Lawsuit could test limits of Title IX

By Frank Fitzpatrick
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This time, it’s not because a female athlete is using the 30-year-old law to pry athletic opportunity out of a reluctant college.

The plaintiff this time is an organization of wrestling coaches convinced that the way Title IX is being administered is destroying college wrestling.

The lawsuit, which the National Wrestling Coaches Association filed in January against the U.S. Department of Education, launched some of the heaviest fire yet against proportionality - the requirement that the percentage of female athletes at any school receiving federal money closely approximate the percentage of female undergraduates.

Friends and foes alike of Title IX see the lawsuit as significant. They also see as significant President Bush’s appointment in March of Gerald Reynolds, a lawyer with a record of opposition to affirmative action, to the top position in the Education Department’s Office for Civil Rights, which is charged with enforcing Title IX.

The worst that could happen, from the perspective of Title IX advocates, is that the courts will agree with the wrestling coaches and strike down proportionality, or that Reynolds will act to diminish the standard.

It’s not surprising that the nation’s colleges and universities - nearly 80 percent of which fall short of Title IX’s standards - are looking anxiously toward Washington as they continue to face the dilemma of either cutting men’s sports or adding women’s programs to comply with the law.

“There is the rumbling of changes in the legal and enforcement landscape, and we’ll be keeping a close eye on those,” said Charles Pollock, vice president for student affairs at Bucknell University, which recently dropped varsity wrestling. “Significant changes there may suggest different approaches [at Bucknell and elsewhere].”

Fighting for the wrestlers

The National Wrestling Coaches Association, which has its headquarters in the Lancaster County town of Manheim, seeks in its lawsuit to have proportionality overturned as a measure of Title IX compliance.

It may be an uphill struggle. The courts have seen proportionality as a more reliable measure of a school’s Title IX compliance than a history of improvements in women’s programs or evidence that female interests have been accommodated.

“We completely embrace Title IX,” said Mike Moyer, the association’s executive director. “It’s this interpretation, this required gender quota, that has turned this law upside down... Wrestling has suffered tragic losses. Every day I come in here and I’m afraid to turn on my computer. It’s another school. It’s another program.”

Wrestling has been a favorite target as college administrators eliminate minor men’s sports to balance athletic opportunities for men and women. But it has not been alone.

Track and gymnastics coaches have joined their wrestling counterparts in the suit, as have wrestling boosters at Bucknell and Marquette, two of the many schools that lost men’s teams in the last two decades.

In Congress, the wrestling backers have a strong ally in House Speaker Dennis Hastert, the Illinois Republican who is a former Wheaton College wrestler and a onetime coach at a Chicago suburban high school.

“Proportionality is a quota program,” Hastert said. “Title IX helps women to a large extent, but it was never put in place to punish men’s sports, and I think proportionality has done that.”
While proportionality may be under challenge, no one is proposing any change in the basic premise of Title IX - that men and women must be afforded equal athletic opportunities.

Title IX has overwhelming public support. An NBC/Wall Street Journal poll in 2000 found that 79 percent of Americans supported Title IX. And that finding didn’t vary much when respondents were asked if they would back the law even if it meant eliminating men’s sports.

Seventy-six percent - 79 percent of Democrats, 70 percent of Republicans - said they would.

“All the challenges to Title IX, all the changes that have been proposed... those figures are the reason it doesn’t happen,” Donna Lopiano, head of the Women’s Sports Foundation, said at a recent Title IX seminar held by the NCAA in Arlington, Va.

“Any politician who opposes Title IX would be committing political suicide.”

The Bush administration, seeking to tread softly between public opinion and anti-quota conservatives who backed the President in 2000, recently gave the NWCA a meek thumbs-down, seeking its dismissal on technical grounds without challenging any legal claims against Title IX.

“Think about it,” suggested a Pennsylvania congressman who did not want his name used because Title IX is, in his words, a third-rail issue. “Do you think women are going to vote for Bush and Republicans in any great number if they perceive that he is attacking the greatest law in women’s history?”

That political sensitivity was re-emphasized just last week when Education Secretary Rod Paige announced the formation of a blue-ribbon panel to study possible changes in the law.

“Some would like to settle this in the courts,” said Paige. “We believe the better approach is to discuss all the questions openly.”

The 15-member Commission on Opportunities in Athletics, which includes prominent women athletes and administrators as well as Pennsylvania State University president Graham Spanier, will conduct hearings and submit a report to Paige by Jan. 31.

The National Women’s Law Center and other Title IX advocates immediately criticized the announcement, saying increased enforcement is the only way to improve the law.

“Most schools commit to comply, and it’s up to you to figure out if they have or haven’t,” said Marcia Greenberger of the NWLC. “Athletics is one of the few areas where we have an explicit distinction drawn on the basis of sex. The fact that there is still second-class treatment for women’s sports programs doesn’t have an analog in any other sphere of our lives.”

The Office for Civil Rights does not actively pursue Title IX violators. It answers complaints. Sometimes that answer involves an investigation and, in still fewer cases, discussions with schools about correcting the problem.

“What usually happens,” said Arthur Bryant, a Washington lawyer who argued a 1992 Title IX lawsuit against Brown University, “is that the process ends with some sort of sweetheart deal.

Research in 2000 by the American Association of University Women found the Office for Civil Rights had received an average of 500 Title IX complaints a year from 1992 to 1997.

The OCR has the authority to withhold federal funds from a school for violating Title IX, but has never done that.

“The OCR can also refer cases to the Justice Department for prosecution. That has never happened,” said Lamar Daniels, a leading Title IX consultant. “Most of their time is spent on handicapped, not Title IX, cases.”

“It’s like mediation,” said Rodger Murphey, a Department of Education spokesman. “What we try to do is resolve the issues with the complainant and school officials.”

A possible complication

If the courts are reluctant to abandon proportionality, the federal government may not be, now that Reynolds is in charge at the Office for Civil Rights. President Bush preempted a possibly contentious confirmation hearing by appointing him during a congressional recess.

“It goes without saying that we hope he shares our views of restoring Title IX to its original intent,” said the NWCA’s Moyer.

“The public has forgotten that Title IX isn’t just for girls,” said Christine Stolba, a senior fellow at the Independent Women’s Forum in Arlington, Va. “Mothers of sons want equal opportunity, too. They want to know why their sons can’t wrestle while athletic directors are scouring college cafeterias, looking for girls to do archery.”
Reynolds, 38, an African American born in New York who has been a corporate lawyer in Kansas City, Mo., has not been giving interviews, but he has bragged that he is glad he did not attend “an Ivy League re-education camp.”

He has drawn the ire of civil-rights groups because of statements critical of the Americans With Disabilities Act and of affirmative action. He has called affirmative action “the big lie - a corrupt system of preferences, set-asides and quotas.”

He also is an active member of the Federalist Society, an organization that has a history of opposition to those same civil-rights policies.

Advocates of proportionality found little comfort in the Bush administration’s brief asking that the wrestling coaches’ suit be dismissed.

“What is revealing is what the government didn’t say,” said Greenberger. “It made absolutely no defense of the underlying policies that were challenged by the wrestlers, and it sets off alarm bells as to what the future plans of the administration might be.”