COMPLIANCE IN COVID – COLLEGIATE ATHLETICS

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YOUR FACULTY

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

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

EQUALITY

EQUITY

JUSTICE
THE THREE-PART TEST: ACCOMMODATION OF INTERESTS AND ABILITIES

1. Proportionality
2. Program Expansion
3. Full Accommodation
Effective accommodation of interests and abilities:

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

- **Part 2**: Where one sex has been underrepresented, a history and continuing practice of program expansion responsive to the developing interests and abilities of that sex; OR

- **Part 3**: Where one sex is underrepresented and cannot show a continuing practice of program expansion, whether it can be demonstrated that the interests and abilities of that sex have been fully and effectively accommodated by that present program.
LEVELS OF COMPETITION

1. Equivalently Advanced Competitive Opportunities
2. Upgrades of Competitive Opportunities
Compliance is assessed by examining:

1. Whether the competitive schedules for men's and women's teams, on a program-wide basis, afford proportionally similar numbers of male and female athletes equivalently advanced competitive opportunities; OR

2. Whether the institution can demonstrate a history and continuing practice of upgrading the competitive opportunities available to the historically disadvantaged sex as warranted by developing abilities among the athletes of that sex.

“OTHER ATHLETIC BENEFITS AND OPPORTUNITIES”

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

Equivalent Treatment of Student Athletes

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

• Go on as normal – not truly a viable option
  – Testing concerns, Infections, liability, etc.
  – Public Relations

• Cancelling seasons

• Delaying and/or Shortening Seasons

• “Freezing Seasons”
Title IX Implications:

• All or some?
• Which sports?
• Why?
• How?

Red Flags:

• More boy’s than girl’s sports
• Team success as rationale
• Football and economics
• “More fun to watch”
SPORT CHOICES IN COVID TIMES – TITLE IX IMPLICATIONS

Options:

• Go on as normal – Is this a viable option?
  – Finances, in-person vs. online attendance, enrollment

• Eliminating teams – varsity and/or JV

• “Furloughing” teams (delayed/cancelled seasons)

• “”Demoting” teams
  – Level of competition
  – Club level
  – Intramural

Title IX Implications
Options:
• If no season:
  – Transfer (state by state implications)
  – Work out or practice only
  – Shift to different competition level
  – Shift to club

Concerns:
• State rules
• Parent demands/donations/lawsuits
• Transferring in and out
INCLUSION - LGBTQ+
To play on a women’s team

- A transgender woman must have > 1 year of hormone treatment
- A transgender man must not have started hormone treatment
NCAA POLICY FOR TRANSGENDER INCLUSION:

To play on a men’s team:

- No restrictions.

- Transgender men are eligible for a TUE for exogenous testosterone.
Idaho HB 500:

- Designates all high school/college sport on the basis of “biological” sex
- Male athletes are banned from female teams
- Female athletes whose sex is “disputed” must submit to medical examination

Arguments:

- Idaho law violates equal protection rights of female athletes by subjecting them, but not male athletes, to gender scrutiny.
- Idaho law violates equal protection rights of transgender athletes because their categorical exclusion from women’s sport is not tied to a valid objective.
- Idaho law violates due process rights of female athletes by invading their privacy with intrusive medical intervention.
Connecticut high school transgender athletes ‘no longer want to remain silent’ following Title IX complaint
 Plaintiffs: cisgender girls who competed against transgender athletes in track
 Argument: CIAC’s inclusive policy violates their rights under Title IX by diminishing opportunities for girls.
 Title IX prohibits discrimination on the basis of sex, but permits separate athletics teams as long as the overall quantity and quality of opportunity is equitable.
 Title IX does not define “sex” but courts in Title IX cases about bathrooms and locker rooms have held that sex discrimination includes discrimination against transgender students. See also Bostock v. Clayton County (Title VII),
 Separately, OCR issued a ruling letter in May, concluding that CIAC policy violates Title IX. No analysis of “sex.”
STUDENT ATHLETES AND RACIAL JUSTICE

Texas athletes call for changes to address university's racial past and future

Brian Davis  Austin American-Statesman
Published 5:37 p.m.  ET Jun. 12, 2020  |  Updated 8:35 p.m.  ET Jun. 12, 2020

Man this 😱 did not happen mane. We got a generated text that was sent to everybody. There was no one on one talk between us and coach. This is a lie and me and my teammates as a whole are outraged and we will not be working out until further notice 🙌 #hunchout

#FSU head coach Mike Norvell (@CoachNorvell) had individual conversations with every player on his roster this past weekend focused on the events surrounding the death of George Floyd. Here's his full quote to @TheAthletic:
SEXUAL HARASSMENT, SEXUAL VIOLENCE AND INTIMATE PARTNER VIOLENCE AND SPORT
UNDERSTANDING THE THREE FORMS OF SEXUAL HARASSMENT

Sexual Harassment is

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

Based on power differentials (quid pro quo), The creation of a hostile environment, or Retaliation
INSTITUTIONAL OBLIGATIONS UNDER TITLE IX

Sexual Harassment

Investigate

Stop

Prevent

Remedy
QUESTIONS?
CONTACT INFORMATION

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