



Title IX Compliance and Athletics for Higher Education

Training and Certification Course



Association of
Title IX Administrators

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Content Advisory

The content and discussion in this course will necessarily engage with sexual harassment, sex discrimination, 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.

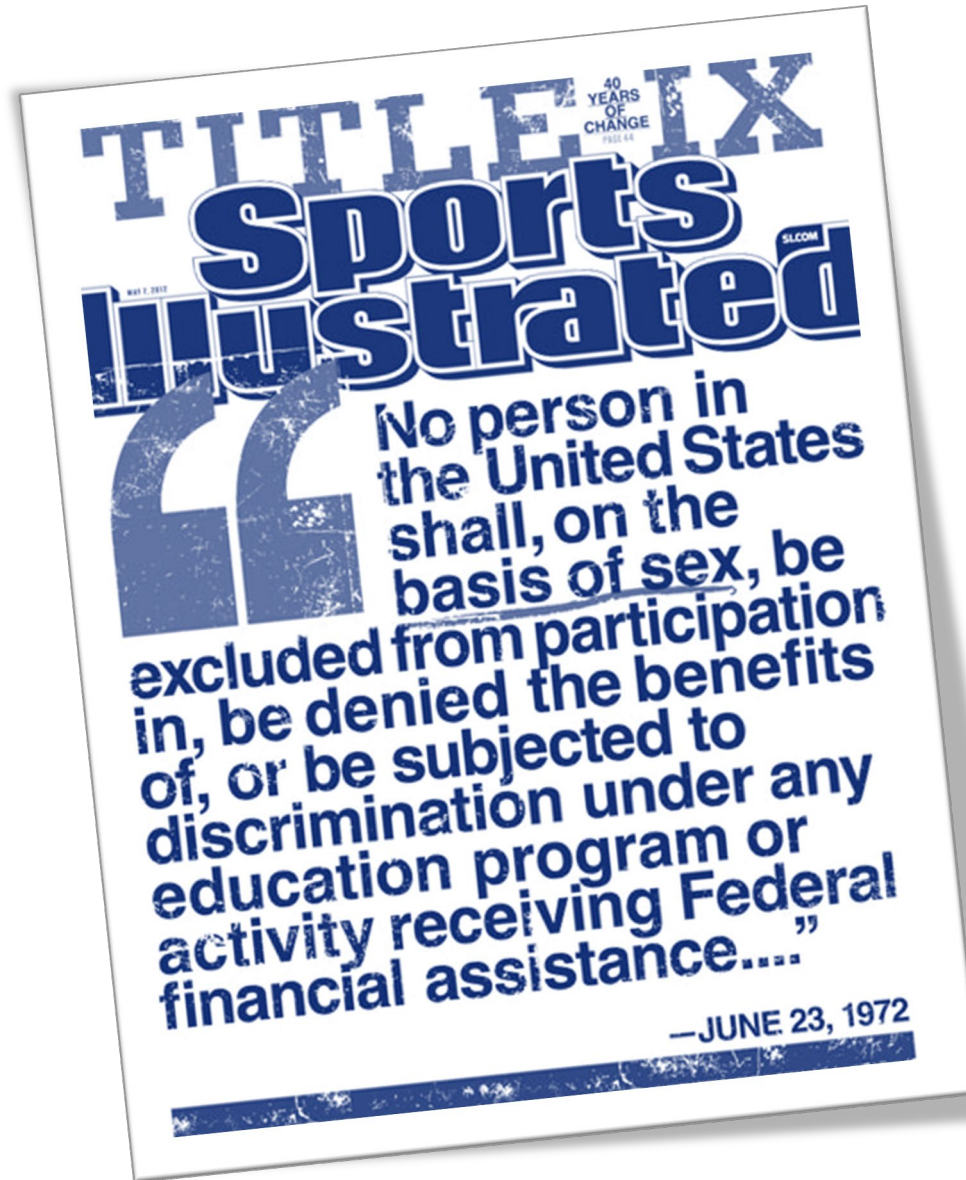


Title IX and athletics practitioners will be able to identify compliance requirements and best practices as well as address red flags related to athletics compliance.



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

Introduction to Title IX and Athletics





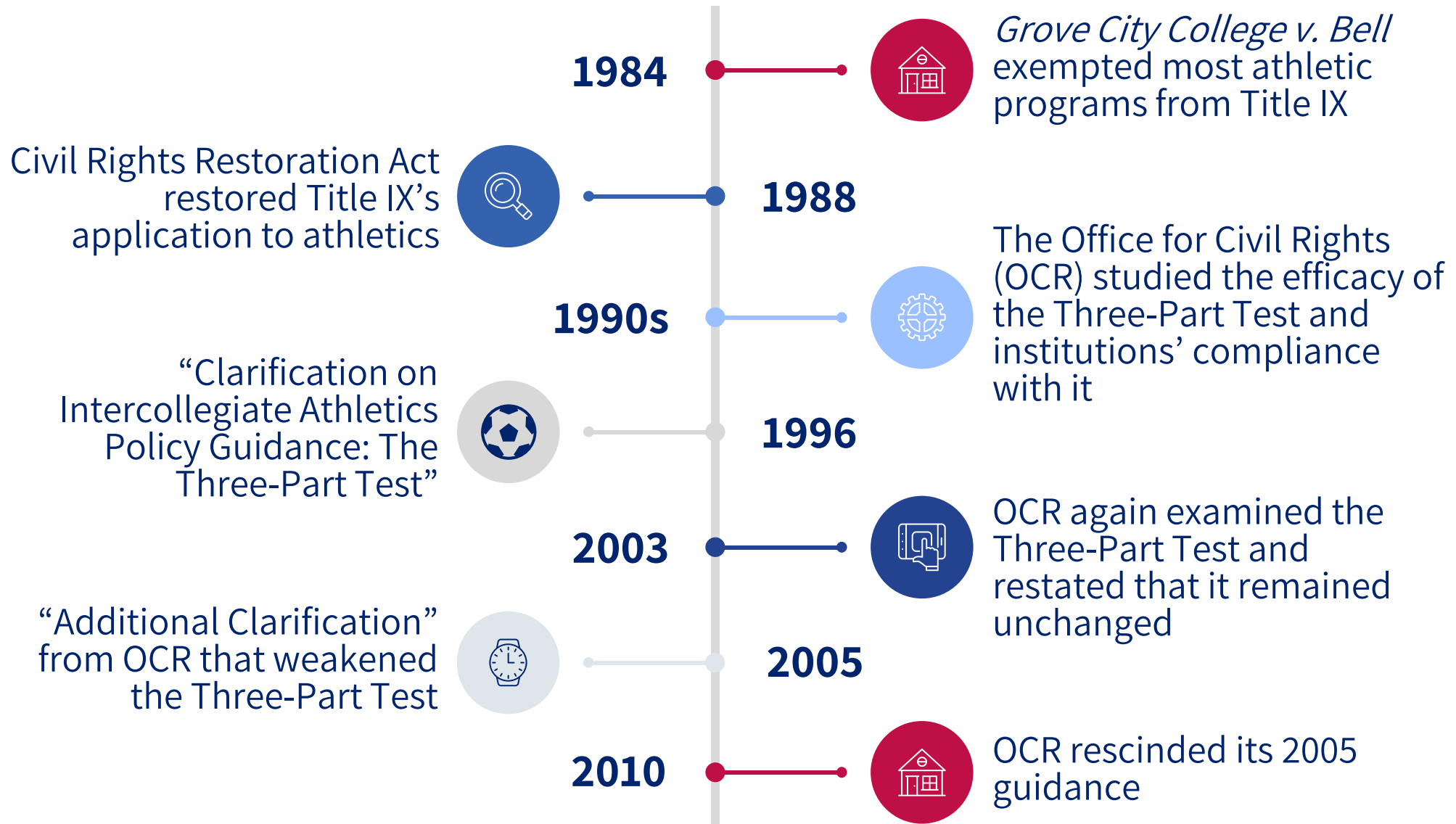
“TOO STRONG FOR A WOMAN”

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

*Formerly the U.S. Department of Health, Education, and Welfare, currently the U.S. Department of Education



NCAA Campus Sexual Violence Policy

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)

Source: NCAA Sexual Violence Policy (April 2021)

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.”
- **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 sex 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

Source: NCAA Executive Committee: August 8, 2014

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: *Id.*

NCAA Policy on Campus Sexual Violence (Items 1-2)

1. 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. Institutional policies and processes regarding sexual violence prevention and adjudication, and the name and contact information for the TIXC are readily available within the department of athletics and are provided to student-athletes

Source: *Id.*

NCAA Policy on Campus Sexual Violence (Items 3-4)

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 must also 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

Source: *Id.*

NCAA Policy on Campus Sexual Violence Definitions

**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

Source: *Id.*

NCAA Policy on Campus Sexual Violence (Item 5)

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

Source: *Id.*

NCAA Policy on Campus Sexual Violence (Item 6)

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
Source: *Id.*

Executive Orders and NCAA Participation Policy

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 Executive Orders (EOs) addressing gender identity
- Directs Office for Civil Rights (OCR) to prioritize investigations/litigation to enforce rights and freedoms related 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, Cont.

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

Defining Sex

Should institutions implement the Executive Order's definition of biological sex?

- Likely depends on state law and court rulings in jurisdiction
- Considerations:
 - *Bostock* applies an expansive definition of sex in employment
 - Residential schools/institutions are subject to the Fair Housing Act (FHA, aka Title VIII)
 - FHA Regulations are still in effect and protect sex expansively
- According to some federal court cases, sex includes sex discrimination that implicates sex stereotypes and sex characteristics

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: Participation Policy for Transgender Student-Athletes, as of Feb. 6, 2025

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

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation

Name, Image, Likeness

Name, Image, and Likeness (NIL)

- 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 institutional and conference requirements to their institution

Source: NCAA Interim Name, Image, and Likeness Policy (2021)

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”)

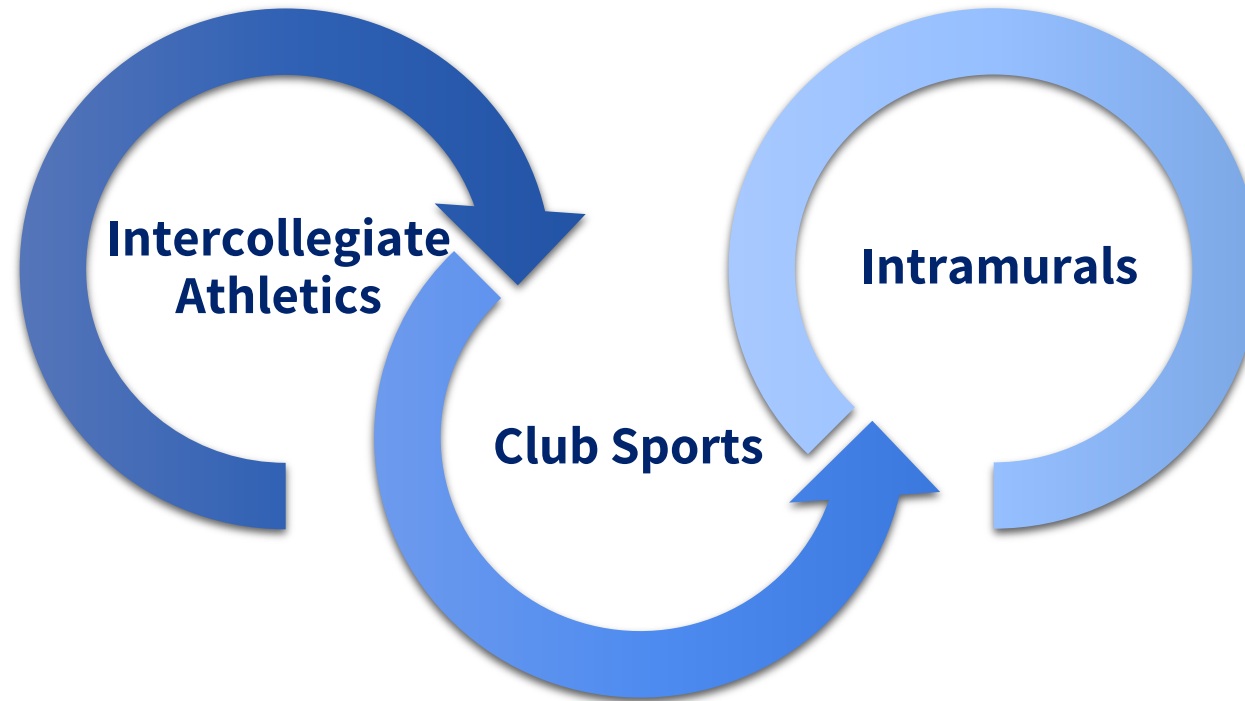
Title IX and Athletics, Cont.

Title IX does not require an institution to:

- Provide the same:
 - Funding to the overall women's and men's programs
 - Funding to men's and women's teams for the same sport
 - Benefits to men's and women's teams in the same sport
- Offer the same:
 - Number of teams for men and women
 - Sports for men and women
- Provide specific benefits to teams
- Compete at a specific level

Source: Bonnette, V.M. (2004), *Title IX and Intercollegiate Athletics*, p.7

Athletics Programs



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

1

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

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**

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

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

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

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

Source: *Id.*

Not Counted

- 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 and stunt team members*
 - Student managers, student coaches, student trainers*

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

Source: *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
- $150 \text{ females} / 400 = 37.5\%$ 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

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

Part 2: Program Expansion, Cont.

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

Source: *Id.*

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

Source: *Id.*

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: *Id.*



Levels of Competition

Levels of Competition Compliance

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

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation

Myers v. Stephen F. Austin State University **2025 WL 2254006 (E.D. Tex. 2025)**

Myers v. Stephen F. Austin (SFA)

Facts of the Case:

- May 2025: SFA announced it was eliminating beach volleyball, bowling, and golf teams
- Plaintiffs:
 - SFA female enrollment is 63% but represent 45.6% of athletic opportunities
 - SFA needs to add 223 opportunities for women to achieve proportionality
 - If the proposed plan were implemented, the gap would increase to 245
- SFA:
 - Factoring in cheer and dance teams, the gap is only 17 students
 - Plaintiffs disagreed, calculating the gap at 71

Myers v. Stephen F. Austin, Cont.

- Court rejected FSA's argument and upheld that effective accommodation of interest and abilities must consider whether there is:
 - Unmet interest in a particular sport
 - Sufficient ability to sustain a team in the sport
 - Reasonable expectation of competition for the team
- **Takeaways**
 - Athletics expansion or reduction is often a strategy to increase enrollment or meet budget constraints, but Title IX must be part of the conversation
 - Consider implementing an athletics audit and an interest survey

Other Athletic Benefits and Opportunities

Equitable Treatment: “The Laundry List”

Equipment and
supplies

Scheduling

Locker rooms
and facilities

Housing and
dining

Coaching

Scholarships

Publicity

Travel and
per diem

Medical and
training
services

Tutoring

Recruitment

Support
services

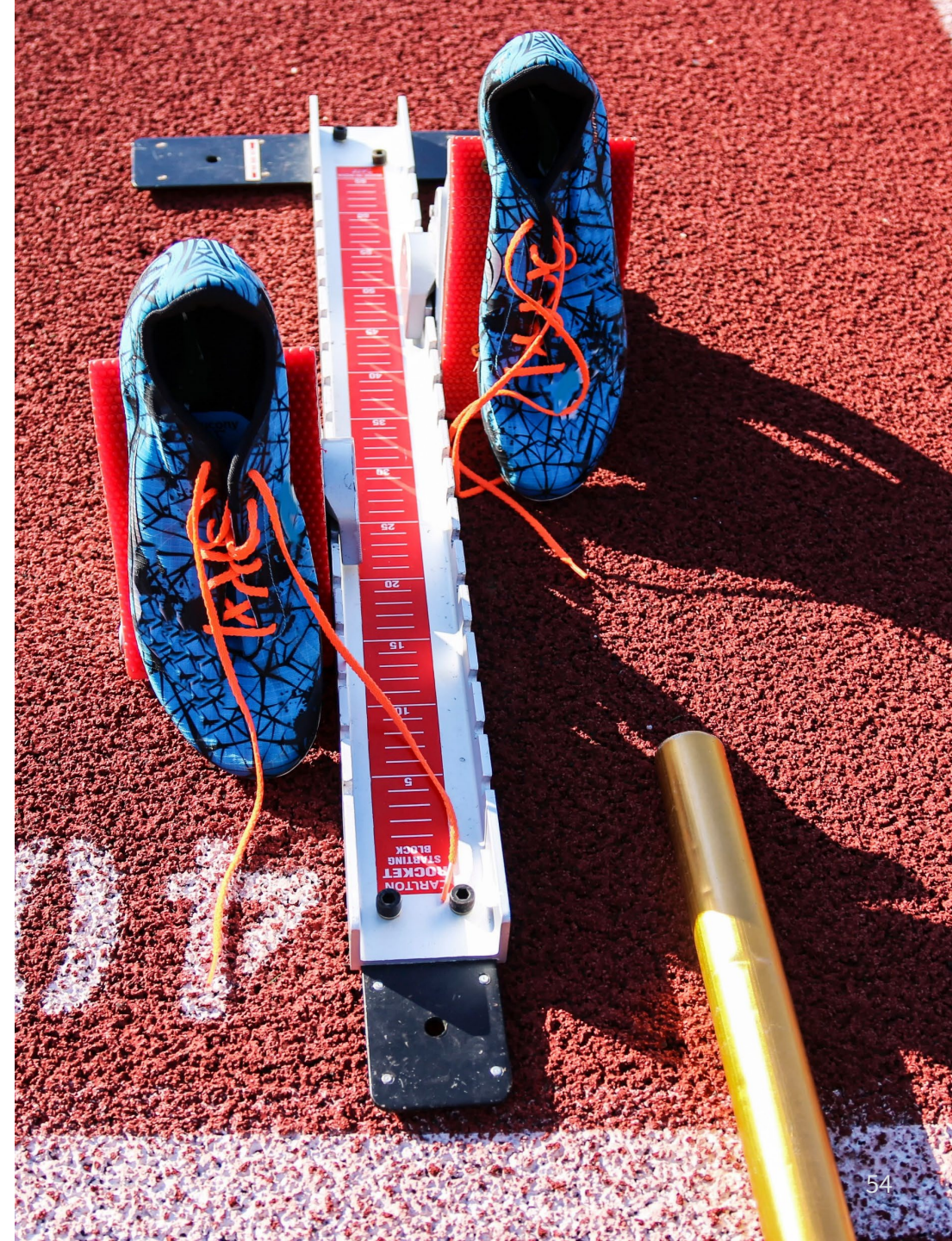
Equipment and Supplies

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

Source: HEW (1979).

Intercollegiate Athletics Policy Interpretation



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 pre-season and post-season competition

Source: *Id.*



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

Source: *Id.*



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

Source: *Id.*

Coaching, Cont.

Key factors in examining the equivalence for men and women, continued:

- 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: *Id.*

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

Source: *Id.*

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
- Quality of locker rooms
- Maintenance of practice and competition facilities
- Preparation of facilities for practice and competitive events

Source: *Id.*

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
 - Of conditioning facilities
- Availability and qualifications of athletic trainers

Source: *Id.*



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)

Source: *Id.*



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

Source: *Id.*



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

Source: *Id.*

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

Source: *Id.*

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 scholarships 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: *Id.*

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 and all athletes**

Fundraising

- **Fundraising:** Teams raising money on their own (e.g., specific opportunity, 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

Sex Discrimination

Disparate Treatment

Program Equity

Sexual Harassment

Quid Pro Quo

Domestic Violence

Hostile Environment

Stalking

Sexual Assault

Dating Violence

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)
- 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



Additional Challenges

- 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
- 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

Source: Pat Griffin, Professor Emerita and Former Swim Coach, UMass Amherst

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

Source: *Id.*

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



Association of
Title IX Administrators

Questions?

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