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The content and discussion in this course will necessarily engage with sex discrimination, sexual harassment, violence, and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language. It is not used gratuitously, and no offense is intended.



Introduction



The primary focus of this training is to prepare Title IX and Athletics practitioners to build stronger Athletic programs regarding compliance, access, and fairness.



Title IX and Athletics practitioners will be able to identify compliance requirements and best practices as well as address red flags related to athletics compliance.



Our goal is to provide a deeper understanding of issues relating to sex discrimination, sexual harassment, and program access and fairness compliance.



2024 Title IX Regulations Vacated

All federal funding recipients are now subject to the 2020 Title IX Regulations

- January 9, 2025: a federal district court in Kentucky vacated the 2024 Title IX Regulations in their entirety; other federal courts have followed suit
 - The 2024 Title IX Regulations are now vacated (null and void) and **not** in effect for **any** state, institution, or school
- Institutions must revert to 2020-compliant policies and procedures for Title IX cases
 - Ensure compliance with all 1975 and 2020 regulatory requirements
 - Revisit any complaints decided under 2024 regulations to ensure compliance



Dear Colleague Letter (02/04/25)

ED released a Title IX-focused Dear Colleague Letter (DCL) on 02/04/25

- OCR will enforce the 2020 Regulations, not 2024
- Institutions must immediately shift open investigations to use 2020 Regulations
- OCR will enforce Defending Women from Gender Ideology EO
 - Quoting the EO, OCR will:
 - ""enforce all sex-protective laws to promote [the] reality' that there are 'two sexes, male and female,' and that '[t]hese sexes are not changeable and are grounded in fundamental and incontrovertible reality."



Executive Order re: Sex and Gender

Defending Women from Gender Ideology Extremism and restoring Biological Truth to the Federal Government (01/20/25)

- Defines sex as a binary concept man or woman
- All agencies must ensure that intimate spaces are designated by sex, not gender identity
- Limited Bostock v. Clayton County's holding, says it only applies to Title VII
 - Dept of Justice issued guidance on 02/12/25 that *Bostock* does not apply to Title IX
- Prohibits federal funds and grants from promoting gender ideology
- Revokes all Biden administration EOs addressing gender identity
- Directs OCR to prioritize investigations/litigation to enforce rights and freedoms to binary nature of sex
- Does not address sexual orientation
- Courts initially paused enforcement, but the EO is now in full effect



Executive Order re: Gender and Athletics

Keeping Men Out of Women's Sports (02/05/25)

- Prohibits transgender women from playing women's sports
 - Cited as necessary for "safety, fairness, dignity, and truth"
- Applies definitions from Defending Women from Gender Ideology EO
- Threatens withdrawal of federal funds
- Will use Title IX to enforce on a prioritized basis
- Seeks to eliminate Olympic competition based on gender identity or testosterone reduction
- Does not prohibit transgender men from participation
- Subject of active and rapid enforcement by Federal government



NCAA Participation Policy for Transgender Student-Athletes

 February 6, 2025 - Following the Trump Administration's Executive Order, the NCAA adopted a new policy limiting competition in women's sports to student-athletes assigned female at birth only

NCAA Men's Sports:

- "Regardless of sex assigned at birth or gender identity, a student-athlete may participate (practice and competition) in NCAA men's sports, assuming they meet all other NCAA eligibility requirements."
- "Student-athletes taking a banned substance (e.g., testosterone) must complete the medical exception process."

Source: https://www.ncaa.org/sports/2022/1/27/transgender-participation-policy.aspx



NCAA Participation Policy for Transgender Student-Athletes, Cont.

NCAA Women's Sports:

- A student-athlete assigned male at birth:
 - May not compete for an NCAA women's team
 - May practice on an NCAA women's team and receive all other benefits applicable to student-athletes:
- A student-athlete assigned female at birth who has begun hormone therapy (e.g., testosterone)
 - May not compete on a women's team
 - May continue practicing with a women's team and receive all other benefits applicable to student-athletes
- Individual schools have the autonomy to determine athletics participation on their campuses
- NCAA schools are subject to local, state and federal legislation and such policy supersedes the rules of the NCAA
- Sports with mixed men's and women's NCAA championships are exempt from this policy



Policy Implications

- Transgender, transitioning, intersex, and non-binary athletes
 - Title IX and Equal Protection Clause
 - Current state of federal regulations, including state noncompliance directives
 - Federal court decisions
 - State laws
- Consider:
 - Sex-segregated sports teams
 - Locker rooms/bathrooms
 - Institutional or conference policies



Dear Colleague Letter (02/14/25)

- ED interprets *Students for Fair Admissions v. Harvard* to bar institutions from using race in decisions pertaining not only to admissions, but also:
 - Financial aid and scholarships
 - Administrative support
 - Discipline
 - Housing
 - Graduation ceremonies
 - All other aspects of student, academic, and campus life (including athletics)
- Relying on non-factual information as a proxy violates the law, too
- FAQ About Racial Preference and Stereotypes: February 28, 2025



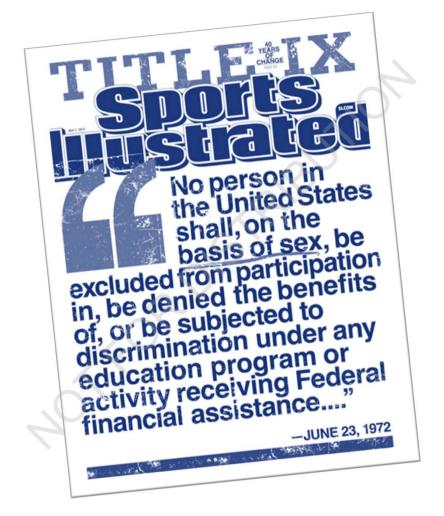
Rescinded Prior Guidance

Rescinds all guidance documents inconsistent with the EO or subsequent guidance including:

- White House Toolkit on Transgender Equality
- 2024 Title IX Regulations: Pointers for Implementation
- ED Toolkit: Creating Inclusive & Nondiscriminatory School Environments for LGBTQI+ Students
- Supporting Intersex Students
- Supporting Transgender Youth in School
- Letter of Educators on Title IX's 49th Anniversary
- Confronting LGBTQI+ Harassment in Schools
- Enforcement of Title IX...Based on Sexual Orientation and Gender Identity in Light of Bostock
 v. Clayton County
- AG's memorandum "Application of Bostock v. Clayton County to Title IX"
- EEOC's "Enforcement Guidance on Harassment in the Workplace"



Introduction to Title IX





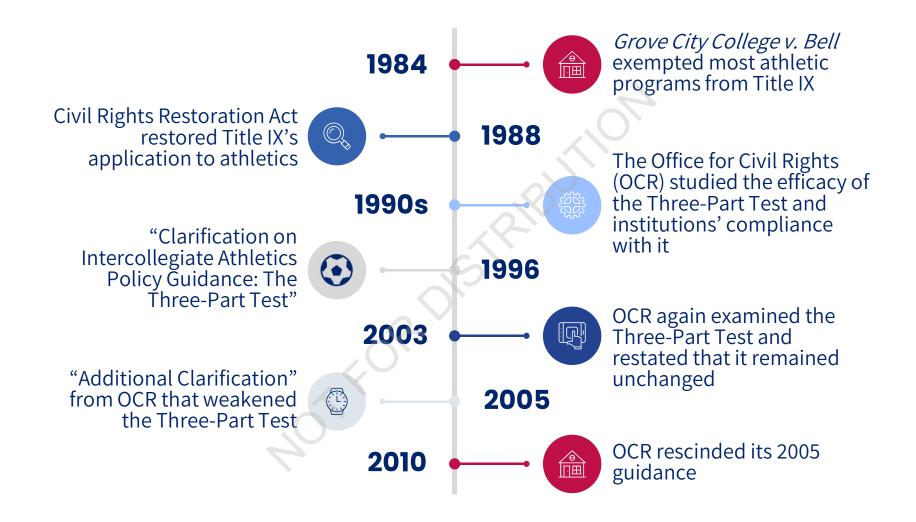
"TOO STRONG FOR A WOMAN"

Bernice "Bunny" Sandler's story

History of Title IX and Athletics

- Athletics is not mentioned in the 1972 Title IX statute
- Regulations proposed in 1974 included athletics, which created a fire-storm
- Regulations passed in 1975 with a three-year compliance deadline for athletics
- Dec. 11, 1979, HEW* issued the "Intercollegiate Athletics Policy Interpretation"
 - Contained the "Three-Part Test" to determine Title IX compliance with student interests and abilities





NCAA Requirements

NCAA Campus Sexual Violence Policy – Annual Attestation

- Policy training and compliance
- Dissemination of information
- Annual education for all student-athletes, coaches, and staff
- Prior conduct disclosure form for all prospective, continuing, and transfer student-athletes
- Prior misconduct check
- Policy regarding gathering information from previous institution(s)



NCAA Attestation: Community or Junior Colleges

- Community colleges are **not** members of the NCAA, so the attestation requirements do not apply to them
 - Not attesting to the information requested may result in the student-athlete not being permitted to participate at NCAA member institutions
- Some institutions are moving toward "serious misconduct" policies, in which they inquire about behavior beyond Title IX and may ask broader questions
 - These requests can also be referred to the dean of students or student conduct office
- These requests should be referred to whoever maintains disciplinary and/or Title IX records for the institution to complete
- Be careful about giving verbal answers regarding matters that may be sealed
- The NJCAA and CCCAA have not implemented attestation policies (yet)



NCAA and Sexual Violence

The Executive Committee expects NCAA members to...**operate fairly and ethically**, and further to assure that student-athletes are neither advantaged nor disadvantaged by special treatment and that **institutions' athletics departments must:**

- Comply with campus authorities and ensure that all athletics staff, coaches, administrators and student-athletes maintain a hostile-free environment for all student-athletes regardless of gender or sexual orientation
- Know and follow campus protocol for reporting incidents of sexual violence
- Report immediately any suspected sexual violence to appropriate offices for investigation and adjudication



NCAA and Sexual Violence, Cont.

Athletic departments must:

- Educate all student-athletes, coaches, and staff about sexual violence prevention, intervention, and response
- Assure compliance with all applicable federal and state regulations related to sexual violence prevention and response
- Cooperate with but **not** manage, direct, control, or interfere with institution's investigations into allegations of sexual violence
 - Ensure that investigations involving student-athletes and athletic department staff are managed in the same manner as all other students and staff on campus
- Sexual Violence Policy FAQ available in course lobby
- NCAA member institutions have access to policy examples (log-in required) and additional resources through the NCAA website

Source: NCAA Executive Committee: August 8, 2014.



- The athletics department is informed on, integrated in, and compliant with institutional policies and processes regarding sexual violence prevention and proper adjudication and resolution of acts of sexual and interpersonal violence
- 2. The institutional policies and processes regarding sexual violence prevention and adjudication, and the name and contact information for the Title IX Coordinator (TIXC) are readily available within the department of athletics and are provided to student-athletes*



- 3. All student-athletes, coaches and staff have been educated each year on sexual violence prevention, intervention and response, to the extent allowable by state law and collective bargaining agreements
- 4. All incoming, continuing and transfer student-athletes have completed an annual disclosure related to their conduct that resulted in discipline through a Title IX proceeding or in a criminal conviction for sexual, interpersonal or other acts of violence**

Transfer student-athletes also must disclose whether a Title IX proceeding was incomplete at the time of transfer. Failure to make a full and accurate disclosure could result in penalties, including loss of eligibility to participate in athletics as determined by the member institution

**See next slide.



- **A person who has been disciplined through a Title IX proceeding or criminally convicted, regardless of the degree, and whether the result of a plea or court determination, of any of the following:
- Interpersonal Violence: Violence that is predominantly caused due to the relationship between the victim and the perpetrator, including dating and domestic violence
- Sexual Violence: A term used to include both forcible and nonforcible sex offenses, ranging from sexual battery to rape
- Other Acts of Violence: Crimes including murder, manslaughter, aggravated assault or any assault that employs the use of a deadly weapon or causes serious bodily injury



5. Institutions have taken reasonable steps to confirm whether incoming, continuing and transfer student-athletes have been disciplined through a Title IX proceeding or criminally convicted of sexual, interpersonal or other acts of violence**

In a manner consistent with federal and state law, all NCAA member institutions must share relevant discipline information and incomplete Title IX proceedings at the time of transfer with other member institutions when a student-athlete attempts to enroll in a new college or university

**See previous slide.



6. An institution choosing to recruit an incoming student-athlete or accept a transfer student-athlete must have a written procedure that directs its staff to gather information that reasonably yields information from the former institution(s) to put the recruiting institution's leadership on notice that the student left the institution with an incomplete Title IX proceeding, was disciplined through a Title IX proceeding, or has a criminal conviction for sexual, interpersonal or other acts of violence.**

Failure to have it written and to gather information consistent with this procedure could result in penalties.

**See slide 24.



Name, Image, Likeness

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Name, Image, and Likeness

- Individuals can engage in name, image, and likeness (NIL) activities that are consistent with the law of the state where the institution is located
 - Colleges and universities may be a resource for state law questions
- College athletes who attend an institution in a state without an NIL law can engage in this type of activity without violating NCAA rules related to NIL
- Individuals can use a professional services provider for NIL activities
- Student-athletes should report NIL activities consistent with state law or intuitional and conference requirements to their institution



Name, Image, and Likeness, Cont.

- Emerging Title IX implications of NIL
 - Publicity and Promotion equity
 - Copyright implications
 - NIL & Collectives litigation (at the College level)
- House case status



Regulatory Standards

Title IX and Athletics

Title IX requires an institution to:

- Provide equal opportunities for female and male students to become intercollegiate athletes
 - Analyzed by means of a three-part test
- Provide fair and consistent treatment of participants in the overall women's program as compared to the overall men's program
 - Analyzed according to 13 different program components (e.g., the "Laundry List")



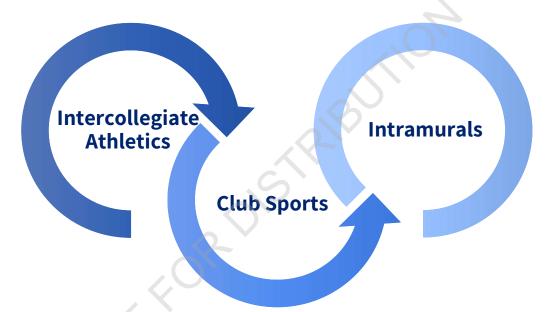
Title IX and Athletics

Title IX does not require an institution to:

- Provide the same funding to the overall women's and men's programs
- Provide the same funding to men's and women's teams for the same sport
- Provide specific benefits to teams
- Offer the same number of teams for men and women
- Offer the same sports for men and women
- Provide the same benefits to men's and women's teams in the same sport
- Compete at a specific level



Title IX and Athletics



Three-Part Test and the 13 program components are typically not as problematic for Intramurals and Club Sports because those programs are usually self-initiated and fewer benefits are provided by the institution



Athletic Oversight:

- Title IX compliance oversight remains the responsibility of the institution's TIXC
- Title IX compliance in athletics may be delegated to the Senior Woman Administrator (SWA) or compliance officer in athletics
 - Need for additional education on the various areas of Title IX
- Institutions should have a Deputy TIXC in athletics
 - Athletics Deputy TIXC should **not** be the institution's TIXC





The Three-Part Test: Accommodation of Interests and Abilities

Three-Part Test (1979)

Effective accommodation of interests and abilities

Opportunities for males and females are **substantially proportionate** to their respective enrollments; **OR**

Where one sex has been underrepresented, a **history and continuing practice** of program expansion responsive to the developing interests and abilities of that sex; **OR**

Where one sex is underrepresented and cannot show a continuing practice of program expansion, whether it can be demonstrated that the **interests** and abilities of that sex have been **fully and effectively accommodated** by that present program



Part 1: Proportionality

Opportunities for males and females are **substantially proportionate** to their respective enrollments

- Substantially proportionate accounts for natural fluctuations in enrollment and participation rates
 - Institutions must adjust if shifts in enrollment or participation persist
- OCR uses a case-by-case analysis, rather than a rigid statistical requirement (e.g., within 1% of student body)
- OCR would also consider opportunities to be substantially proportionate when the number of opportunities that would be required to achieve proportionality would **not** be sufficient to sustain a viable team

Source: OCR (1996). Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test.



Counting Participants

For purposes of Title IX compliance, a **participant** is defined as those athletes who:

- Regularly receive institutionally sponsored support normally provided to athletes
- Regularly participate in organized practices or team meetings and activities during the season
- Are listed on the eligibility list or squad (see next slide)
- Are injured, but continue to receive financial aid on the basis of athletic ability



Counting Participants, Cont.

- Participants also include those who:
 - Are listed on a team's squad or eligibility list and are on the team as of the team's first competitive event
 - Join the team during the season
 - Season begins at team's first competitive event, concluding at final event
 - Are a walk-on
 - Are a member of the JV, freshman, "B" team, etc.
 - Quit or were cut after the first competitive event
 - Are a Redshirt athlete
 - Are a mid-year transfer eligible to participate in the spring





Counting Participants, Cont.

The following are **not** participants:

- Unfilled team slots or positions
- Club, intramural, and recreation program participants
- Athletes who quit or are cut **before** first competitive event of the season
- Sport participants out of season (e.g., spring football)
- Scrimmage or practice squads
- Students who are academically ineligible
- Mid-year transfers, if no spring season
- Cheerleaders*
- Student managers, student coaches, student trainers*

*Even if they receive scholarships, they are not participants for counting purposes.

Sources: Id.



Computing Substantial Proportionality

Example: Student enrollment is 50% male and 50% female

Unduplicated Measure

- 300 participating student-athletes
 - Head count only
 - Not counting two- and three-sport athletes, two and three times
- 180 male athletes; 120 female athletes
- 120/300 = 40% female athletes; however,
 50% of student body are females
- Unduplicated measure = 10% female differential

Duplicated Measure

- 300 participating student-athletes
 - Count two- and three-sport athletes each time
 - Count **all** filled participation slots
- There are 400 filled participation slots
 - 250 slots filled by males
 - 150 slots filled by females
- 150 females/400 = 37.5% of slots filled by females
- Duplicated measure = 12.5% female differential



Part 2: Program Expansion

History and continuing practice of **program expansion** responsive to the developing interests and abilities of the underrepresented sex

In analyzing a history of program expansion, OCR considers an institution's:

- Record of adding intercollegiate teams, or upgrading teams to intercollegiate status, for the underrepresented sex
- Record of increasing the number of participants in intercollegiate athletics who are members of the underrepresented sex
- Affirmative responses to requests by students or others for addition or elevation of sports



Part 2: Program Expansion

In analyzing a history of program expansion, OCR considers an institution's:

- Current implementation of a nondiscriminatory policy or procedure for requesting the addition of sports (including the elevation of club or intramural teams) and the effective communication of the policy or procedure to students
- Current implementation of a plan of program expansion that is responsive to developing interests and abilities



Part 3: Full Accommodation

Whether it can be demonstrated that the interests and abilities of that sex have been **fully and effectively accommodated** by that present program

OCR will consider whether there is:

- Sufficient unmet interest to support an intercollegiate team
- Sufficient ability to sustain an intercollegiate team
- A reasonable expectation of competition for the team



Part 3: Full Accommodation

Determining unmet interest:

- Requests from athletes, students, coaches, and other constituents
- Whether there is a suitable club team to elevate
- Annual interest surveys and/or focus groups
- Consider opportunities in the conference, region, or feeder schools

Source: OCR (1996). Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test.





Levels of Competition

Levels of Competition

OCR assesses compliance by examining whether:

 The competitive schedules for men's and women's teams, on a program-wide basis, afford proportionally similar numbers of male and female athletes equivalently advanced competitive opportunities

OR

 The institution can demonstrate a history and continuing practice of upgrading the competitive opportunities available to the historically disadvantaged sex as warranted by developing abilities among the athletes of that sex





Other Athletic Benefits and Opportunities

Equitable Treatment: "The Laundry List"

Equipment & Supplies

Scheduling

Locker Rooms & Facilities

Housing & Dining

Coaching

Scholarships

Publicity

Travel & Per Diem

Medical & Training Services

Tutoring

Recruitment

Support Services

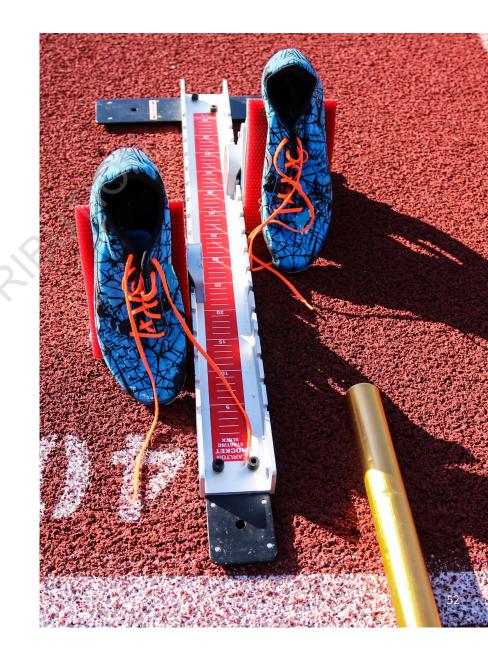


Equipment and Supplies

Key factors in examining the equivalence for men and women:

- Quality of equipment and supplies
- Amount of equipment and supplies
- Suitability of equipment and supplies
- Maintenance and replacement of the equipment and supplies
- Availability of equipment and supplies





Schedule of Games and Practice Times

Key factors in examining the equivalence for men and women:

- Number of competitive events per sport
- Number and length of practice opportunities
- Time of day competitive events are scheduled
- Time of day practice opportunities are scheduled
- Opportunities to engage in available preseason and post-season competition





Travel and Per Diem Allowances

Key factors in examining the equivalence for men and women:

- Modes of transportation
- Housing furnished during travel
- Length of stay before and after competitive events
- Per diem allowances
- Dining arrangements





Coaching

Key factors in examining the equivalence for men and women:

- Opportunity to receive coaching
 - Relative availability of full-time coaches
 - Relative availability of part-time and assistant coaches
 - Relative availability of teaching assistants
 - Volunteers
- Assignment of coaches
 - Training, experience, and other professional qualifications
 - Professional standing



Coaching, Cont.

Key factors in examining the equivalence for men and women:

- Compensation of coaches
 - Rate of compensation (per sport, per season)
 - Duration of contracts
 - Conditions relating to contract renewal
 - Experience
 - Nature of coaching duties performed
 - Working conditions
 - Other terms and conditions of employment



Academic Tutoring

Key factors in examining the equivalence for men and women:

- Academic Tutoring
 - Availability of tutoring
 - Procedures and criteria for obtaining tutorial assistance
- Assignment of Tutors
 - Tutor qualifications
 - Training, experience, and other qualifications

- Compensation of Tutors
 - Hourly rate of payment by nature of subjects tutored
 - Pupil loads per tutoring season
 - Tutor qualifications
 - Experience
 - Other terms and conditions of employment



Locker Rooms, Practice, and Competitive Facilities

Key factors in examining the equivalence for men and women:

- Quality and availability of practice and competition facilities
- Exclusivity of use of practice and competition facilities
- Availability of locker rooms (will discuss 2024 Regulations later)
- Quality of locker rooms
- Maintenance of practice and competition facilities
- Preparation of facilities for practice and competitive events



Medical and Training Facilities and Services

Key factors in examining the equivalence for men and women:

- Availability of medical personnel and assistance
- Health, accident, and injury insurance coverage
- Availability and quality of weight and training facilities
- Availability and quality of conditioning facilities
- Availability and qualifications of athletic trainers





Housing and Dining Facilities and Services

Key factors in examining the equivalence for men and women:

- Housing provided
- Special services as part of housing arrangements
 - E.g., laundry facilities, parking space, cleaning service





Publicity

Key factors in examining the equivalence for men and women:

- Availability and quality of sports information personnel
- Access to other publicity resources for men's and women's programs
- Quantity and quality of publications and other promotional devices featuring men's and women's programs





Student-Athlete Recruitment

Key factors in examining the equivalence for men and women:

- Whether coaches or other professional athletic personnel in the programs serving male and female athletes are provided with substantially equal opportunities to recruit
- Whether the financial and other resources made available for recruitment in male and female athletic programs are equivalently adequate to meet the needs of each program
- Whether the differences in benefits, opportunities, and treatment afforded prospective student athletes of each sex have a disproportionately limiting effect upon the recruitment of students of either sex



Support Services

- Administrative and clerical support provided to an athletic program can affect the overall provision of opportunities to male and female athletes
 - Particularly to the extent that the provided services enable coaches to perform their coaching functions better

Key factors:

- Amount of administrative assistance provided to men's and women's programs
- Amount of secretarial and clerical assistance provided to men's and women's programs



Financial Assistance

- Must provide reasonable opportunities for financial assistance to members of each sex in proportion to the participation rate of each sex in intercollegiate athletics
 - Does NOT require same number of scholarships for men and women or scholarship of equal value
 - Total amount awarded must be "substantially proportionate to the participation rates" of men and women in the institution's athletic programs
- Disparities could be non-discriminatory in origin
 - E.g., in-state vs. out-of-state recruits; reasonable professional decisions
- Also applies to work-related aid programs or loans



Multi-Sport Athletes and Financial Assistance

- There is a different standard for counting multi-sport athletes for scholarship participants than for all other forms of Title IX analyses
- Scholarship counting:
 - An athlete who participates in multiple sports is counted as only ONE scholarship
 - Based on total program participation, not individual team analysis
 - Typically, does not matter for which team the student is counted
 - All other forms of Title IX analysis, an athlete who participates in multiple sports is counted as a participant for each sport

Source: OCR (1996). Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test; Bonnette, pp. 92-93.



Donors, Boosters & Fundraising

Donations

- Booster club and donor contributions can affect an institution's Title IX compliance
 - Booster Clubs: Groups of fans or donors who want to support a team or program
 - **Donors:** Individuals who want to give to a team or program
- Can assist an institution's athletic programs
- Often, they only want to support a specific team or program, or provide a specific service
- Oversight and guidance from the Title IX office are necessary to ensure compliance
- Often involves educating the donor/club
- Ideally, they support ATHLETICS



Fundraising

- Fundraising: Teams raising money on their own
 - For a specific opportunity
 - For equipment, uniforms, etc.
 - For special equipment, uniforms, etc.
- Private fundraising is permissible
- Title IX requires that male and female teams to have equal access and equal opportunities to comparable benefits and services no matter the source of money





The Law

- Booster/Donor money can be viewed as clandestine financing for major school sports programs – most of which are overwhelmingly male
 - Impact of NIL at the college level
- While funding may be unequal, the benefits and services for programs must be equal/equitable
 - If not, the Recipient must make up the difference to equalize opportunities
- Nothing in the language of Title IX dictates that funding must be the same for the female and male overall programs or the female and male teams in the same sports
 - However, lack of funds cannot justify sex discrimination
- These contributions should be a big concern for institutions



eSports

eSports and Title IX

Legal landscape still developing

- One federal court ruled that eSports was not a sport under Title IX
 - eSports athletes could not be counted as athletic opportunities
 - Nonetheless, institutions offer eSports scholarships
- NCAA does not recognize eSports as a sport
 - Other associations like NJCJAAE and various eSports associations are continuing to standardize eSports and develop governing bodies
 - IOC created the Olympic eSports Games, with the first games scheduled for 2025 in Saudi Arabia



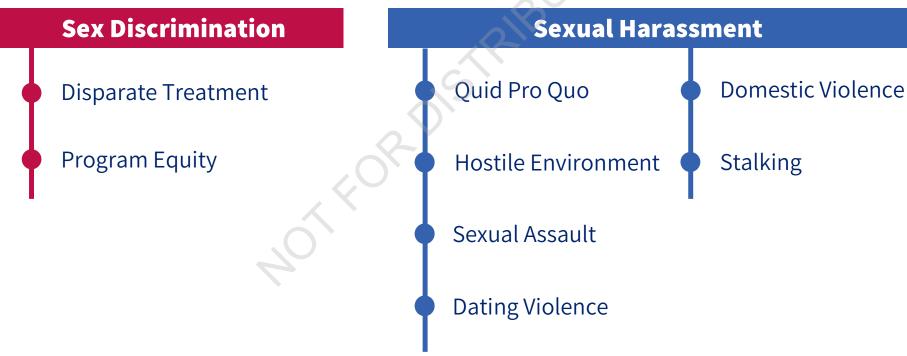
eSports Considerations

- Proportionality issues
- Internet culture in eSports leading to harassment concerns
- Competitions often take place outside the U.S. or involve teams/players outside the U.S.
- Need to differentiate between institutional play and recreational play
- Training for eSports athletes and coaches



Sex Discrimination, Sexual Harassment, and Sport

Review: Sex Discrimination and Sexual Harassment



Instructive Cases

Simpson v. Univ. of Colorado Boulder, 500 F.3d 1170 (10th Cir. 2007)

- Recruiting visits
- Off-campus parties
- Climate

Jennings v. UNC Chapel Hill, 482 F.3d 686 (4th Cir. 2007)

- Climate in locker room
- Player evaluation meetings
- Power of a coach

Williams v. Bd of Regents of Univ. of Georgia, 477 F.3d 1282 (11th Cir. 2007)

Recruit histories

Jackson v. Birmingham, 544 U.S. 167 (2005)

Retaliation



Unique Challenges

- Athletic department hostile environment
- Coach-Athlete dynamics
 - Power-based
 - Trust-based
 - Recruitment
 - Performance meetings
- Coaches communicating with athletes via text, or other electronic platforms (e.g., SnapChat, WhatsApp, etc.)
- Insularity of teams and athletic department
- Protectionism of teams and athletic department



Unique Challenges, Cont.

- Body image and focus on the body (especially women)
- Coach-coach dynamics
- Must-win mentality
- "Revenue" vs. non-revenue sports
- Student-athlete on student-athlete violence





Unique Challenges: Title IX and Student Athletics

- Approval of sexist language and attitudes
- Bonding and group loyalty
- Celebrity sense
- Culture of aggressive behavior in sports
- Entitlement
- Locker room hazing/behavior with Title IX implications
- Perception of "groupie culture," regardless of sex
- Sexualization and subordination of women in men's team sports



Pregnancy and Parenting

An institution may not:

Discriminate in its education program or activity against any student or employee on the basis of such individual's:

- pregnancy
- childbirth
- false pregnancy
- termination of pregnancy
- recovery therefrom

Apply any rule which treats a student, employee, or applicant differently on the basis of current, potential, or past:

- parental,
- family, or
- marital status



Title IX, Pregnancy, and Athletics

- Pregnant student-athletes must be permitted to participate in athletics without restriction or modification (other than what restrictions are applied to all students)
- Reasonable modifications
- Supportive documentation



Managing Dating Relationships Among Teammates

- Frame intra-team dating as part of broader relationship management issues that can distract a team from their competitive goals
 - If the institution permits it, do so across all teams
 - Increasingly common to permit relationships on teams or between teams
 - If the institution **prohibits it**, do so across all teams
 - Leaving decisions up to coaches often results in discrimination
 - Common issues presented by dating relationships on teams



Managing Dating Relationships Among Teammates, Cont.

- Develop policy that applies to all relationship management issues rather than focusing on same-sex teammates dating
- Make policies about dating apply to all dating relationships not just same-sex dating
- Range of possible policies on intra-team dating:
 - Prohibit intra-team dating (Not recommended)
 - Ignore intra-team dating (Not recommended)
 - Proactively set expectations for intra-team dating and other dating relationships and interpersonal conflict on the team (**Recommended**)
- Note: Most students do not use the term "dating" to describe their emotional and intimate relationships



Emergency Removal

- Removing a student-athlete from a team related to a Title IX complaint is **not** permissible without:
 - An individualized risk assessment that determines an immediate threat to the physical health or safety of any student or any other individual exists, and
 - The risk must arise from the allegations of sexual harassment
- This is a very high bar
- TIXC must be involved in the process
- Removal without the appropriate risk assessment could be considered retaliation
 - However, there may be non-Title IX basis for interim action that would not be retaliatory





Questions?

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