

THE BEST OFFENSE IS A GOOD DEFENSE



Title IX and Athletics Compliance

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WHY ARE WE HERE TODAY?

- **To gain a basic understanding of the Athletic requirements of Title IX**
- **To learn proactive ways to protect your university or school from Title IX violations**



WHAT IS TITLE IX OF THE EDUCATION AMENDMENTS OF 1972?

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

20 U.S.C. § 1681, *et seq.*



WHY ATHLETICS?

- **Athletics versus History, English, Math, Chemistry Departments**
- **Sexual Misconduct PR implications**



SEXUAL MISCONDUCT IN ATHLETICS

- Most high profile Title IX sexual misconduct cases emanate from Athletics



- Athletic culture may feed the problem
- What does a Title IX Athletics Review reveal?
 - What students and coaches actually retain from Title IX training
 - Whether Title IX complaints are taken seriously by the administration
 - Whether there are rumors of sexual misconduct that have gone unreported

WHAT GUIDES TITLE IX COMPLIANCE?

Regulations

- 34 C.F.R. §106.41 Athletics
 - (a) General. No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.
 - (c) Equal opportunity. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes....
- 34 C.F.R. §106.37 Financial Assistance
 - (c) Athletic scholarships. (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

WHAT GUIDES TITLE IX COMPLIANCE?

- **Office of Civil Rights Guidance**
 1. 1979 Policy Interpretation
 2. January 16, 1996 Dear Colleague Letter
 3. 1998 Bowling Green Dear Colleague Letter
 4. April 20, 2010 Dear Colleague Letter

- **Case Law**
 - Typically in the form of an injunction prohibiting the cutting of a sports team

TITLE IX IN ATHLETICS

Three areas of compliance must be met:

- I. Effective Accommodation of Student Interests and Abilities (“Equal Participation”)**
- II. Athletic Financial Aid (“Scholarships”)**
- III. Equal Opportunities/Treatment (“The Laundry List”)**

EQUAL PARTICIPATION

Standard: Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes

Three-Part Test

1. Substantially proportionate enrollment to participation ratios
2. History and continuing practice of expansion
3. Demonstration that interests and abilities have been fully and effectively accommodated by the present program

An institution need only satisfy ONE prong of the three-part test.

EQUAL PARTICIPATION

Substantially Proportionate Enrollment to Participation Ratios (Prong 1)

- Are participation levels for male and female athletes **substantially proportionate** to their respective full-time undergraduate enrollments?
- Athletes may be counted as a participant in each sport for which he or she participates.

2017-2018 Enrollment Statistics		
	Number of Students	Percentage
Male Undergraduate Students	5,500	47%
Female Undergraduate Students	6,100	53%
Total Students	11,600	

2017-2018 Athletic Participation Statistics		
	Number of Athletes	Percentage
Male Athletes	250	60%
Female Athletes	168	40%
Total Athletes	418	

EQUAL PARTICIPATION

History and Continuing Practice of Expansion (Prong 2)

- Can you show your institution has a history and continuing practice of program expansion which is demonstrably responsive to developing interests and abilities?
- Factors that evidence a *history* of expansion:
 - An institution's record of adding or upgrading teams for the underrepresented sex;
 - An institution's record of increasing the number of participants of the underrepresented sex;
 - An institution's affirmative responses to requests by students to add or elevate sports.



EQUAL PARTICIPATION

History and Continuing Practice of Expansion (Prong 2)

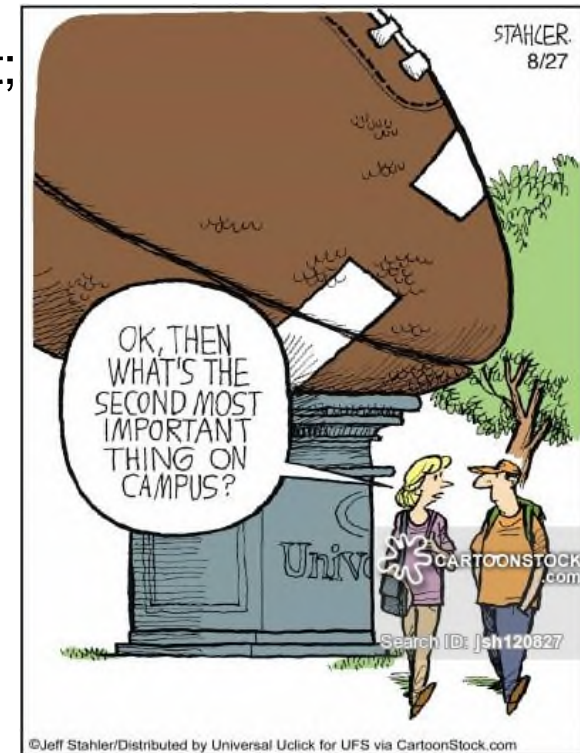
- Factors that evidence a ***continuing practice*** of expansion:
 - An institution's current implementation of a nondiscriminatory policy or procedure for requesting the addition of sports and the effective communication of the policy or procedure to students;
 - An institution's current implementation of a plan of program expansion.
- This prong cannot be satisfied by solely decreasing opportunities for the overrepresented sex.
- We recommend being able to demonstrate that participation numbers have increased more than 25% in the last five-year period.



EQUAL PARTICIPATION

Demonstration that Interests and Abilities Have Been Fully and Effectively Accommodated by the Present Program (Prong 3)

- Look to:
 - a) unmet interest in a particular sport;
 - b) sufficient ability to sustain a team in the sport;
and
 - c) a reasonable expectation of competition for the team.
- An institution will be noncompliant if all three conditions are present and there has been no endeavor to add a team.



EQUAL PARTICIPATION

Demonstration that Interests and Abilities Have Been Fully and Effectively Accommodated by the Present Program (Prong 3)

- A. Methods to collect, maintain and analyze information on **unmet interest**:
- Requests by students that a particular sport be added or elevated
 - Participation in particular club or intramural sports
 - Interviews with students, admitted students, coaches, and administrators regarding interest in particular sports
 - Results of student surveys
 - Participation in interscholastic sports by admitted students
 - Participation rates in sports in high schools and community sports leagues in areas from which the institution draws its students

EQUAL PARTICIPATION

Demonstration that Interests and Abilities Have Been Fully and Effectively Accommodated by the Present Program (Prong 3)

B. Indicators of **ability to sustain a team**:

- Athletic experience and accomplishments in interscholastic, club, or intramural competition of students and admitted students;
- Opinions of coaches, administrators and athletes; and
- If the team competed at the club or intramural level, whether the competitive experience indicates the potential to sustain a team.

Only potential to sustain a team is required (no need to be top of the league/conference).

EQUAL PARTICIPATION

Demonstration that Interests and Abilities Have Been Fully and Effectively Accommodated by the Present Program (Prong 3)

C. Indicators of a **reasonable expectation of competition**:

- Competitive opportunities offered by schools against which the institution competes; and
- Competitive opportunities offered by schools in the institution's geographic area.

Although guidance was designed for intercollegiate athletics, the principals apply to elementary and secondary interscholastic athletic programs

SCHOLARSHIPS

- Must provide reasonable opportunities for scholarship awards for members of each sex **in proportion to** the number of students of each sex participating in interscholastic or intercollegiate athletics.
- Institutions will be found in compliance if a comparison results in substantially equal amounts (1%), or if the disparity can be explained by legitimate, nondiscriminatory factors.
- Compare using scholarship aid total, not number of scholarships, and includes work-related aid or loans.



SCHOLARSHIPS – EXAMPLE 1

2016-2017 Athletic Aid Comparison		
	Number of Athletes	Athletic Financial Aid
Men's Program	250	\$1,750,000
	(59.8%)	(59.3%)
Women's Program	168	\$1,200,000
	(40.2%)	(40.7%)
Total	418	\$2,950,000
Disparity	0.5%	



SCHOLARSHIPS – EXAMPLE 2

2016-2017 Athletic Aid Comparison		
	Number of Athletes	Athletic Financial Aid
Men's Program	250	\$1,000,000
	(59.8%)	(44.4%)
Women's Program	168	\$1,250,000
	(40.2%)	(55.6%)
Total	418	\$2,250,000
Disparity	15.4%	



EQUAL TREATMENT

Standard: Equal or equal in effect, or unequal but differences are result of nondiscriminatory factors (i.e. unique aspects of sport, increased services for sports drawing large crowds).

Components for Equal Treatment:

1. Recruitment;
2. The provision of equipment and supplies;
3. The scheduling of games and practice time;
4. Travel and *per diem* allowance;
5. Opportunity to receive coaching and academic tutoring;
6. Assignment and compensation of coaches and tutors;
7. Provision of locker rooms, practice and competitive facilities;
8. Provision of medical and training facilities and services;
9. Provision of housing and dining facilities and services;
10. Publicity;
11. Support services.



EQUAL TREATMENT

1. Recruitment

- Opportunities provided to coaches
- Financial resources devoted to recruitment
- Whether differences in benefits, opportunities and treatment have a limiting effect on prospective students of either sex

2. The Provision of Equipment and Supplies

- Quality
- Amount
- Suitability
- Maintenance and replacement
- Availability



EQUAL TREATMENT

3. The Scheduling of Games and Practice Times

- Number of games
- Number and length of practices
- Time of day of events and practices
- Opportunity to engage in pre-season and season activities



4. Travel and Per Diem Allowance

- Modes of transportation
- Housing during travel
- Length of stays
- *Per diem* allowances
- Dining arrangements



EQUAL TREATMENT



5. Opportunity to Receive Coaching and Academic Tutoring

- Availability of full-time, part-time/assistant and graduate assistant coaches
- Availability of tutoring
- Criteria for obtaining tutoring

6. Assignment and Compensation of Coaches and Tutors

- Assignment:
 - Training/experience and professional standing of coaches, tutor qualifications and experience
- Compensation of Coaches
- Compensation of Tutors



EQUAL TREATMENT

7. Provision of locker rooms, practice and competitive facilities

- Quality and availability of practice and game facilities
- Exclusivity of facilities
- Quality and availability of locker rooms
- Maintenance of practice and game facilities
- Preparation for games and events



8. Provision of medical and training facilities and services

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



EQUAL TREATMENT

9. Provision of housing and dining facilities and services

- Housing provided
- Dining provided
- Special services offered (laundry, parking, maid service)

10. Publicity

- Quality of sports information personnel
- Access to publicity resources
- Quantity and quality of publications and promotional devices

11. Support services

- Administrative assistance
- Secretarial and clerical assistance
- Other amenities



WHAT CAN YOU DO TO ENSURE COMPLIANCE?

Equal Participation

- Choose your prong:
 1. **Substantially proportionate enrollment to participation ratios**
 - A. Roster management
 - B. Add/cut a sport
 2. **History and continuing practice of expansion**
 - A. Add an underrepresented sport at least every 10 years
 - B. Develop a strategic plan which includes a date certain of a new sport offering
 3. **Demonstration that interests and abilities have been fully and effectively accommodated by the present program**
 - A. Monitor results of student survey and new sport requests
 - B. Track local high school and neighboring higher ed. institution sport offerings
 - C. Interview prospective and current student athletes
 - D. Add a sport if sufficient interest is shown



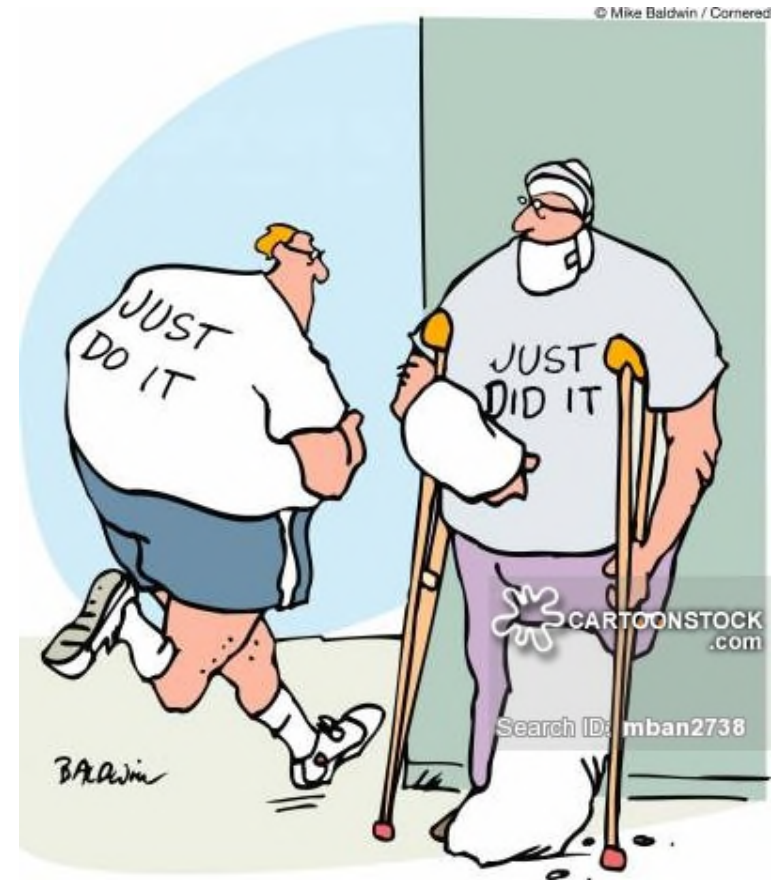
WHAT CAN YOU DO TO ENSURE COMPLIANCE?

Scholarship

- Financial aid allotments must mirror participation rates of male and female athletes
- Disproportionate scholarships may be allowed to increase participation rates of the underrepresented sex
- Ongoing annual review

Equal Treatment

- Requires a deep dive into the Athletic Department to determine equitability
- Extra attention should be given to budget allocations, adherence to budgets, and in-kind contributions and fundraising dollars



BEST PRACTICES FOR COMPLIANCE

Every 10 years

- Add an underrepresented sport

Every 4 - 5 years

- Conduct a comprehensive Title IX Athletics Review
- Conduct a Student Interest Survey

Every Year

- Analyze participation rates and enrollment rates
- Perform a scholarship statistical analysis
- Review Athletic Policies & Procedures

Every Quarter

- Constitute and organize a meeting of a gender equity committee which is tasked with overseeing and ensuring compliance in athletics
- Compile and respond to new sport requests
- Interview student athletes and coaches



"Bless me, Father, for I am
out of compliance...."

QUESTIONS



PLEASE NOTE

This presentation does not constitute specific legal advice for any particular situation. It contains general recommendations and information and should not be relied upon for any specific purpose without consultation with legal counsel and in the context of specific facts and circumstances.

THANK YOU!



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