



Association of  
Title IX Administrators

# Title IX Compliance and Athletics for Higher Education

Training and Certification Course

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Strategic Risk  
Management Solutions



Any advice or opinion provided during this training, either privately or to the entire group, is **never** to be construed as legal advice or an assurance of compliance. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law in your jurisdiction, any applicable state or local laws, and evolving federal guidance.

# Content Advisory

The content and discussion in this course will necessarily engage with sex- and gender-based harassment, 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.

# Course Introduction



The primary focus of this course is to prepare Title IX and Athletics practitioners to build stronger Athletic programs regarding compliance, culture, and equity.



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-based harassment, sexual misconduct, culture in Athletics, and program equity compliance.

# 2024 Title IX Regulations Litigation

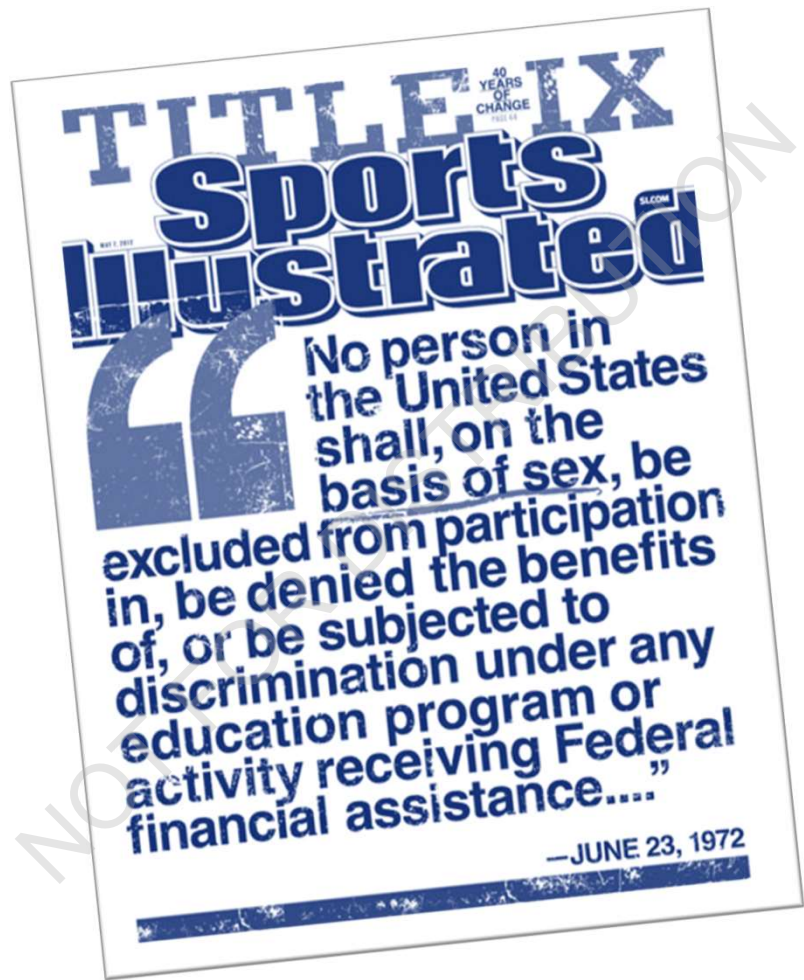
- Opponents of the 2024 Title IX Regulations sought, and were granted, **injunctions** to delay or halt implementation of the Regulations
  - **Injunction:** A court order requiring an individual or entity to either perform or stop performing a specific action
- Generally, courts granted injunctions based on questions around the validity of the gender identity provisions and the hostile environment definition
- If the 2024 Regulations are not enforceable as a result of an injunction, schools, districts, and institutions in those states should continue to follow the **2020 Regulations**
  - The 2024 Regulations also are not enforceable in some individual schools and institutions

# 2024 Title IX Regulations Litigation

- Implementation will be unsettled for the foreseeable future
  - Appeals will continue and, eventually, trials
  - Consult legal counsel to determine implementation plans and risk strategy
- **Note:** Some states also have “Do Not Implement” directives from state officials
  - Independent from any federal lawsuits or injunctions
- Track developments on ATIXA’s Regulations website, [www.atixa.org/regs](http://www.atixa.org/regs)
  - State-by-state information on injunctions and Do Not Implement directives
  - Lists of individual schools or institutions impacted by the Kansas injunction

# Introduction to Title IX





# Title IX Scope

## Sex Discrimination

- Program Equity
- Inequitable Treatment
  - Sex Characteristics
  - Sex Stereotypes
  - Pregnancy or Related Conditions
  - Sexual Orientation
  - Gender Identity
- Exclusion from participation

## Sex-Based Harassment

- Quid Pro Quo
- Hostile Environment Harassment
- Dating Violence
- Domestic Violence
- Sexual Assault
- Stalking

## Retaliation



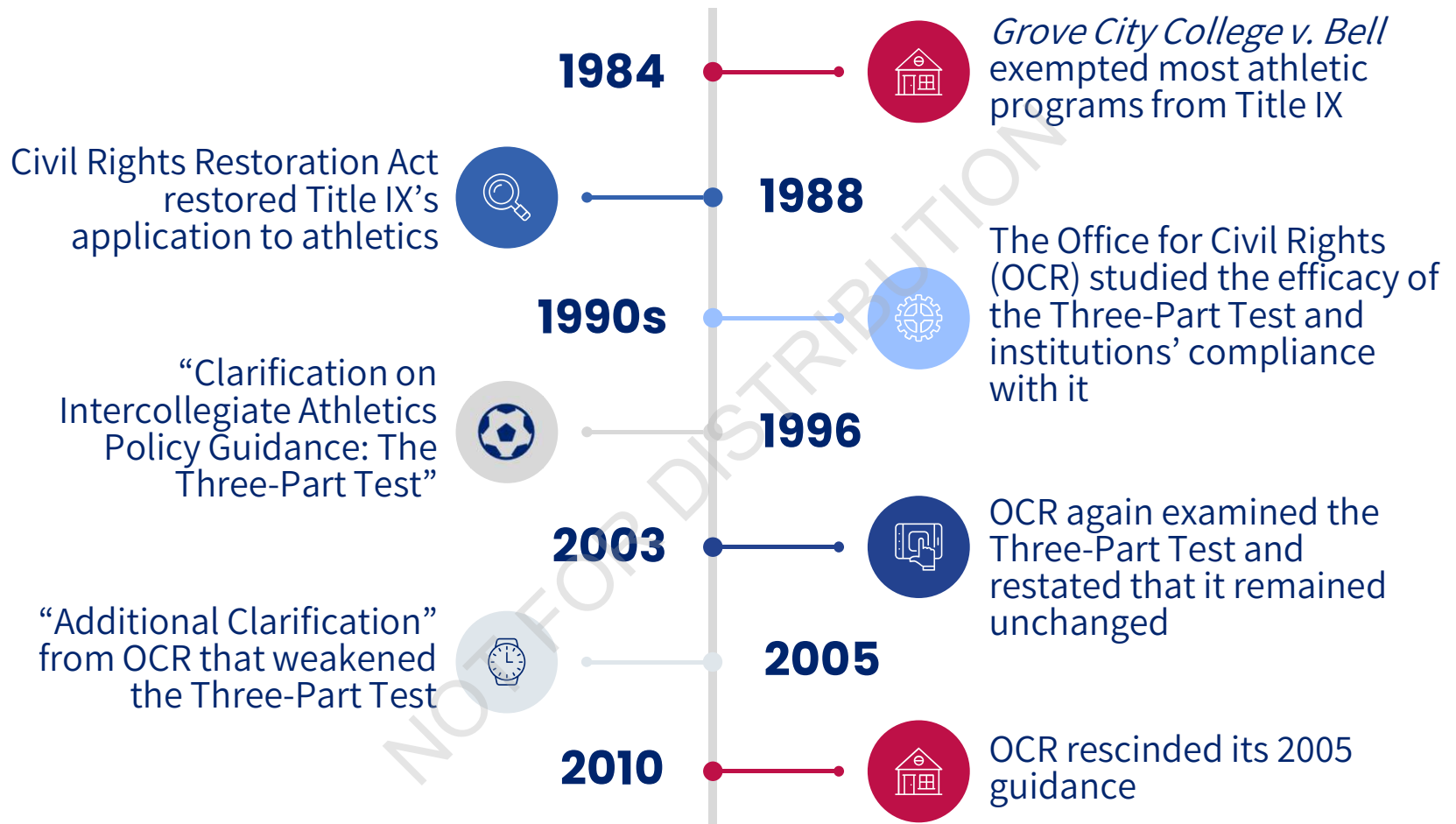
# **“TOO STRONG FOR A WOMAN”**

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.



# Recent Regulatory Timeline

- **August 2020:** Due-process oriented regulations took effect, reshaping how Recipients respond to reports of **sexual harassment**
- **July 2022:** OCR published a Notice of Proposed Rulemaking (NPRM) on responding to complaints of **sex discrimination**
- **April 2023:** OCR published an NPRM outlining proposed changes to the Title IX regulations focused on **gender identity and athletic participation**
- **April 2024:** OCR published a new rule governing sex-based harassment and sex discrimination, and protection on the basis of gender identity, generally
  - **HOWEVER**, the new rule explicitly excluded guidance on athletic participation on the basis of gender identity, which will be released separately
- **August 1, 2024:** Effective date for April 2024 Regulations

# OCR Guidance on Title IX and Athletics

September 17, 2008	Criteria for a Sport
April 4, 2011*	Sexual Violence
January 25, 2013	Disabled Student-Athletes
June 23, 2013	Pregnant and Parenting Students
April 24, 2013	Retaliation
October 1, 2014*	OCR Enforcement
April 24, 2015*	Title IX Coordinators
May 12, 2016*	Transgender Students

\*Denotes rescinded guidance.

# OCR Guidance

June 15, 2016	Career and Technical Education
February 22, 2017	Transgender Students (withdrew 5/2016 Dear Colleague Letter (DCL) guidance)
September 22, 2017	Q&A on Sexual Violence (withdrew 4/2011 DCL guidance and 4/2014 Q&A guidance)
January 14, 2021	Q&A on Single-Sex Scholarships, Clubs, and other Programs
May 19, 2021	Notice of Interpretation: Enforcement of Title IX in Light of <i>Bostock v. Clayton County</i>
July 20, 2021	Q&A on Title IX Regulations on Sexual Harassment



# 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

# 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

Source: NCAA Executive Committee: August 8, 2014.

# NCAA and Sexual Violence

- **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

# NCAA Policy on Campus Sexual Violence

1. 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\*

# NCAA Policy on Campus Sexual Violence

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.

# NCAA Policy on Campus Sexual Violence

\*\*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

# NCAA Policy on Campus Sexual Violence

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.



# NCAA Policy on Campus Sexual Violence

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 21.

Source: NCAA Policy to Combat Campus Sexual Violence.

# 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 institutional and conference requirements to their institution
- Emerging Title IX implications of NIL

# Regulatory Standards

# Title IX and Athletics

## Title IX requires an institution to:

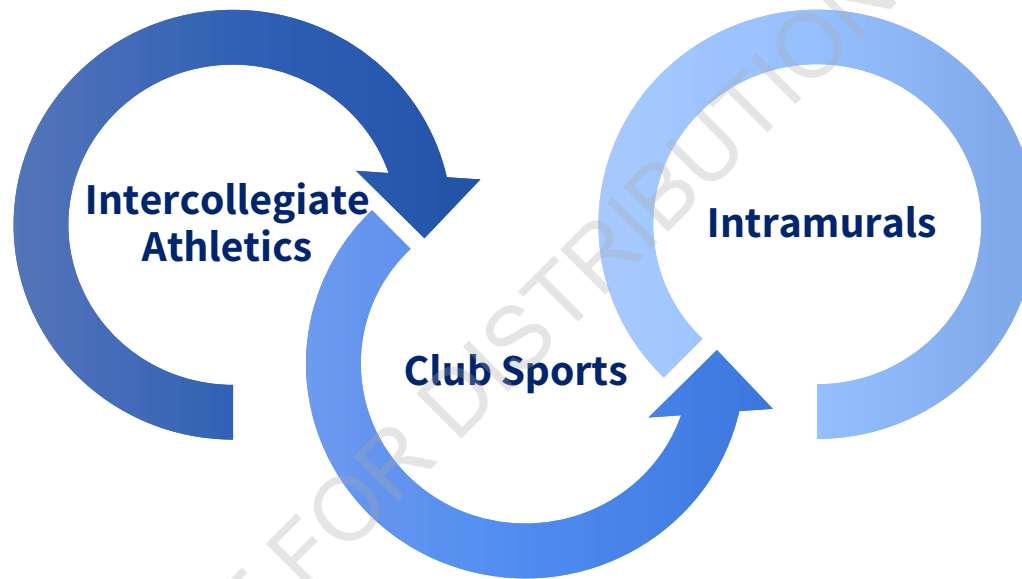
- Provide **equal opportunities** for female and male students to become intercollegiate athletes
  - Analyzed by means of a three-part test
- Provide **equitable treatment of participants** in the overall women's program as compared to the overall men's program
  - Analyzed according to 13 different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

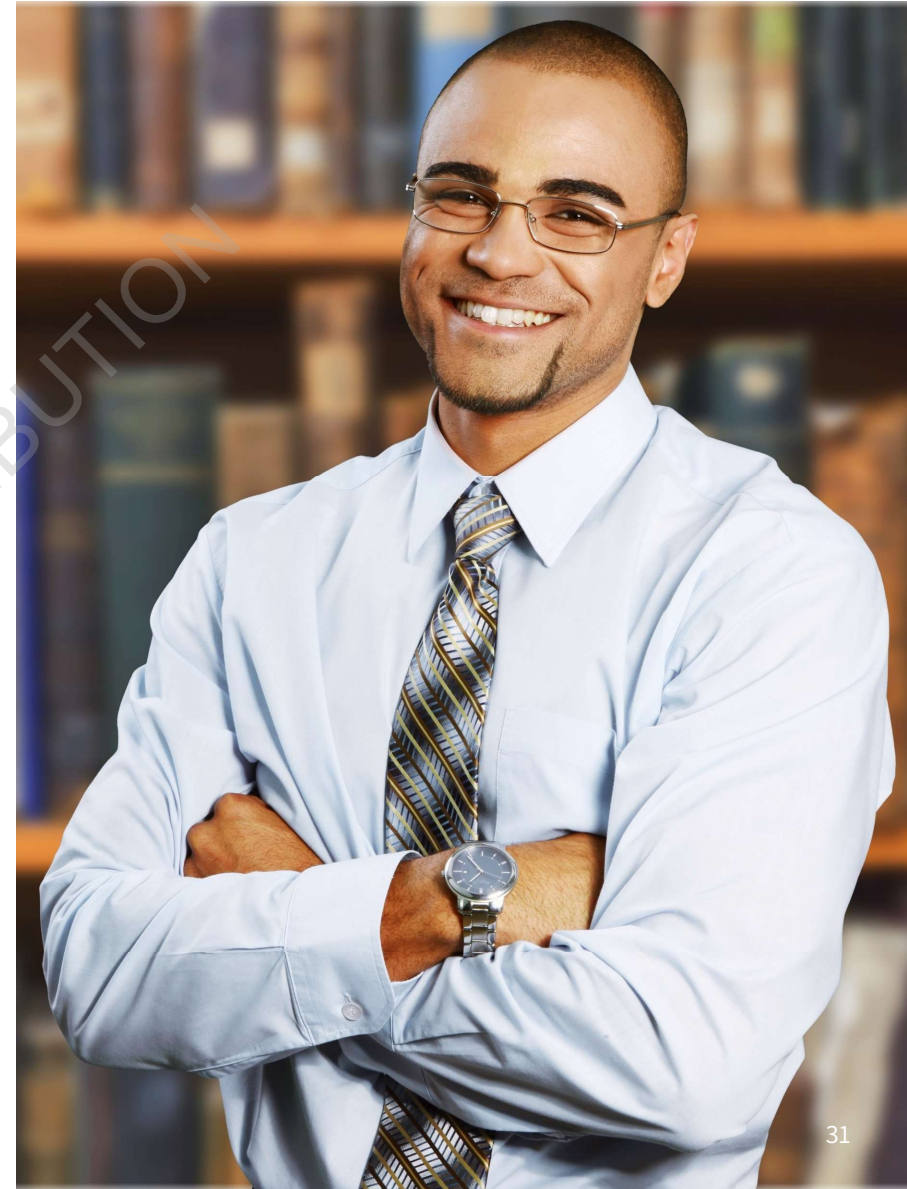
# Title IX and Athletics



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: Gender Equity

- 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 Recipient'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

# 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

- **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

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

- 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: HEW (1979). Intercollegiate Athletics Policy Interpretation;

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

# 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

# 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”

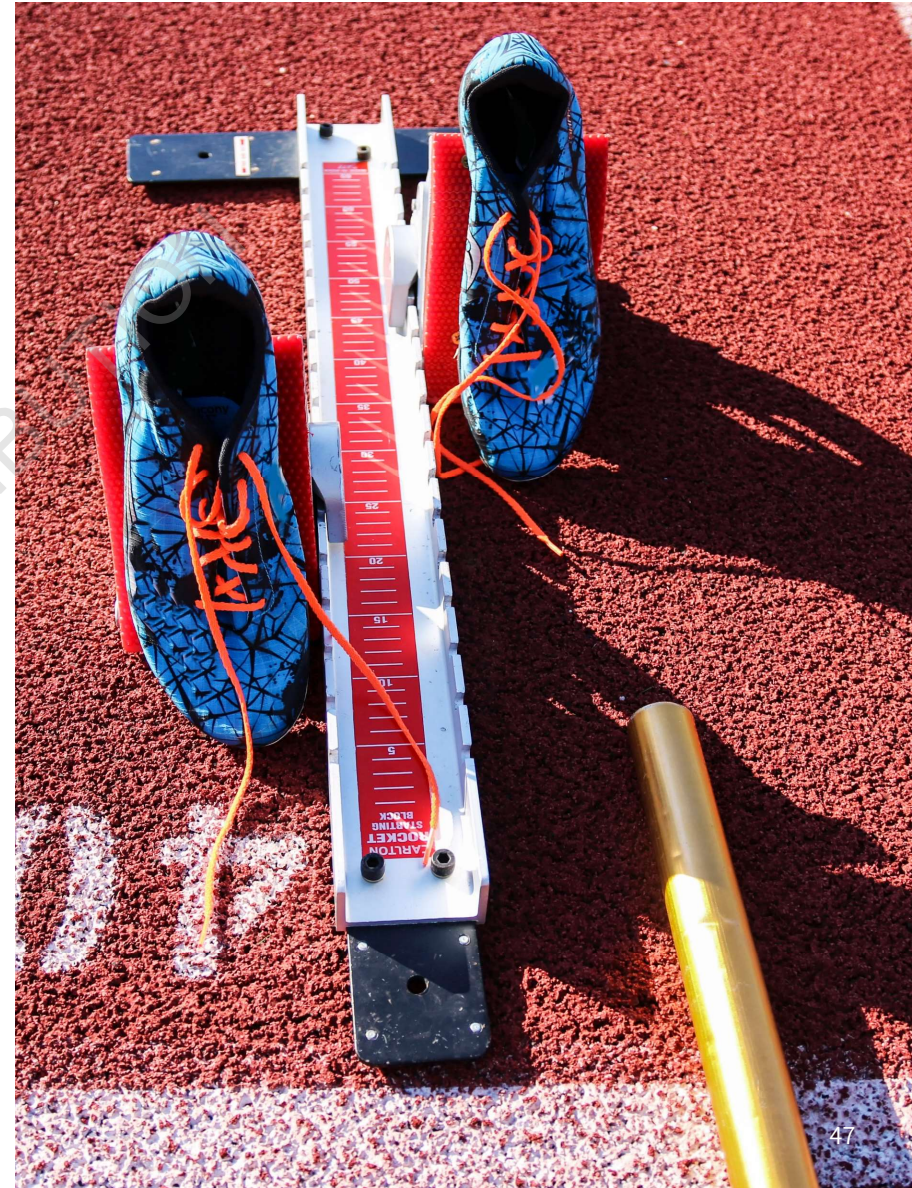
Equipment & Supplies	Scheduling	Locker Rooms & Facilities	Housing & Dining
Coaching	Scholarships	Publicity	Travel & Per Diem
Medical & Training Services	Tutoring	Recruitment	Support Services

# 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

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



# 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 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

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



# 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

## 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

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, cleaning service

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



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





# 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

# Other Considerations

- 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
    - *De Minimis* Harm provision in 2024 Regulations
  - Institutional or conference policies

# Athletics NPRM and Trans Limitations

“The Athletics NPRM said a categorical ban on transgender students playing sports consistent with their gender identity would **not** satisfy the proposed regulation, but **more targeted criteria**, substantially related to sport, level of competition, and grade or education level, **could be permissible**”

# Separate Bathrooms or Locker Rooms

- “The Department has determined...that **sex separation in certain circumstances**, including in the context of bathrooms or locker rooms, **is not presumptively unlawful sex discrimination**
- However, when such separation imposes **more than *de minimis* injury** on a protected individual...such as when it denies a transgender student access to a sex-separate facility or activity consistent with that student’s gender identity, this would violate Title IX’s general nondiscrimination mandate”

# 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

# Red Flags

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# Potential Red Flags

“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 are definitely in compliance.”

“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!”

# Potential Red Flags

**Gender Imbalances on Coaching Staff**

**Closed Hiring Practices**

**Booster Clubs and Donations for Single Sports**

**Salaries Not Benchmarked (conference, geographic)**

**Hostile Environment Complaints**  
**How managed?**  
**By whom?**

**Coaches Raising Money for Only Their Team**

# 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

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# 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



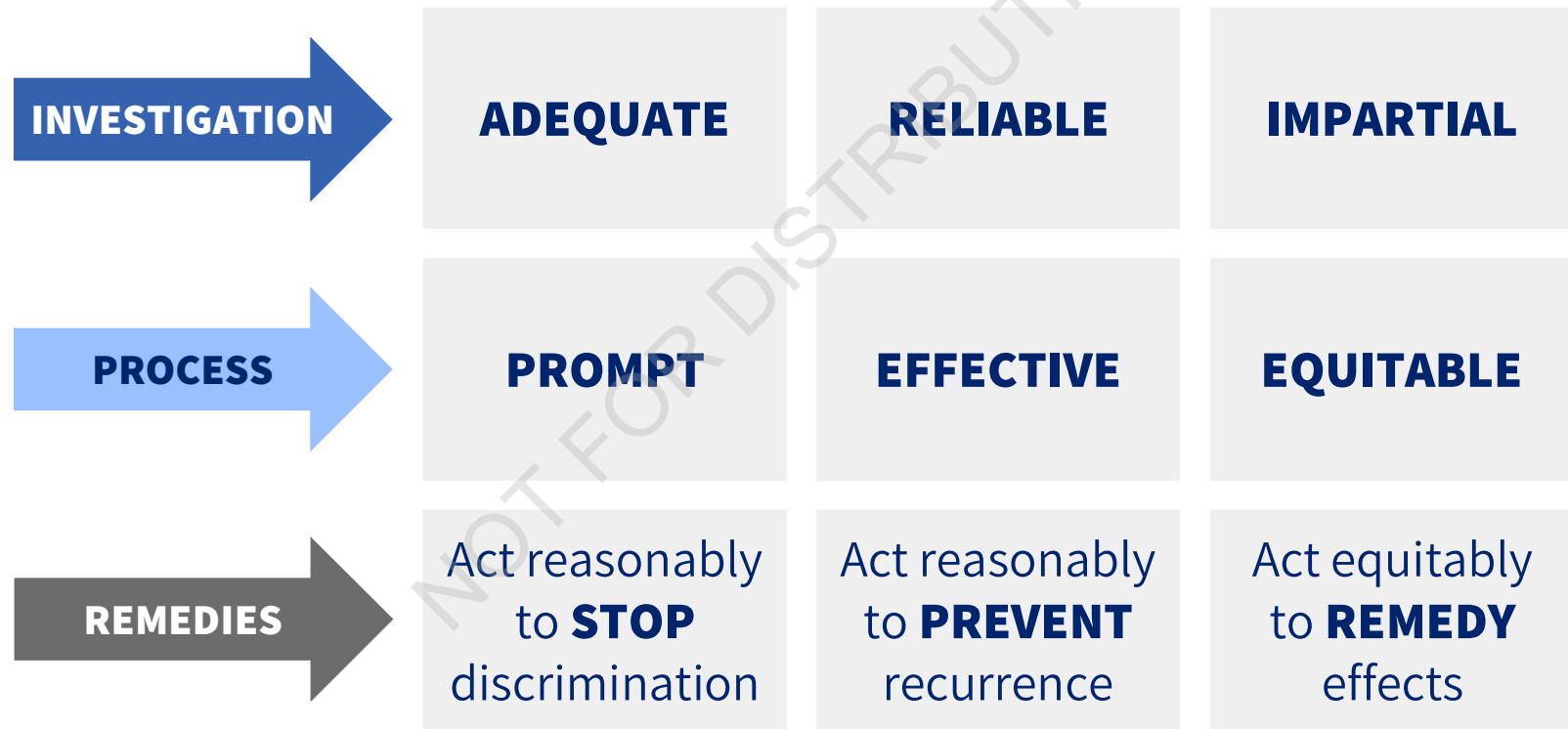
# Sex Discrimination, Sex-Based Harassment, and Sport

# Sex-Based Harassment

- Subset of sex discrimination
- Includes (the “Big Six” offenses):
  - Quid Pro Quo
  - Hostile Environment Harassment
  - Sexual Assault
  - Dating Violence
  - Domestic Violence
  - Stalking
- No consent definition provided
  - ATIXA recommends adopting a definition in institutional policy



# The IX Commandments



# 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 (4<sup>th</sup> 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

# 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 **imminent and serious threat** to the health and safety of the Complainant or any other persons exists, and
  - The risk arises from the allegations of sex discrimination
- This is a **very** high bar
- TIXC must be involved in the process
- Removal without the appropriate risk assessment could be considered retaliation
- Title IX jurisdiction expanded significantly under the 2024 Regulations, so the prohibition on removals applies to more types of behavior
  - However, there may be non-Title IX basis for interim action that would not be retaliatory

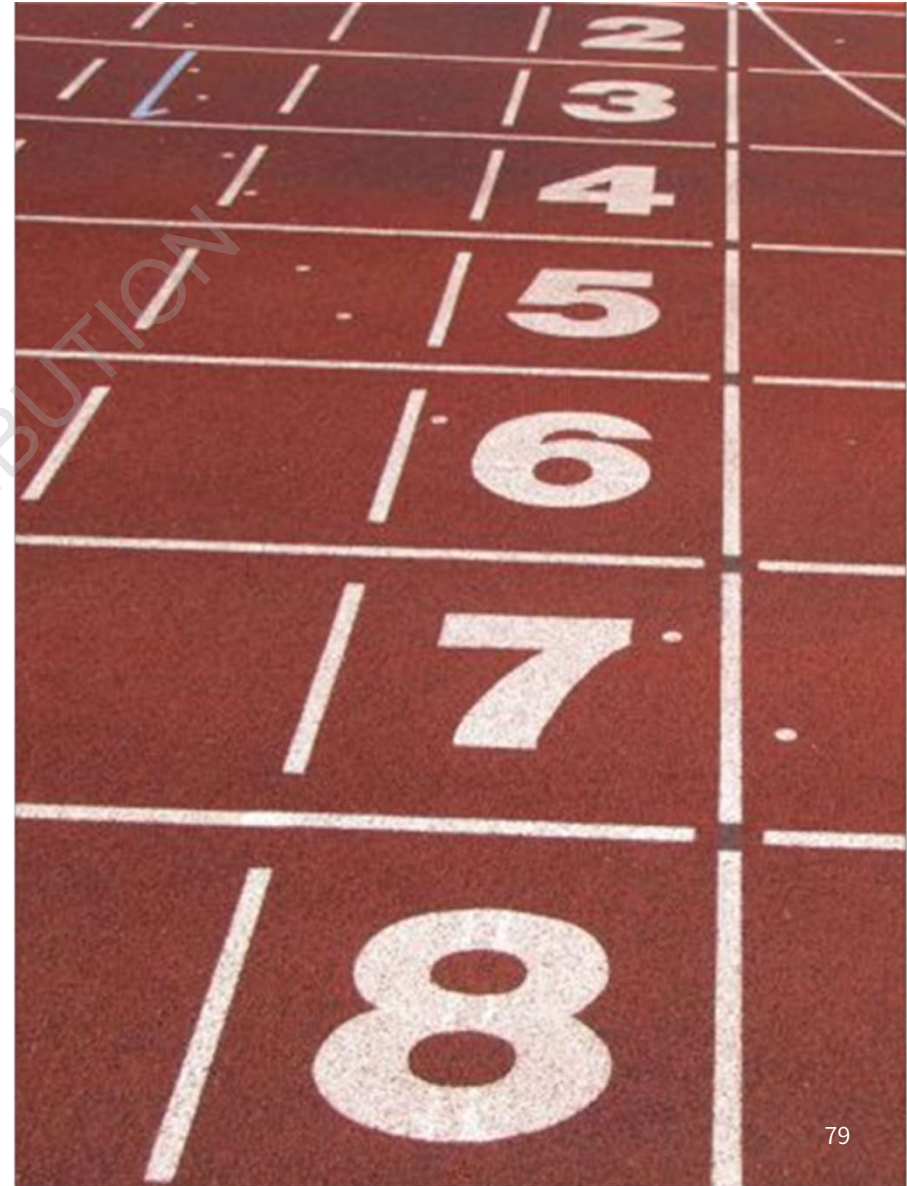
# Unique Challenges: Title IX and Student Athletics

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



# Unique Challenges: Title IX and Student Athletics

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



# Pregnancy and Parenting: 2024 Title IX Regulations

## An institution may not:

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

- pregnancy, OR
- related conditions

Adopt or implement any policy, practice, or procedure 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

- The 2024 Regulations provide extensive coverage for, and guidance concerning pregnancy protections, and incorporate much of OCR's longstanding guidance
- 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



# Current LGBTQIA+ Issues in Competition

- The 2024 Regulations include general protections for sexual orientation and gender identity
  - Multiple states are suing the Department of Education to prevent these protections from taking effect
- Title IX Regulations on gender identity and athletic participation are pending
- State laws and rules regarding competition are being challenged in federal courts
- ATIXA will continue to update members on these issues

# 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

- 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

# Case Studies

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**Questions?**

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