt and attend the
alternative program. The discussion that follows supplements the gaps in Darnellia's story with a broader examination of the schooling of pregnant teens and teen mothers—not because this more general story describes Darnellia's experiences, but because it sheds light on the broader issues that the film raises but does not explore.

Ideologies of race and gender have shaped the educational system's response to pregnant and parenting students. The racialism of teen pregnancy as a social problem contributed to the development of social policy situating education for teen mothers as a social welfare issue, a responsibility to society rather than an individual right. Race-driven reactions to teen pregnancy fueled a discourse of contamination, driving fears of the spreading of lax sexual morals. The educational system responded by separating out the "bad girls" from mainstream educational programs, forging two separate tracks of education. The two tracks rest on very different ideologies that produce very different outcomes, and are characterized by rigid segregation, largely along racial lines.

One track, separate programs for pregnant girls and teen mothers, emerged as a response to the "epidemic logic" that began dominating discourses about teen pregnancy in the mid- to late-1970s. By the 1980s, most school districts had established separate facilities and programs for teen mothers and pregnant teens. For many schools, these separate programs were a next-best response to no longer being able to dismiss pregnant students outright. In urban areas especially, separate programs were a popular response. Wanda Pillow's examination of urban school districts found that seventy-six out of ninety city school districts have separate facilities for pregnant students and mothers.

These separate programs were designed to fit into the broader social welfare framework for containing and reconstructing the "bad girls" to keep them from being a drain on society. The programs departed sharply from the college track, including only the most basic academic offerings, with a focus on job skills for low wage jobs, self-sufficiency, mothering skills, and the importance of

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153 Pillow, supra note 116, at 47.
154 Id. at 11.
155 Id. at 86.
156 Id. at 88. In recent years, a number of separate schools for pregnant students have been closed for failing to effectively educate the students they serve. The PPPT in Luttrell's study was closed in 1997. More recently, New York City's schools for pregnant girls were shut down in 2007. Julie Bosman, New York's Schools for Pregnant Girls Will Close, N.Y. Times, May 24, 2007, available at http://www.nytimes.com/2007/05/24/education/24educ.html (last visited Apr. 25, 2008).
157 Luttrell, supra note 117, at 21-22 (describing the separate programs as based on the ideology that it is the teens' responsibility to educate themselves in order to avoid burdening society and supported by curricula that treated the girls as irresponsible and likely to become bad mothers and welfare dependents).
They typically set low expectations for students and have low academic standards. As Pillow points out, these programs were not developed with white girls in mind.

True to their design, special, separate programs for pregnant students and young mothers are overwhelmingly populated by girls of color, with a sprinkling of lower class white girls occasionally in the mix. Anthropology professor Wendy Luttrell’s study of one alternative school program, the Piedmont Program for Pregnant Teens in Centerville, North Carolina, provides a stark example of such a racial breakdown. Of the fifty girls enrolled in the program during Luttrell’s study, from 1992-1997, forty-five were black, three were Mexican-American, and two were white. Both of the white students left the PPPT later in their pregnancy to receive home tutoring, when the girls’ doctors put them on bed rest. All of the girls were from poor or working class families. As Luttrell observes, the racial representation of such programs, coupled with the ability of disproportionately white families with resources to seek less stigmatized options, reinforces the social construction of teen pregnancy as a racial problem.

These separate school programs are not only racially identifiable, they are also stigmatized as inferior. The separate facilities are often located in or near schools that are especially troubled or that serve problem students. They are generally marked as “black schools” by students, administrators and teachers. Although Title IX requires that any separate programs for pregnant students be offered on a purely voluntary basis, much evidence suggests a reality that is far different. Although pregnant students are no longer overtly excluded from mainstream programs, those girls who fit the “profile” of the special programs are often cajoled, pressured, or pushed into the separate programs.

The separation of pregnant and parenting students from regular school programs enables mainstream schools to ignore the special needs of this population by failing to offer needed services or accommodations. The

158 Pillow, supra note 116, at 132-33.
159 Id. at 86, 90.
160 Id. at 72-73.
161 Luttrell, supra note 117, at 20.
162 Pillow, supra note 116, at 86. Luttrell, supra note 117, at 11 (stating that the PPPT was located in an annex to the city’s most troubled high school).
163 Pillow, supra note 116, at 131.
164 34 C.F.R. § 106.34(b)(1)(iii).
166 Pillow, supra note 116, at 91.
separation also reinforces discourses situating pregnancy as a social welfare problem outside the realm of educational policy. While the separation makes these girls invisible in regular school programs, it makes them hyper-visible in the special separate environments they populate. The extreme racial imbalance in the separate programs reinforces the image of the teen pregnancy "problem" as a problem with girls of color.

The near absence of white girls from special programs for pregnant teens is not because white girls, including those from middle and upper class backgrounds, do not get pregnant and have babies. In fact, nationally, white teens represent the highest number of teen mothers enrolled in school. However, because these girls are severely underrepresented in special programs for pregnant teens and teen moms, they are much less visible.

A separate educational track for pregnant and parenting students exists largely for white girls from more privileged backgrounds. In Pillow's study, the only stories she encountered of pregnant girls and teen mothers who stayed in their regular school programs, with a brief absence for home tutoring before returning to their regular schools, were the college-track white girls. Because they received in-home tutoring during their third trimester, they were invisible from the educational system at the height of their pregnancies. This invisibility reinforces the "good girl" status of white teen sexuality, just as the over-representation of girls of color in special programs reinforces their "bad girl" status.

Title IX enters this story blind to the racial disparities embedded in the educational system generally, and its racially-specific response to teen pregnancy in particular. Title IX sees only the sex-based dimension of inequality in the educational programs provided to pregnant teens and mothers. The Title IX regulation covering pregnancy prohibits schools from excluding students from academic or extracurricular programs because of a student's pregnancy or related condition. Although a student may choose to participate in a special program

167 Id. at 97-98.
168 Id. at 134.
169 Id. at 115.
170 Id.
171 Luttrell, supra note 117, at 16-17 (describing the racial imbalance in the PPPT and explaining that no similar program in the county served pregnant and parenting white girls who were educated separately and differently).
172 Pillow, supra note 116, at 131-32.
173 34 C.F.R. § 106.40(b)(1) ("A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or
for pregnant students, such participation must be “completely voluntary” and “comparable” to regular school programs. Although the general tenor of the regulation is to require the same treatment for pregnant students as for all other students with medical conditions, the regulation goes beyond a purely comparative standard to require schools to provide medically necessary leaves of absence for pregnant students, without penalty, regardless of whether such leaves are provided for other students.

Not surprisingly, given its single-axis focus on sex-based discrimination, Title IX has lead to disparate racial outcomes for teen mothers. Wanda Pillow observes that Title IX has had a significant impact on white teens’ access to schooling, since it forbade the then-common practice of expelling pregnant girls. As a result, the graduation rate for white teen mothers increased between 1975 and 1986. However, the law did not have a comparable effect on the graduation rates of black teen mothers.

It is not clear from the film what, if any, educational barriers Darnellia confronted when she became pregnant. However, her initial decision to drop out of school hints at the difficulties pregnant students are likely to confront in school. Darnellia’s initial decision to drop out of school is far from uncommon. Approximately half of teen girls who become pregnant while enrolled in school drop out of their home schools. Pregnant students who want to stay in their education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the separate portion is comparable to that offered to non-pregnant students.”).

174 34 C.F.R. § 106.40(b)(3) (“A recipient which operates a portion of its education program or activity of the recipient.”).

175 Compare 34 C.F.R. § 106.40(b)(2) (allowing medical certification for pregnant students as a condition of participation only if such certification is required “of all students for other physical or emotional conditions requiring the attention of a physician”) and 34 C.F.R. § 106.40(b)(4) (requiring the same medical coverage for pregnancy as for other temporary disabilities) with 34 C.F.R. § 106.40(b)(5) (requiring recipients to “treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student’s physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began”).

176 Pillow, supra note 116, at 28-32.

177 Id.

178 See Brittany Ducker, Chalk Talk: Overcoming the Hurdles: Title IX and Equal Educational Attainment for Pregnant and Parenting Students, 36 J.L. & Educ. 445 (2007) (“After giving birth, a teenager has a 59% chance of subsequently dropping out of school.”). Latinas are at the highest risk for dropping out both prior to and after getting pregnant, while white teens are next most likely to drop out after pregnancy, and black girls have the lowest risk of dropping out of school after becoming pregnant. Pillow, supra note 116, at 118-119. This racial breakdown in the drop-out rate from pregnancy is ironic, given that racial stereotypes often cast black pregnant teens as the “problem” girls
regular school programs often encounter many obstacles, including strict registration and timing requirements, teachers and counselors who discourage them from staying and steer them into separate alternative programs instead, strict attendance policies, and a lack of adequate support services and accommodations.  

While such practices clearly violate the terms of Title IX's regulation prohibiting discrimination against pregnant students, there is a dearth of legal precedent on the obligations of schools to accommodate pregnant students and the rights of pregnant students and mothers to equal educational opportunities. The only reported cases applying Title IX to pregnancy discrimination against students involve the exclusion of high-achieving students who become pregnant from National Honor Society membership. In the sports context in particular, the only publicized lawsuit alleging pregnancy discrimination under Title IX involved a college basketball player who filed a Title IX challenge based on her treatment by the college after she became pregnant. That case settled out of court without any reported decision. The temporary nature of both pregnancy and high school make formal legal challenges to such practices uncommon. The difficulty of bringing such challenges is compounded by the overwhelming daily burdens confronting pregnant students and student mothers to survive and manage daily life. As Pillow observed, it takes extraordinary adult support for a pregnant or mothering student to pursue her legal rights. In light of Title IX's failure to translate into meaningful educational opportunity for high school students generally, the potential for the law to improve the chances that pregnant high school athletes will stay in the game appear dim at best. The law's utter

with respect to teen pregnancy.

179 Pillow, supra note 116, at 95, 123-26; see also Brittany Ducker, Chalk Talk: Overcoming the Hurdles: Title IX and Equal Educational Attainment for Pregnant and Parenting Students, 36 J.L. & Educ. 445 (2007); Amber Hausenfluck, Comment: A Pregnant Teenager’s Right to Education in Texas, 9 Scholar 151 (2006).

180 Contrast Pfeiffer v. Marion Ctr. Area Sch. Dist., 917 F.2d 779 (3d Cir. 1984) (excluding a pregnant girl for having engaged in premarital sex is not necessarily sex discrimination) with Chipman v. Grant County Sch. Dist., 30 F.Supp.2d 975 (6th Cir. 1998) (excluding a pregnant girl from National Honor Society was sex discrimination); Cazares v. Barber, 959 F.2d 753 (9th Cir. 1991); Wort v. Vierling, 778 F.2d 1233 (7th Cir. 1985).

181 See Joanna Grossman, A New Lawsuit by a Female Athlete Tests Title IX's Protection Against Pregnancy Discrimination, Findlaw, Tuesday, May 6, 2003, available at http://writ.news.findlaw.com/grossman/20030506.html (last visited Apr. 25, 2008) (describing a case filed by a female athlete at Sacred Heart University alleging that the university denied her "medical redshirt" status and revoked her scholarship when she became pregnant).

182 Pillow, supra note 116, at 127.

183 A recent "Dear Colleague" letter by the Office for Civil Rights interprets Title IX to protect
failure to engage deeply embedded issues of racial inequality in the education of pregnant teens and teen parents makes it all the more unlikely a tool for meaningful social change in this area.

3. Sports as an Educational Policy Issue and the Implications for Gender and Racial Equality

Darnellia’s story raises important questions about the value of sports and what function they serve in our schools. If sports are educationally beneficial to school-age youth, do they lose their value to girls who become pregnant? One of the highly touted benefits of sports in the public relations campaign to expand athletic offerings to girls is their effect in reducing teenage pregnancy. This emphasis in the case for offering sports to girls, however, risks reinforcing the racial and gender ideologies that have constructed teen pregnancy as problematic in the first place. Fueling the “epidemic” logic that so often accompanies discussion of teen pregnancy, this argument for increasing sports opportunities for girls presents sports as a vaccine to reduce the risk of teen pregnancy. Its power in expanding popular support for girls’ sports plays on the racially-coded stigma that situates teen pregnancy as a social welfare problem. It may also inadvertently reinforce the gender ideology that women, and not men, are responsible for unplanned pregnancies. While sports participation has the effect of increasing the age of sexual activity for young women, it does not have this effect for young men. Although sports are judged as valuable for boys even without any inhibitory effect on their sexual activity, the value of sports for girls is linked in part to their effect in reducing girls’ sexual activity.

Under this logic for making sports available to female students, a young woman who becomes pregnant is less deserving of the chance to play sports. She has lost one of her reasons to play. Presenting sports as a vaccine against teen pregnancy has the unfortunate effect of reinforcing the good girl/bad girl divide, with bad (sexually active, pregnant) girls losing their entitlement to the sports privileges reserved for good girls.

Of course, advocates must always frame their arguments within real-world constraints, pitched to the audience whose support is necessary for change. So it is easy to understand the appeal of the teen pregnancy prevention argument for pregnant athletes from discrimination, but it is focused at the intercollegiate level and on the protection of athletic scholarships. Dear Colleague Letter, Office of the Assistant Secretary (June 25, 2007), available at http://www.ed.gov/about/offices/list/ocr/letters/colleague-20070625.html (last visited Apr. 25, 2008). It is not clear that it would have helped Darnellia Russell in her struggle to continue to participate in interscholastic sports.

184 Pillow, supra note 116, at 223.
185 Id.
increasing girls' sports opportunities. However, there is a significant downside to linking pro-sports discourse to teen pregnancy prevention. A better case for expanding girls' sports opportunities would examine how sports help all young people learn important lessons, focusing on the reasons why sports are included in our educational system in the first place. Sports participation can convey important lessons that further long-term personal growth, independence and wellbeing. These lessons are valuable to all girls and young women.

Consideration of how a student's pregnancy should affect her sports career may require a rethinking of the positive values of sports and the reasons they are found in schools. If school sports programs are valued only as a feeder system for commercialized college and professional sports, pregnancy might mark a legitimate stopping point for, or at least significant interruption of, a student's athletic career. In a commercialized model of sports, in which winning is valued above the experience of the game, athletes are essentially commodities, useful only to the extent they advance the goal of winning. In this model, a pregnant athlete who needs extra time to return to the team might be less valuable than an athlete whose physical condition is constant. On the other hand, if our model for having sports in schools is an educational one which values sports for what they teach students, female athletes should not be discarded from sports upon becoming pregnant. The educational model of sports would ensure that sports programs adapt to the educational needs of the pregnant student and facilitate her return to sports when she is ready rather than penalize her for the interruption.

Choosing between these models raises important educational policy questions about the purposes and priorities of our schools. The current trend in education policy, at least at the national level, is to push for objective measurements of learning, narrowly defined. Schools have less space for "play" and fewer resources allocated beyond the basics. Education policy is long overdue for a deeper conversation about the importance of "play" and why sports remain worthy enterprises in an education setting. Proponents of increasing the value society places on "play" could emphasize its importance in helping young people forge strong identities, come to terms with transitions, develop human agency and navigate complex relationships.

If we expect schools to do more than inculcate narrowly defined, short-term job skills, they must provide ample opportunities for play. Sport, at its best, can be an important training ground for

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186 Wendy Luttrell has made a similar point in lamenting the devaluation of bodies as a site of knowledge, which harkens back to the mind/body split that characterizes western culture. Luttrell, supra note 117, at 178.

187 Id. at 179-82 (citing D.W. Winnicott, Playing & Reality 13 (1971)).
these developmental skills, and no less so for girls than for boys.

Title IX enforcement and advocacy has treated sports as a completely distinct area, wholly apart from other educational policy issues. The racial and gender inequities that pervade our educational system are manifest in the realm of sports too, but they are submerged in discussions of Title IX that focus only on sex, and only on sports, separate from rest of school environment. However, securing the benefits of sports to all girls and young women requires attention to how broader educational equity issues intersect with sports participation. The ultimate goal of Title IX should be to make sports valuable experiences for all female students, valuing them as whole persons and not just for what they contribute to a team’s win-loss record. To realize this goal for all girls and women, the educational model of sports must prevail over the commercial, win-at-all cost model that treats athletes as commodities in the service of winning.

CONCLUSION

Current Title IX advocacy and scholarship views sports as a discrete overlay on education without looking more deeply at how educational inequities affect and interrelate with sports, and the attendant implications for the women and girls who play sports. We need to reconceptualize gender equality in sports more broadly as an educational equity issue that is inclusive of race as well as gender, and situate sports within that broader education context. Darnellia’s story, as told in the film The Heart of the Game, provides a launching point for an intersectional analysis of how gender and race function to limit opportunities in sports, and education more broadly, for girls of color and African-American girls in particular. Such an examination is long overdue. This article has identified some themes for starting that discussion.
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<tr>
<th>State</th>
<th>Rule Description</th>
<th>Additional Information</th>
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<tr>
<td>Alabama</td>
<td>Eight Semester Rule - A high school student may be eligible only eight semesters in attendance after entering the ninth grade. School attendance of 15 days or more of any semester is counted as a semester. A student can be eligible only four fall semesters and four spring semesters after entering the ninth grade. The last two semesters, the seventh and eighth of a four-year high school and fifth and sixth of a three-year high school, must be consecutive.</td>
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<td>b. A waiver will not be granted in any case in which the asserted hardship is the sole result of knowing conduct by the student or his or her parents or guardians which had the effect of causing the hardship.</td>
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<td>c. Hardship is an unforeseeable, unavoidable and uncorrectable act, condition or event which causes the imposition of severe and non-athletic burden upon the student and his/her family.</td>
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<td>Arizona</td>
<td>Age Rule &amp; Eight Semester Rule (only the seventh and eighth semester must be consecutive)</td>
<td>Hardship exception available for unforeseeable, unavoidable, and uncorrectable acts, conditions, or events.</td>
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<td>“Rationale - The age rule and the semester rule are both attempts to equalize competition among athletes in AAA member schools as well as to encourage athletes to graduate with their class.”</td>
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<td>Hardships involve serious documented medical situations where students are not able to attend school at all or become incapacitated.</td>
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<td>Hardship exceptions are not to be granted for students who are in attendance and have the potential to earn credits, for students who due to illness or injuries are unable to compete but are able to attend school with the potential to earn credits or have failed to earn sufficient credits needed to graduate in eight consecutive semesters due to an expulsion.</td>
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<tr>
<td><a href="http://www.chsaa.org/">http://www.chsaa.org/</a></td>
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<tr>
<td>Delaware</td>
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<td>&quot;Hardship&quot; shall be defined as extenuating circumstances peculiar to the student athlete caused by unforeseen events beyond the election, control or creation of the student athlete, his/her family, or school which (1) deprive him/her of all or part of one of his/her opportunities to participate in a particular sports season; (2) preclude him/her from completing the academic requirements for graduation within the normal period of eligibility.</td>
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<td>Florida</td>
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<tr>
<td>Hardship exception circumstances of a sudden and extraordinary nature that are completely beyond the control of the student.</td>
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<tr>
<td>Georgia</td>
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<tr>
<td>Advisory note for when pregnant students should participate in activities → before 18th week with doctor’s permission</td>
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</tbody>
</table>
may participate. After 18th week, no participation.

Hardship exception
(a) The conditions which cause the student to fail to meet the eligibility requirements are beyond the control of the school, the student, and/or his parents and such that none of them could reasonably have been expected to comply with the rule; and,
(b) The conditions which cause the student to fail to meet the eligibility requirements work an unjust, unfair, and unforeseeable hardship upon the student; and
(c) The facts are clear, undisputed, and supported by appropriate documentation.

Constitution and By-laws
http://www.ghsa.net/constitution

<table>
<thead>
<tr>
<th>State</th>
<th>Rule Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hawaii</td>
<td>Athletic association doesn’t post handbook online</td>
</tr>
<tr>
<td>Idaho</td>
<td>Eight Consecutive Semester Rule</td>
</tr>
<tr>
<td></td>
<td>Hardship waiver possible if “rule fails to accomplish the purpose for which it is intended.”</td>
</tr>
<tr>
<td>Illinois</td>
<td>Age Rule &amp; Eight Semester Rule (only the seventh and eighth semester must be consecutive)</td>
</tr>
<tr>
<td>Indiana</td>
<td>Age Rule &amp; Eight Consecutive Semester</td>
</tr>
<tr>
<td></td>
<td>No hardship exception for eight consecutive semester rule</td>
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<tr>
<td></td>
<td>By-Laws and Articles of Incorporation - <a href="http://www.ihsaa.org/by_laws.shtm">http://www.ihsaa.org/by_laws.shtm</a></td>
</tr>
<tr>
<td>Iowa</td>
<td>Age Rule &amp; Eight Consecutive Semester</td>
</tr>
<tr>
<td></td>
<td>Exception to Semester Rule - “Extenuating circumstances, such as health, may be the basis for an appeal to the executive board which may extend the eligibility of a student when the executive board finds that the interests of the student and interscholastic athletics will be benefited.”</td>
</tr>
<tr>
<td>Kansas</td>
<td>Age Rule &amp; Eight Consecutive Semester Rule</td>
</tr>
<tr>
<td></td>
<td>Hardship exception for “illness or other justifiable emergencies”</td>
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<tr>
<td></td>
<td><a href="http://www.kshsaa.org/">http://www.kshsaa.org/</a></td>
</tr>
<tr>
<td>Kentucky</td>
<td>Age Rule &amp; Eight Consecutive Semester Rule</td>
</tr>
<tr>
<td>State</td>
<td>Rule Description</td>
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<tr>
<td>Louisiana</td>
<td>Age Rule &amp; Eight Consecutive Semester Rule</td>
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<tr>
<td>Maine</td>
<td>Age Rule &amp; Eight Consecutive Semester Rule</td>
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<tr>
<td>Maryland</td>
<td>Age Rule &amp; Eight Consecutive Semester Rule</td>
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<tr>
<td>Massachusetts</td>
<td>Age Rule &amp; Eight Consecutive Semester Rule</td>
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<tr>
<td>Michigan</td>
<td>Age Rule &amp; Eight Semester Rule (Four first semesters and four second semesters)</td>
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<tr>
<td>Minnesota</td>
<td>Age Rule &amp; Four Season Maximum – Also to be eligible student must not have dropped out or repeated a grade.</td>
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<tr>
<td>Mississippi</td>
<td>Age Rule &amp; Eight Consecutive Semester Rule</td>
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<tr>
<td>State</td>
<td>Rule Description</td>
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</tbody>
</table>
| Missouri | Age Rule & Eight Consecutive Semester Rule  
School principal regulate exceptions to eight semester participation rule  
http://www.mshsaa.org/Activities/Eligibility/EligibilityStandards.aspx#Requirements |
| Montana  | Age Rule & Eight Consecutive Semester Rule  
Possible Waiver for Age Rule -- It will be the burden of the student to prove:  
1. the student does not create a safety risk to other players, and  
2. the student does not skew the overall competitiveness of the particular activity(ies) for which the student will participate, and  
3. the student’s participation will not result in the exclusion of other eligible players, and  
4. the student meets all other criteria necessary for participation in MHSA activities. |
| Nebraska | Age Rule & Eight Semester Rule  
Hardship Appeal from Eligibility Determination  
The following shall be considered by the Executive Director or the Board of Control in determining if a hardship waiver is to be granted:  
a. There must be unique conditions existing that concern the student’s educational, physical, or emotional status which were caused by circumstances beyond the control of the student and his/her parents or legal guardian.  
b. The circumstances must be totally different from those that exist for the majority of students who are confronted with similar situations and choices. Usual maturation problems and family situations that do not cause physical harm do not constitute a hardship.  
c. There must be no reason to believe that non-compliance with the rule requested to be waived was for activity participation purposes.  
d. Academic deficiencies in a school’s curriculum or deficiencies in the school’s co-curricular activities do not constitute a hardship.  
e. Loss of eligibility in itself is not to be considered a hardship. Only the circumstances causing the ineligibility |
<table>
<thead>
<tr>
<th>State</th>
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<tbody>
<tr>
<td>New Hampshire</td>
<td>Deviations from eligibility rules dependent upon merits of the case and whether deviation would be consistent with the purpose of the rule. Deviations from eligibility rules dependent upon merits of the case and whether deviation would be consistent with the purpose of the rule. Coaches’ Handbook - <a href="http://www.nhiaa.org/manuals.cfm">http://www.nhiaa.org/manuals.cfm</a></td>
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<td>New Jersey</td>
<td>Deviations from eligibility rules dependent upon merits of the case and whether deviation would be consistent with the purpose of the rule. Deviations from eligibility rules dependent upon merits of the case and whether deviation would be consistent with the purpose of the rule. Coaches’ Handbook - <a href="http://www.nhiaa.org/manuals.cfm">http://www.nhiaa.org/manuals.cfm</a></td>
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<td>New Mexico</td>
<td>Deviations from eligibility rules dependent upon merits of the case and whether deviation would be consistent with the purpose of the rule. Deviations from eligibility rules dependent upon merits of the case and whether deviation would be consistent with the purpose of the rule. Coaches’ Handbook - <a href="http://www.nhiaa.org/manuals.cfm">http://www.nhiaa.org/manuals.cfm</a></td>
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<td>New York</td>
<td>Deviations from eligibility rules dependent upon merits of the case and whether deviation would be consistent with the purpose of the rule. Deviations from eligibility rules dependent upon merits of the case and whether deviation would be consistent with the purpose of the rule. Coaches’ Handbook - <a href="http://www.nhiaa.org/manuals.cfm">http://www.nhiaa.org/manuals.cfm</a></td>
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<td>Nevada</td>
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<td>North Carolina</td>
<td>Deviations from eligibility rules dependent upon merits of the case and whether deviation would be consistent with the purpose of the rule. Deviations from eligibility rules dependent upon merits of the case and whether deviation would be consistent with the purpose of the rule. Coaches’ Handbook - <a href="http://www.nhiaa.org/manuals.cfm">http://www.nhiaa.org/manuals.cfm</a></td>
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<td>North Dakota</td>
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<td>Oklahoma</td>
<td>Deviations from eligibility rules dependent upon merits of the case and whether deviation would be consistent with the purpose of the rule. Deviations from eligibility rules dependent upon merits of the case and whether deviation would be consistent with the purpose of the rule. Coaches’ Handbook - <a href="http://www.nhiaa.org/manuals.cfm">http://www.nhiaa.org/manuals.cfm</a></td>
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</tbody>
</table>
### Possible Hardship Exceptions
- A legitimate need to care for seriously ill or infirm relatives.
- An unstable home environment in which the physical and/or emotional health of the student is at serious risk.
- A substantial negative change in the financial condition of the parents, or custodial parent or courtappointed guardian with legal custody of the student.
- Any other circumstance beyond the control of the student which creates an unavoidable hardship for that student.

### Hardship Waiver Regulations
[http://www.ossaa.com/partners/ossaa/eligibility/hardship_waiver_index.html](http://www.ossaa.com/partners/ossaa/eligibility/hardship_waiver_index.html)

<table>
<thead>
<tr>
<th>State</th>
<th>Rule &amp; Semester Rule</th>
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<tbody>
<tr>
<td>Oregon</td>
<td>Possible addition of a fifth year if (1) proof of disability or (2) due to circumstances beyond the control of both the student and the student’s parent(s), there has been both a significant absence from school (not less than one semester) and an inability to obtain academic credit during that period of absence.</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>Possible Hardship Waiver where a student demonstrates that the student repeated a school year or semester for a reason beyond the student's control, which produced severe and unusual environmental, social, and/or emotional conditions which, in turn created a debilitating personal non-athletic hardship which would have prevented a reasonable student under similar circumstances from satisfactorily completing a school year or semester. No more than two semesters may be waived by the District Committee.</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>If a female drops out because of pregnancy, she is not subject to the 50 percent rule (can't add players after 50 percent of the scheduled games have been played) as long as she returns to the same school</td>
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<tr>
<td>State</td>
<td>Rule Description</td>
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<tr>
<td>South Carolina</td>
<td>Age Rule &amp; Eight Consecutive Semester Rule</td>
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<td></td>
<td>South Carolina Age Rule &amp; Eight Consecutive Semester Rule</td>
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<tr>
<td>South Dakota</td>
<td>Age Rule &amp; Eight Consecutive Semester Rule</td>
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<td></td>
<td>Hardship exception only for transfer rule</td>
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<td></td>
<td>South Dakota Age Rule &amp; Eight Consecutive Semester Rule</td>
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<tr>
<td>Tennessee</td>
<td>Age Rule &amp; Eight Consecutive Semester Rule</td>
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<tr>
<td></td>
<td>No hardship exception for these eligibility rules</td>
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<tr>
<td></td>
<td>Tennessee Age Rule &amp; Eight Consecutive Semester Rule</td>
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<td></td>
<td>TSSAA Constitution and Bylaws <a href="http://www.tssaa.org/Handbook/handbookindex.htm">http://www.tssaa.org/Handbook/handbookindex.htm</a></td>
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<tr>
<td>Texas</td>
<td>Age Rule &amp; Four Year Rule</td>
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<td>Hardship exception for four year rule</td>
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<tr>
<td></td>
<td>Texas Age Rule &amp; Four Year Rule</td>
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<td><a href="http://www.uil.utexas.edu/policy/eligibility.html">http://www.uil.utexas.edu/policy/eligibility.html</a></td>
</tr>
<tr>
<td>Utah</td>
<td>Age Rule &amp; Four Season Maximum Rule</td>
</tr>
<tr>
<td></td>
<td>Utah Age Rule &amp; Four Season Maximum Rule</td>
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<tr>
<td></td>
<td>By-laws <a href="http://www.uhsaa.org/info/index.php">http://www.uhsaa.org/info/index.php</a></td>
</tr>
<tr>
<td>Vermont</td>
<td>Age Rule &amp; Eight Consecutive Semester Rule</td>
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<td>Waivers of eligibility rules in matters of age may be granted as a matter of</td>
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<td>discretion only under extraordinary circumstances in which undue hardship, (as</td>
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<td>defined in these rules), directly causes non-compliance with the eligibility</td>
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<td>rule, and if the waiver will not have an adverse impact on other participants or</td>
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<td>the fairness of competition.</td>
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<td>Undue Hardship: A severe burden upon the student or his/her family/guardian as</td>
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<td>a direct result of circumstances which were unforeseeable and could not be avoided.</td>
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<td></td>
<td>Circumstances involving choice on the part of the student or parents/guardians do</td>
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<td>not constitute undue hardships.</td>
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<td></td>
<td>Vermont Age Rule &amp; Eight Consecutive Semester Rule</td>
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<tr>
<td></td>
<td>Standards of Eligibility &amp; Exceptions and Waivers</td>
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<tr>
<td></td>
<td><a href="http://www.vpaonline.org/bylaws/index.asp">http://www.vpaonline.org/bylaws/index.asp</a></td>
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<tr>
<td>Virginia</td>
<td>Age Rule &amp; Eight Consecutive Semester Rule</td>
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<td></td>
<td>Virginia Age Rule &amp; Eight Consecutive Semester Rule</td>
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<tr>
<td></td>
<td>No exception for age rule. Only students who study abroad may qualify for</td>
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<tr>
<td></td>
<td>exception to eight consecutive semester rule</td>
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244
<table>
<thead>
<tr>
<th>State</th>
<th>Rule &amp; Exception Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Washington</td>
<td>Age Rule &amp; Eight Semester rule&lt;br&gt;The WIAA provides a process by which a student, parent or guardian can appeal to have eligibility reinstated. Eligibility appeals are based upon hardship conditions beyond the control of the student that do not exist for the general school population. Guide to Student Athlete Eligibility <a href="http://www.wiaa.com/pub/forms/default.asp#eligibility">http://www.wiaa.com/pub/forms/default.asp#eligibility</a></td>
</tr>
<tr>
<td>Wisconsin</td>
<td>Age Rule &amp; Eight Semester rule&lt;br&gt;Appeal process, but no express hardship exception&lt;br&gt;Senior high handbook - <a href="http://www.wiaawi.org/index.php?id=8">http://www.wiaawi.org/index.php?id=8</a></td>
</tr>
<tr>
<td>Wyoming</td>
<td>Eight Semester Rule&lt;br&gt;SEMESTER RULE – HARDSHIP&lt;br&gt;If after determination of a student’s eligibility with regard to semester, the member school administrator determines that certain conditions beyond a student’s control exist which create a hardship on the student, the member school administrator may petition the Commissioner for a waiver of the semester rule. Such cases must be filed under and in accordance with the proper form. The Commissioner will rule upon the petition for waiver on an individual case basis. The semester hardship rule applies only to those students who, because of illness or other justifiable emergencies, <a href="http://www.whsaa.org/handbook/handbook.asp">http://www.whsaa.org/handbook/handbook.asp</a></td>
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</tbody>
</table>