


Gender Equity/Title IX
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MODULE SEVEN





Athletic Department Title IX Training

- In person if possible
- Coaches and Student-Athletes specifically mentioned in the Dear Colleague Letter.
- Access and Knowledge
- Known or should have known standard
- Obligation to Report
- Isolation, Control and Culture
- Recruiting/Clinics/Summer Camps

Title IX



- DCL Letter provides that Title IX's protection applies to third parties who participate in a school's education programs or activities including:
 - A high school student participating in a college's recruitment program
 - A visiting student athlete
 - A visitor in a college's on-campus residence hall



Training

- Title IX's Application to Athletics
- Policy and Complaint Procedure
- Balance of Power – No Relationship
- Quid Pro Quo
- Hostile Environment Harassment
 - Inappropriate Behavior
 - Unwelcome
 - Subjective
 - Objective
 - Alters Environment
 - Totality of the Circumstances





OCR Guidance on Training

- **Same Sex Sexual Harassment**
 - Gender based harassment, including that predicated on sex-stereotyping, is covered by Title IX if it is sufficiently serious
- **Title IX's prohibition against sexual harassment does not extend to legitimate nonsexual touching or other nonsexual conduct.**
 - A high school athletic coach hugging a student who made a goal . . . will not be considered sexual harassment.
 - A student's demonstration of a sports maneuver or technique requiring contact with another student will not be considered sexual harassment.
- **However, in some circumstances, nonsexual conduct may take on sexual connotations and rise to the level of sexual harassment.**
 - For example, a teacher repeatedly hugging and putting his or her arms around students under inappropriate circumstances could create a hostile environment.

Additional Issues:


Title IX, Student Behavior and Social Media: O.M.G.

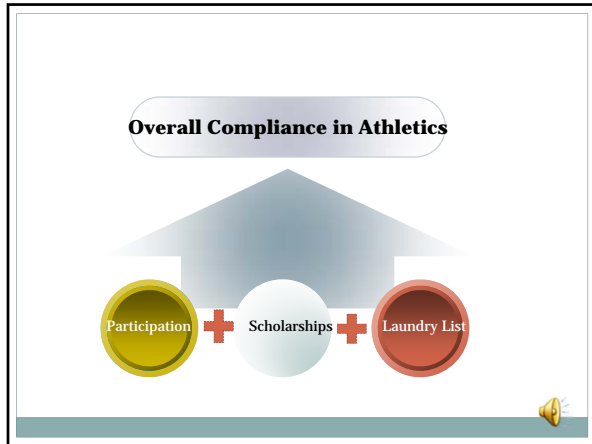


- Tweeting
- Hazing
- Facebook
- Google Plus
- Hazing (I know I said it already)
- Party with a Theme
- Sexting

Title IX's Programmatic Application to Intercollegiate Athletics Programs

MODULE EIGHT







Sports/Participant Analysis

What's a SPORT for Title IX Purposes?
Who are Countable Participants under Title IX?

- a. Normal Support; and
- b. Regular Activities; and
- c. On the Squad List; or
- d. Injured on Scholarship.

In short, participants are those student-athletes that are included on the squad list as eligible as of the first date of competition, plus others added shortly after and minus other taken off shortly after ... but case by case basis.

Participation: EADA, WEB Rosters, OCR . . .

The screenshot shows the 'The Equity in Athletics Data Analysis Cutting Tool' website. It includes a navigation bar, a main content area with text and instructions, and a footer with various links.

The Equity in Athletics Data Analysis Cutting Tool

is brought to you by the Office of Postsecondary Education of the U.S. Department of Education. This analysis cutting tool was designed to provide rapid assessment reports for public inquiries relating to equity in athletics data. The data are drawn from the OCR Equity in Athletics Disclosure Website database. This database consists of athletics data that are submitted annually as required by the Equity in Athletics Disclosure Act (EADA), via a Web-based data collection, to all 50 educational institutions' institutions that receive Title IX funding (i.e., those that participate in federal student aid programs) and that have an intercollegiate athletics program.

Cautionary Note


Please note that valid comparisons of athletics data are possible only with study and analysis of the conditions affecting each institution.

The OCR Equity in Athletics Data Analysis Cutting Tool Website is linked to the Department of Education's Federal Student Aid site.

Please click on the first report from the list below to start.

- **Get data for one institution**
This report will provide you with data for one institution. After you select your target institution, you can view the individual Equity in Athletics data along with general information about the institution.
- **Get aggregated data for a group of institutions**
This report will provide you with aggregated data for a group of institutions you select. After you select your target group of institutions, you can view and view specific comparisons of Equity in Athletics data.
- **Download selected data**
This report will provide you with selected Equity in Athletics data for selected institutions or all institutions, for a selected year. The data are provided in a CSV file format. OCR uses this.
- **Download Data Files**
This entry allows you to download the complete data file for all institutions for a selected year.

OCR Home | Information for Students | Research for Colleges | Tools | Student Aid Professionals | Equity in Athletics Disclosure Act Tools | OCR Contact Us



Participation: The Three Part Test

Prong 1.
Intercollegiate-level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollment, or

Prong 2.
The institution can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the members of the underrepresented gender, or

Prong 3.
It can be demonstrated that the interests and abilities of the members of the underrepresented gender have been fully and effectively accommodated by the present program.

Prong 1 Substantial Proportionality

% Male % Female Full-Time Undergraduates

% Male % Female Athletic Participants

Prong 2 History and Continuing Practice of Program Expansion for Underrepresented Sex in Athletics

Year First Team Added for the Underrepresented Sex

% Participation Opportunities for Underrepresented Sex as Compared To Opposite Sex

Present Day

Prong **3** Full and Effective Accommodation of Interest and Ability

The institution must show:

(1) It took reasonable steps to access the interest and ability of the underrepresented sex; and,

(2) it found insufficient:

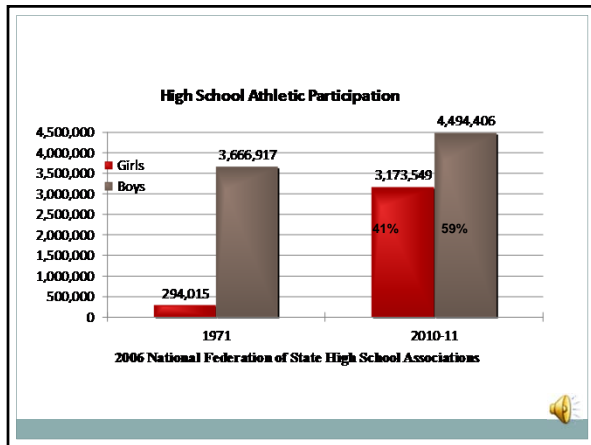
- Interest
- Ability
- Competition

Note: The mere absence of formal requests for the elevation or addition of teams is not enough

Factors Considered, non exclusive:

- Requests by students and admitted students to add sport;
- Requests for elevation of club sport;
- Participation in club or intramural sports;
- Interviews with students and admitted students, coaches, administrators, and others;
- Results of surveys or questionnaires of students and admitted students;
- Participation in interscholastic sports by admitted students;
- Participation rates in feeder high schools, amateur athletic associations, and community sports leagues; and
- Participation in intercollegiate sports in normal competitive regions.

Intercollegiate Athletics Policy Clarification: The Three-Part Test – Part Three, Dear Colleague Letter, OCR (April 20, 2010).



Levels of Competition

In addition to demonstrating that the athletic program offers gender-equitable participation opportunities as measured above, Title IX requires that those participation opportunities are meaningful opportunities. Accordingly, institutions must be able to demonstrate that an athletic program complies with either of the following two-part test assessing levels of competition:

- the competitive schedules for men's and women's teams, on a program-wide basis, afford proportionately 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.

Financial Aid Dollars – Scholarship Analysis

Compare the Scholarship Dollars Spent on Male and Female Athletes in the Current Athletic Program

Unlike Before, Count All Athletes One Time Only – No Matter How Many Sports They May Play

DOCUMENT, VERIFY AND BE ABLE TO EXPLAIN ALL VARIABLES

Summer School and Exhausted Eligibility Counted Separately.

The Laundry List: 11 Program Components

- Equipment and supplies
- Scheduling games and practices
- Travel and per diem
- Opportunity to receive coaching and academic tutoring
- Assignment and compensation of coaches and tutors
- Locker rooms, practice and competitive facilities
- Medical and training facilities
- Housing and dining
- Publicity
- Recruitment
- Support Services

DOCUMENT, VERIFY AND BE ABLE TO EXPLAIN ALL VARIABLES



Section 106.41(c) provides:

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance [T]he Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

DOCUMENT, VERIFY AND BE ABLE TO EXPLAIN ALL VARIABLES



What counts?

- Institutional Funds
- Donations
- Gifts
- Equipment Contracts
- Guarantees
- In-Kind
- Bequests
- Spontaneous Acts of Kindness



Equipment and Supplies

- Quality
- Suitability
- Amount
- Maintenance & Replacement
- Availability





Scheduling of Games & Practice Times

- Number of Competitive Events
- Practice Time and Length
- Time of Day Issues
- Pre and Post Season Competition


New Case out of the 7th Circuit on Scheduling of Basketball Games.

Conference Letter from OCR regarding Scheduling of Basketball Games.



Travel & Per Diem Allowance

- Type of Transportation
- Where Do the Athletes Stay?
- Length of Stay
 - Before
 - After
- Per Diem Allowances
- Dining Arrangements



Coaches

- Opportunity to Receive Coaching
 - Full-Time Coaches
 - Part-Time and Assistant Coaches
 - Graduate Assistants
- Assignment
 - Training, Experience & Other
 - Professional Standing
- Compensation
 - Rate
 - Duration of Contracts & Renewal
 - Experience
 - Nature of Coaching Duties
 - Working Conditions
 - Other Terms and Conditions of Employment





Academic Tutors

- Opportunity to Receive Academic Tutoring
 - Availability
 - Procedures
- Assignment and Compensation of Tutors
 - Tutor Qualifications
 - Tutor Experience
 - Rate of Pay
 - Relative Workload



Facilities

- **Locker Rooms**
 - Availability
 - Quality
- **Practice & Competitive Facilities**
 - Quality & Availability
 - Exclusive Use
 - Maintenance
 - Preparation



Medical & Training Services

- **Availability of Medical Personnel**
 - Practice and Games
 - Travel Issues
- **Health, Accident & Injury Insurance**
- **Availability & Qualifications of Certified Athletic Trainers**
 - Practice and Games
 - Travel Issues
- **Availability & Quality of:**
 - Weight Facilities
 - Training Facilities
 - Conditioning Facilities



Housing & Dining Services

- **Do student-athletes get meals on-campus?**
 - Training Table
 - Length of Contest
 - Organized
- **Is Student Athlete Housing Provided?**
- **If it is, are there Special Services?**
 - Laundry
 - Parking
 - Cleaning Service



Night before home games?




Publicity/Marketing

- Availability & Quality of Personnel
- Access to other Publicity Sources
- Quantity & Quality of Publications and other Promotional Materials
- Travel Issues



Support Services

- Amount of Administrative Assistance
- Amount of Secretarial & Clerical Assistance
- Office Space
- Computers, Phones, Office Machines



Recruiting

- Provision of Substantially Equal Opportunities to Recruit
- Provision of Financial and Other Resources
- Whether Differences in Benefits, Opportunities, and Treatment Afforded Prospective Student Athletes have a Disproportionately Limiting Effect on Recruitment




Treatment Issues . . .

Laundry List Area of Review	Men's Program	</>/ =	Women's Program
Equipment and Supplies			
Scheduling			
Per Diem and Travel			
Tutors			
Coaches			
Facilities			
Medical & Training Services			
Housing			
Publicity			
Support Services			
Recruiting			
OVERALL ASSESSMENT			


Are the Disparities Significant?

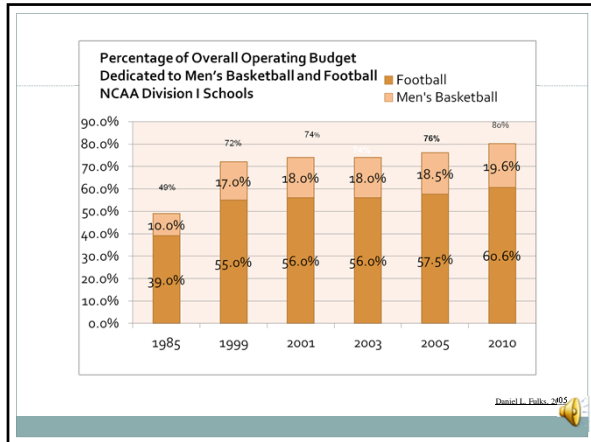
- **Difference, on the Basis of Sex**
 - in benefits or services that has a . . .
 - negative impact on athletes of one sex . . .
 - when compared with benefits or services available to athletes of the other sex.
- **Significant Disparity:**
 - So Substantial as to Deny Equal Opportunity to Athletes of One Sex.
- **Disparities that are not Significant. . .**
 - Evidence to be Evaluated on a case by case basis.



Permissible Differences

- **Unique aspects of particular sports are recognized:**
 - Recruitment
 - Event Management Costs
 - Equipment
 - Publicity Issues
 - Compensation Issues
 - Medical Issues





Common (Mis)Perception


Football and men's basketball finance other men's sports and all women's sports in colleges.

Reality: It costs a good deal of money to finance football and basketball. Most football and men's basketball teams spend much more money than they bring in.

A 2009 study shows that almost half of Division I-FBS football and men's basketball programs -- the ones that are making money -- do not generate enough revenue to pay for themselves. These programs reported annual deficits averaging \$2.7 million and \$870,000 respectively.

Jackson v. Birmingham Bd. of Education

- Supreme Court Decision/Retaliation
- Resolved Circuit Split
- Supreme Court Holding:
 - Retaliation is intentional discrimination on the basis of sex
 - One who witnesses and complains about discrimination is protected from adverse action imposed because of the complaints
 - Coaches, teachers, administrators and students in best position to witness and alert schools
 - Enforcement scheme would unravel if no action for retaliation existed.



Take Aways:

Practical Strategies:



Title IX Coordinator:

- Gender Equity Committees
- Title IX Policy for Athletics
- In Person Training
- Annual Meetings with SAAC and Captains (student athlete advisory committee)
- Understanding that the Title IX Coordinator needs to be included