



TITLE IX COMPLIANCE AND
ATHLETICS

Blue Bell, PA | May 21, 2019

YOUR FACULTY



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AGENDA



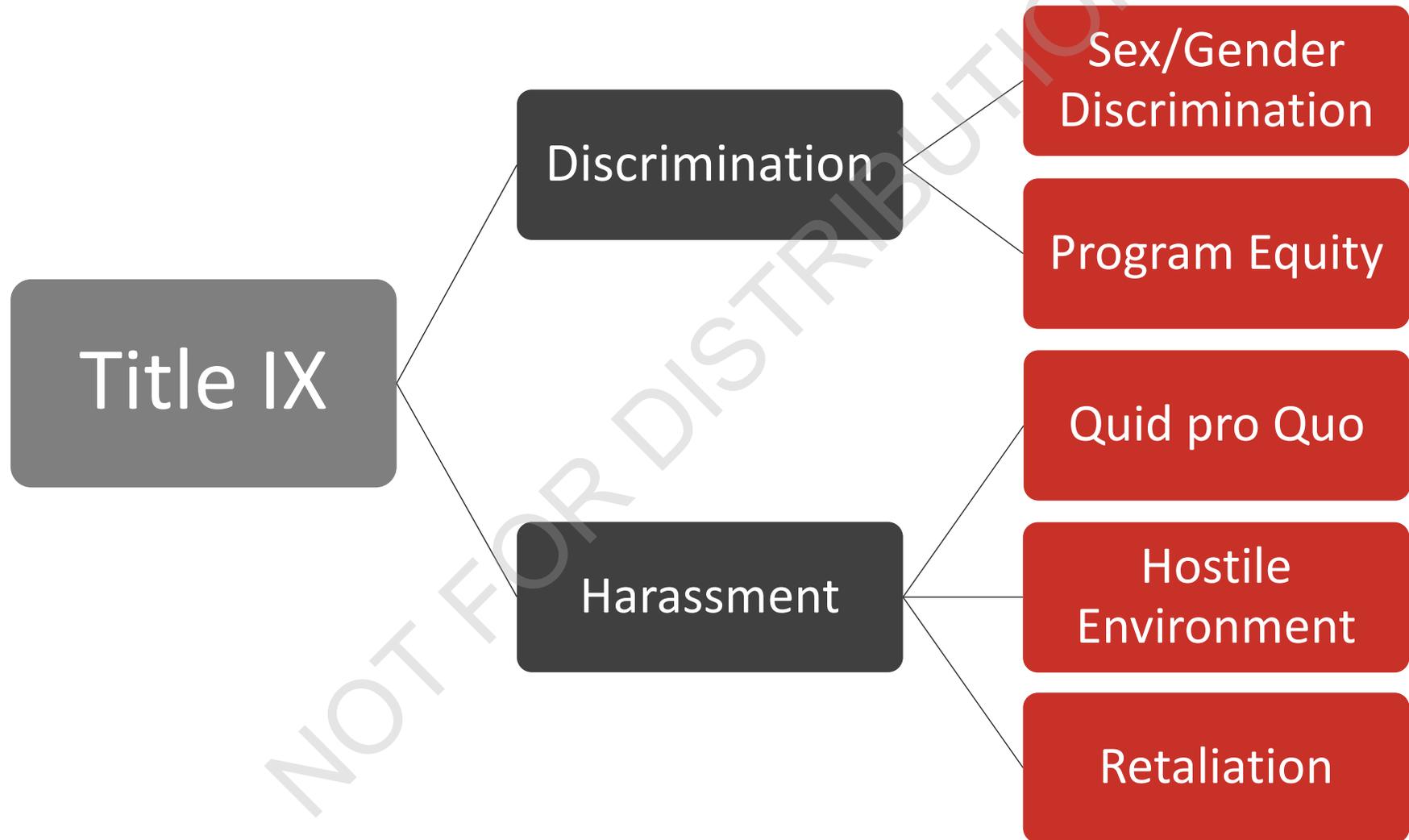
- Overview and History of Title IX and Athletics
- Accommodation of Interests and Abilities
 - The Three-Part Test
 - Levels of Competition
- Accommodation of Interests and Abilities
- Athletic Financial Assistance
- Other Athletic Benefits and Opportunities
- Red Flags
- Sexual Harassment, Sexual Violence and Intimate Partner Violence in Sports
- Inter- and Intra-squad Dating

TITLE IX 40 YEARS OF CHANGE 1972-2012
Sports Illustrated MAY 7, 2012 SL.COM



No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance....”

—JUNE 23, 1972



HISTORY OF TITLE IX & ATHLETICS



- Athletics is not mentioned in the 1972 Title IX statute
- Proposed regulations (1974) did and created a fire-storm
- Regulations passed in 1975 and athletics was given three years to comply
- 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
- 1984: Grove City College v. Bell – Exempted most athletic programs from Title IX

HISTORY OF TITLE IX & ATHLETICS



- 1988: Civil Rights Restoration Act restored Title IX's application to athletics.
- 1990s: OCR studied the efficacy of the Three-Prong Test and institutions' compliance with it.
- 1996: Issued "Clarification on Intercollegiate Athletics Policy Guidance: The Three-Part Test."
- 2003: OCR again examined the Three-Part Test and restated that it remained unchanged.
- 2005: "Additional Clarification" from OCR that weakened 3-part test.
- 2010: OCR rescinded 2005 guidance.

TITLE IX & ATHLETICS



- Applies to:
 - Intercollegiate athletics
 - Intramurals
 - Club teams
- However, 3-part test and the 13 program components are typically not as problematic for Intramurals and clubs because those programs are self-initiated and benefits provided by the institution are far fewer.

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TITLE IX & ATHLETICS



- Title IX DOES require an institution to:
 - Provide an equal opportunity for female and male students to become intercollegiate athletes.
 - Analyzed by means of a three-part test
 - Provide equivalent treatment of participants in the overall women’s program as compared to the overall men’s program.
 - Analyzed according to thirteen (13) different program components.

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TITLE IX & 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 on 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

Source: Valerie McMurtrie Bonnette (2004), Title IX and Intercollegiate Athletics, p.7.

EQUALITY V. EQUITY

EQUALITY VERSUS EQUITY



In the first image, it is assumed that everyone will benefit from the same supports. They are being treated equally.



In the second image, individuals are given different supports to make it possible for them to have equal access to the game. They are being treated equitably.



In the third image, all three can see the game without any supports or accommodations because the cause of the inequity was addressed. The systemic barrier has been removed.

OVERSIGHT OF ATHLETICS GENDER EQUITY



- Title IX compliance requirements:
 - Effective accommodation of interests and abilities
 - Financial assistance proportionality
 - Treatment of student-athletes
- **Compliance** may be delegated to the senior women's administrator or compliance officer in athletics.
- The oversight of compliance remains the responsibility of the Title IX coordinator.
 - Need for outside education
- The dangers of being both.

THE THREE-PART TEST: ACCOMMODATION OF INTERESTS AND ABILITIES

-
1. Proportionality
 2. Program Expansion
 3. Full Accommodation

OVERSIGHT OF ATHLETICS GENDER EQUITY: THREE-PART TEST (1979)



Effective accommodation of interests and abilities:

- **Part 1:** Opportunities for males and females substantially proportionate to their respective enrollments; OR
- **Part 2:** 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
- **Part 3:** 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.

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 or squad list
 - Are injured, but continue to receive financial aid on the basis of athletic ability

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

COUNTING PARTICIPANTS



- “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*
 - 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

*Season begins on the date of a team’s first intercollegiate competitive event and concludes on the date of the final intercollegiate competitive event.

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation; OCR (1996). Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test; Bonnette, pp. 91-92.

COUNTING PARTICIPANTS



- The following are not participants:
 - Unfilled team slots or positions
 - Club, intramural and recreation program participants
 - Cheerleaders*
 - 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
 - Student managers*, student coaches*, student trainers*
 - Students who are academically ineligible
 - Mid-year transfers if no spring season

*Even if they receive scholarships

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation; OCR (1996). Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test; Bonnette, pp. 91-92.

PART 1: PROPORTIONALITY

OPPORTUNITIES FOR MALES AND FEMALES SUBSTANTIALLY PROPORTIONATE TO THEIR RESPECTIVE ENROLLMENTS



- Substantially proportionate accounts for natural fluctuations in enrollment and participation rates, but institutions must adjust if shifted enrollment or participation shifts 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.

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;
 - An institution's record of increasing the numbers of participants in intercollegiate athletics who are members of the underrepresented sex; and
 - An institution's affirmative responses to requests by students or others for addition or elevation of sports.

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

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 continuing practice 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; and
 - An institution's current implementation of a plan of program expansion that is responsive to developing interests and abilities.

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

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
 - There is sufficient ability to sustain an intercollegiate team
 - There is a reasonable expectation of competition for the team

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

LEVELS OF COMPETITION

1. Equivalently Advanced Competitive Opportunities
2. Upgrades of Competitive Opportunities

LEVELS OF COMPETITION



OCR assesses compliance by examining:

1. 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
2. Whether 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.

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

ATHLETIC FINANCIAL ASSISTANCE

- Financial Assistance
- Counting participants for Financial Assistance

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.

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

MULTI-SPORT ATHLETES & FINANCIAL ASSISTANCE



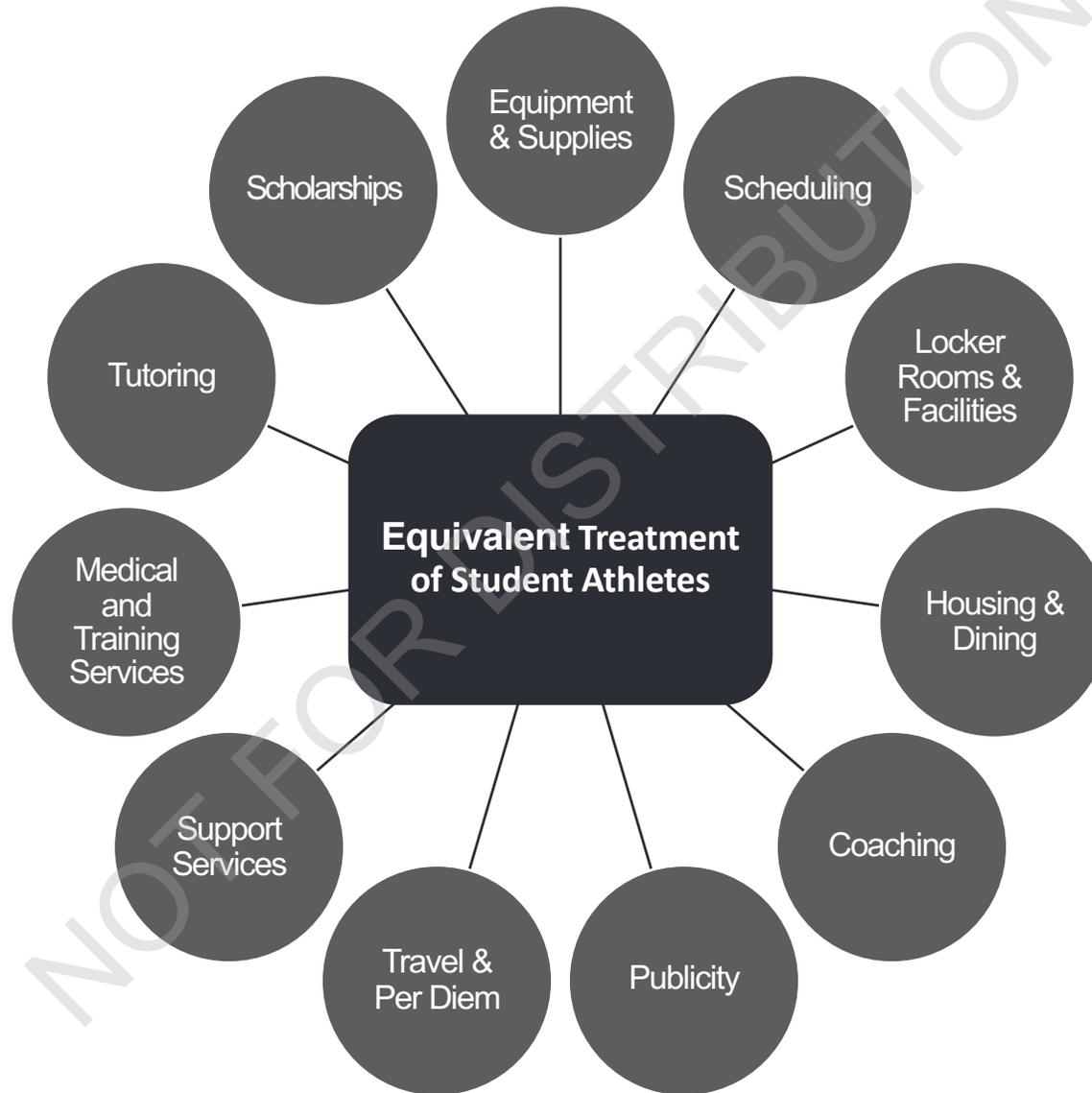
- There is a different standard for counting multi-sport athletes for scholarship participants than for all other forms of Title IX analyses.
- Scholarship counting
 - An athlete who participates in multiple sports is counted as only ONE scholarship.
 - Based on total program participation, not individual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

“OTHER ATHLETIC BENEFITS AND OPPORTUNITIES”

- Equipment and supplies
- Scheduling (games and practice times)
- Travel and per diem allowance
- Coaches
- Tutors
- Locker rooms and other facilities
- Medical and training services
- Housing and dining services
- Publicity
- Recruitment of student athletes
- Provision of support services

OVERSIGHT OF ATHLETICS GENDER EQUITY



EQUIPMENT & SUPPLIES



Key factors in examining the equivalence for men and women:

- The quality of equipment and suppliers
- The amount of equipment and supplies
- The suitability of equipment and supplies
- The maintenance and replacement of the equipment and supplies
- The availability of equipment and supplies

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

SCHEDULING OF GAMES AND PRACTICE TIMES



Key factors in examining the equivalence for men and women:

- The number of competitive events per sport
- The number and length of practice opportunities
- The time of day competitive events are scheduled
- The time of day practice opportunities are scheduled
- The opportunities to engage in available pre-season and post-season competition

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

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

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Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

Key factors in examining coaching:

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

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

Key factors in examining coaching:

- 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

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

ACADEMIC TUTORING



Key factors in examining the equivalence for men and women:

- Academic Tutoring
 - The 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 subjects tutored
 - Pupil loads per tutoring season
 - Tutor qualifications
 - Experience
 - Other terms and conditions of employment

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

LOCKER ROOMS, PRACTICE AND COMPETITIVE FACILITIES



Key factors in examining the equivalence for men and women:

- Quality and availability of the facilities provided for practice and competitive events;
- Exclusivity of use of facilities provided for practice and competitive events;
- Availability of locker rooms;
- Quality of locker rooms;
- Maintenance of practice and competitive facilities; and
- Preparation of facilities for practice and competitive events.

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

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.

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Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

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, maid service)

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Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

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; and
- Quantity and quality of publications and other promotional devices featuring men's and women's programs.

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RECRUITMENT OF STUDENT ATHLETES



Key factors:

- 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; and
- 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.

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

SUPPORT SERVICES



The administrative and clerical support provided to an athletic program can affect the overall provision of opportunity to male and female athletes, particularly to the extent that the provided services enable coaches to perform better their coaching functions.

Key factors:

- The amount of administrative assistance provided to men's and women's programs;
- The amount of secretarial and clerical assistance provided to men's and women's programs.

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

RED FLAGS TO LOOK FOR AND ASK ABOUT

- Proportionality
- Program Expansion
- No Unmet Interest
- Retaliation
- Equal Pay
- Hostile Environment

“Our proportionality is within 5 percentage points - close enough!”

“We will reach proportionality through roster management!”

“We just added a women’s team so we definitely comply with prong two!”

“It’s OK, we are cutting a men’s and a women’s team!”

“But no one has complained about our lack of women’s sports!”

“We absolutely have enough money to add a new men’s team!”

Gender imbalance on the coaching staff.

Closed hiring.

Salaries not benchmarked.

Female/women's coaches more often disciplined.

Complaints about hostile environment

Complaints about gender inequity.

SEXUAL HARASSMENT, SEXUAL VIOLENCE AND INTIMATE PARTNER VIOLENCE AND SPORT

- Recent Examples
- Instructive Cases
- Prevalence
- NCAA Position
- Definitions
- Obligations
- Challenges

COLLEGIATE ATHLETICS AND SEXUAL VIOLENCE: SOME EXAMPLES



- Florida State University
- University of Montana
- University of Georgia
- University of Colorado
- Vanderbilt University
- Oregon State University
- Xavier University
- University of Missouri
- University of Notre Dame



PREVALENCE OF VIOLENCE AGAINST WOMEN IN THE ATHLETIC DEPARTMENT



- Male athletes are more represented in violence against women statistics vs. their non-athlete counterparts.
- Male student athletes = 3.3% of student population.
 - 19% of sexual violence.
 - 35% of domestic violence.

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NCAA & 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 campus offices for investigation and adjudication;**



- ...institutions' athletics departments must:
 - **Educate all** student-athletes, coaches and staff about sexual violence prevention, intervention and response;
 - Assure compliance with all federal and applicable state regulations related to **sexual violence prevention and response**; and
 - **Cooperate with but not manage, direct, control or interfere with** college or university investigations into allegations of sexual violence ensuring that investigations involving student-athletes and athletics department staff are managed in the same manner as all other students and staff on campus.

UNDERSTANDING THE THREE FORMS OF SEXUAL HARASSMENT



Sexual Harassment is

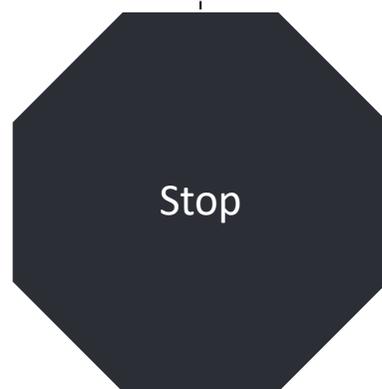
Unwelcome conduct of a sexual nature or that is sex or gender-based

Based on power differentials (**quid pro quo**),

The creation of a **hostile environment**,
or

Retaliation

Sexual Harassment



THE IX COMMANDMENTS



Investigation	Process	Remedies
Thorough	Prompt	End the Discrimination
Reliable	Effective	Prevent its Recurrence
Impartial	Equitable	Remedy the effects upon the victim & community

INSTRUCTIVE CASES

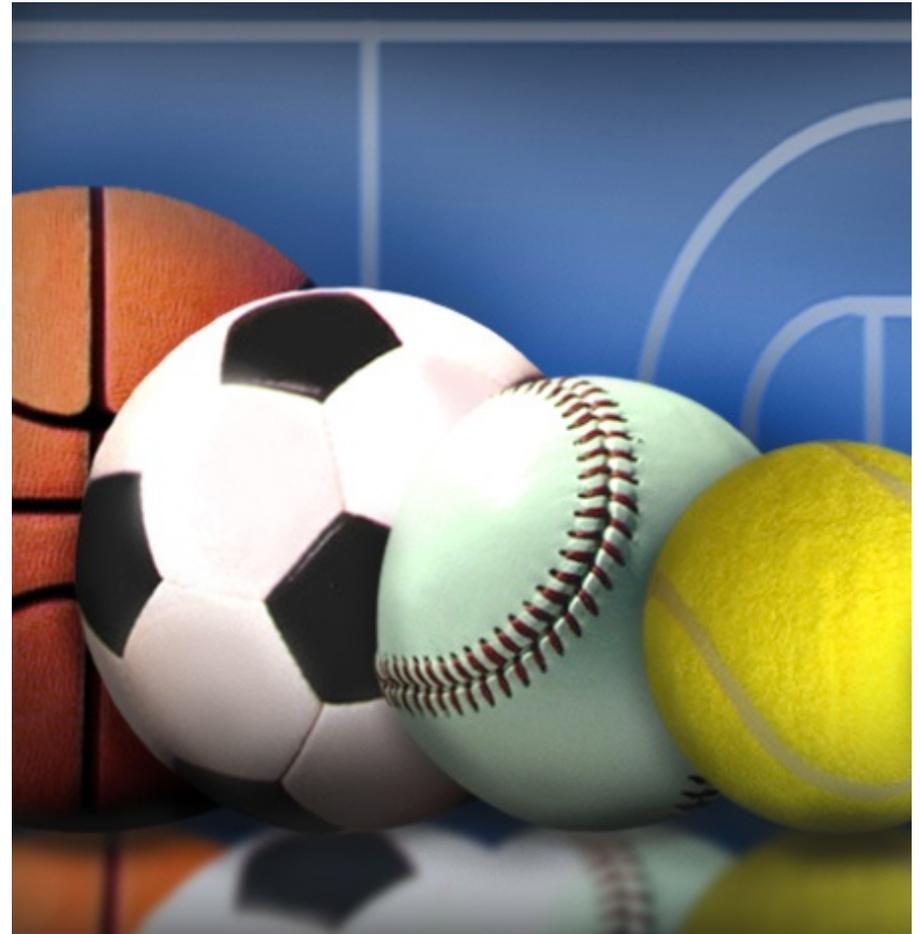


- *Simpson v. Univ. of Colorado Boulder*. 500 F.3d 1170 (10th Cir. 2007).
 - Recruiting visits.
 - Off-campus parties.
 - Climate.
- *Williams v. Bd of Regents of Univ. of Georgia*. 477 F.3d 1282 (11th Cir. 2007).
 - Recruit histories.
- *Jennings v. UNC Chapel Hill*. 482 F.3d 686 (4th Cir. 2007).
 - Climate in locker room.
 - Player evaluation meetings.
 - Power of a coach
- *Jackson v. Birmingham*, 544 U.S. 167 (2005).
 - Retaliation

UNIQUE CHALLENGES: TITLE IX AND STUDENT ATHLETICS



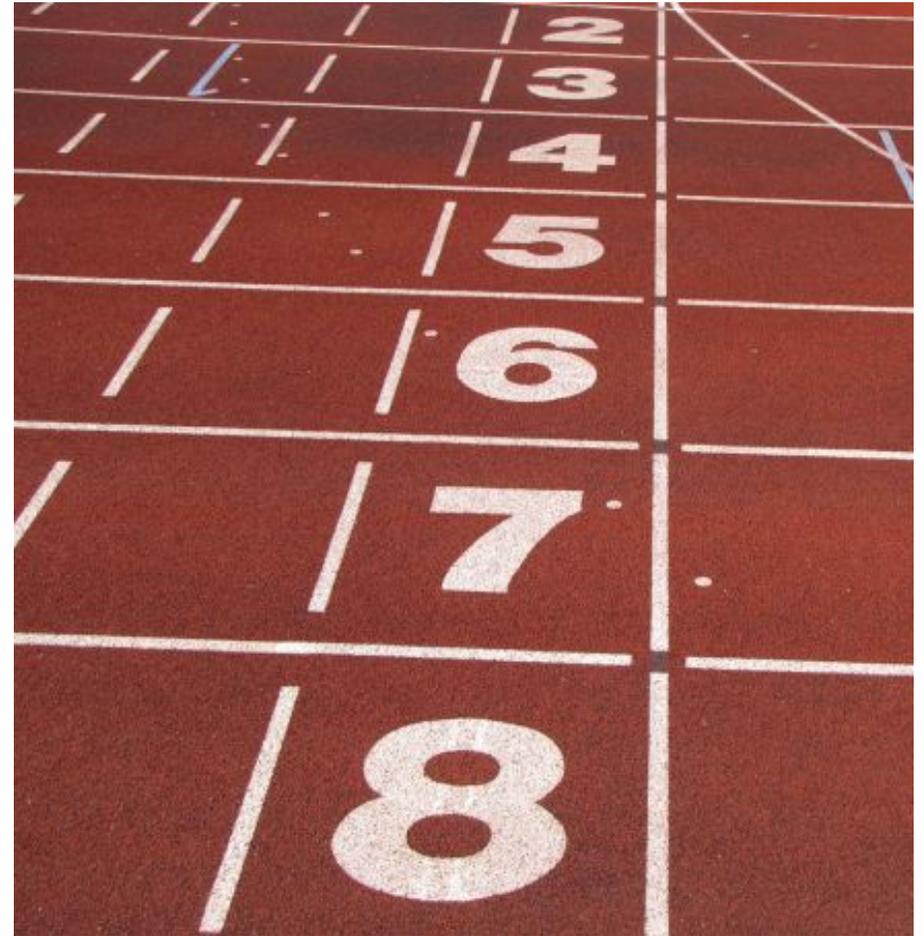
- Athletic department hostile educational environment.
- Insularity of teams and the athletic department
- Protectionism of teams and athletic department
- Coach-Athlete dynamic
 - Power-based
 - Trust-based
 - Recruitment
 - Performance meetings
- Coach-coach dynamic



UNIQUE CHALLENGES: TITLE IX AND STUDENT ATHLETICS



- Male privilege
- Body Image and focus on the body (especially women)
- Student-athlete on student-athlete violence.
- Power dynamics
- Revenue vs. non-revenue sports.
- Must-win mentality



UNIQUE CHALLENGES: TITLE IX AND STUDENT ATHLETICS



- Culture of violence and aggressive behavior in sports.
- Male bonding and group loyalty.
- Sexualization and subordination of women in male team sports.
- Approval of sexist language and attitudes.
- Perception of “groupie culture.”
- Celebrity sense.
- Entitlement.

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, such as:

- Best friends on a team being cliquy or having a big falling out
- Two women on a team dating the same guy on a men's team
- One teammate getting dumped by her boyfriend and then he starts dating one of her teammates
- Heterosexual dating on a mixed team
- Heterosexual dating on men's and women's teams that practice together and travel to competitions together
- Same-sex teammates dating on a men's or on a women's team
- Conflicts between white and black teammates
- Conflicts between gay and straight teammates
- Conflicts between Christian and non-Christian teammates

Source: Pat Griffin, UM-Amherst

MANAGING DATING RELATIONSHIPS AMONG TEAMMATES



- 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)

SCENARIOS & CASE STUDIES

Time Permitting



QUESTIONS?



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