

Title IX Athletics

Q & A

Q **Our President / Chancellor / Superintendent does not have time to become an expert on the Title IX athletics requirements. Can you provide a quick summary that will orient all of us to the issue?** (Multiple Requests From Postsecondary and Secondary Administrators)

A Of course.

Title IX of the Education Amendments of 1972 is a federal statute that prohibits sex discrimination in education programs that receive federal funds. The Title IX regulation implementing the statute became law in 1975. The Title IX regulation covers admissions, treatment of students, access to academic courses, and employment. The regulation also outlines athletics requirements covered by Title IX. As a federal law, Title IX takes precedence over state law and athletic association by-laws.

Title IX Policy Documents

The Office for Civil Rights (OCR) of the U.S. Department of Education has nationwide enforcement authority for Title IX. OCR has the legal authority to issue policies elaborating on the regulations it enforces. OCR's major

policy documents concerning athletics include the 1979 Intercollegiate Athletics Policy Interpretation; the 1990 Title IX Athletics Investigator's Manual (co-authored by the founder of Good Sports, Inc.); the "Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test," issued in 1996; and a policy clarification for athletic scholarships, issued in 1998. The 1979 Policy Interpretation is the most significant policy document for Title IX athletics requirements and remains current policy.

Civil Rights Laws / Title IX Athletics

Civil rights laws have two basic provisions: equal access to the program, and equal treatment once in the program. The Title IX athletics policies follow this same basic civil rights approach – access and treatment. The Title IX athletics policy for equal access is addressed by the program component of the "accommodation of interests and abilities," which incorporates the much debated and litigated three-part test. The policies for equal treatment of those who have become participants are addressed by 12 other program components.

The 1979 Policy Interpretation outlines factors within these 13 program components, which are separated by OCR into three major categories for compliance findings: 1) the Accommodation of Interests and Abilities; 2) Athletic Financial Assistance; and 3) Other

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Athletic Benefits and Opportunities, which includes the 11 program components of – equipment and supplies; scheduling of games and practice times; travel and per diem allowances; tutoring; coaching; locker rooms, practice, and competitive facilities; medical and training facilities and services; housing and dining facilities and services; publicity; support services; and recruitment of student-athletes.

Athletics Provisions Protect Students

The Title IX athletics provisions protect the students and student-athletes, not coaches or administrators. Employees are protected by another subpart of the Title IX regulation covering employment. The Title IX athletics requirements regarding coaches' salaries, coaches' contracts, working conditions, courtesy cars, and coaches' office space and clerical support are reviewed only to the extent that, by enhancing coaches' availability and efficiency, they allow coaches to better serve the student-athletes.

Title IX and the Money

Title IX does not require dollar-for-dollar matching for women's and men's teams in the same sport or equal funding in the overall women's and men's programs. Title IX does not prohibit private funding, revenue production, fundraising, booster club or other donations from subsidizing athletics. Title IX does not impose any requirements for budgeting procedures or specify into which account donated dollars must be deposited. However, lack of funds cannot justify sex discrimination. Institutions are not absolved of their obligation to comply if donors choose to donate only to men's teams, the booster club supports only football, or institution staff make poor choices about how to spend the available money. This means that whatever benefits are provided for student-athletes (improved facilities, additional coaches, new uniforms, better travel accommodations, scholarships, etc.) via donated monies, tangible gifts, guarantees, and endowments, are all viewed under Title IX as benefits provided by the institution. This principle of institutional responsibility is the same under all civil rights laws so as to prohibit actions that would circumvent those laws.

There are only two program components where dollar amounts are key to compliance findings: athletic scholarships and recruitment. Awarding dollars proportionate to participation is required for scholarships, while it is a compliance target, not a requirement, for recruitment. Under certain circumstances, disproportionate funding may be justified under both program components. Compliance with most other program components is determined by the tangible benefits provided to students – the availability and quality of coaches, the quality of facilities, modes of transportation, practice schedules, quality of equipment, the availability of athletics trainers, the publications provided – and not the dollar amount spent for each benefit.

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Overall Approach to Compliance

Title IX does not require an educational institution to offer an athletics program. Should institution administrators choose to offer an athletics program, Title IX does not require identical programs for men and women or identical benefits for women's and men's teams in the same sports. Title IX imposes no requirements related to the level of quality of that program; in effect, whether the institution offers an excellent, mediocre, or poor quality program. Title IX only requires that the program be equally excellent, equally mediocre, or equally poor for male and female students. This requirement concerns the overall athletics program, as Title IX imposes no requirements by sport, such as for basketball, football, or volleyball.

Different sports may be emphasized for men and women. This means that institutions may provide benefits for the men's basketball team that are superior to those for the women's basketball team if this is offset, for example, by providing benefits to the women's lacrosse team that are superior to those for the men's wrestling team.

In accordance with OCR's 1979 Policy Interpretation, offsetting benefits refers to situations where students of one sex are provided an advantage in some aspect of the program, while students of the other sex are provided an advantage in a different aspect of the program. If the benefits are of equivalent weight or importance, they may "offset" each other or provide a balance of benefits; in effect, comply with Title IX. Institution officials have the flexibility to provide offsetting benefits within a factor, within a program component, or among the eleven program components combined under the finding for Other Athletic Benefits and Opportunities: equipment; scheduling; travel; tutoring; coaching; facilities; medical and training services; housing and dining facilities; publicity; support services; and recruitment. For example, if the overall women's program is disadvantaged in the program area of equipment and supplies, this may be offset by providing women's teams with benefits superior to men's teams in areas such as the scheduling of games and practice times. Determining whether benefits are truly offsetting requires judgment that is within OCR's purview. In general, it is simpler to provide offsetting benefits within a program component rather than between program components, as providing offsetting benefits presents a continuous administrative challenge to ensure gender equity.

Compliance findings for the accommodation of interests and abilities, which incorporates the three-part test, are independent of all other findings. Findings for athletic scholarships are also independent of all other findings.

Sport-to-sport comparisons are useful for analysis and identifying differences in benefits, but again, compliance determinations are dependent upon comparing the total women's program to the total men's program. For example, for a program with ten men's teams and eleven women's teams, the benefits provided to all ten men's teams must be compared to

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those provided to all eleven women's teams before a compliance determination can be made. A review of benefits for the more popular sports, Olympic sports, revenue-producing sports, highest tier sports or any other subdivision is incomplete, and therefore, inaccurate.

Degrees of Noncompliance / Pattern and Practice of Discrimination

Differences in benefits between women's and men's teams are not compliance concerns until students of one sex are at a disadvantage, and this disadvantage is not offset elsewhere in the program. In general, OCR classifies compliance problems by different levels of severity.

Violation. A "violation" of Title IX represents compliance problems so severe as to deny equal athletic opportunity on the basis of sex program-wide. An institution found in violation of Title IX – and that refuses to remedy the violation – risks losing federal funding.

Moderate Disparity. A "disparity" represents a difference in benefits where students of one sex are at a disadvantage, but not to the extent of a violation. A moderate or significant disparity generally refers to situations where several teams for one sex are at a disadvantage for a more important benefit; however, the concern does not rise to the level of a violation.

Minor Disparity. A minor disparity usually represents situations where only one or two teams representing a small percentage of the participants for one sex, such as 20% or less, are at a disadvantage for a minor benefit.

Pattern and/or Practice of Discrimination Is Often a Violation. For both the accommodation of interests and abilities and scholarships, failure to comply with either program component is likely to violate Title IX. Compliance problems within the other eleven program components do not by themselves violate Title IX unless the problems are egregious. However, disparities are reviewed collectively to determine whether they create a pattern and practice of discrimination. If so, a series of disparities may rise to the level of a violation. Many institutions, even when avoiding a violation in a single program component such as the accommodation of interests and abilities or scholarships, have a series of disparities that creates a pattern and practice of discrimination that violates Title IX. Consequently, administrators should remedy any minor disparity that is identified as soon as possible to reduce the potential for a violation.

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Time Frame for Solutions

There are no-cost solutions to all Title IX compliance problems, and most problems can be, and therefore should be, resolved within a year. Significant remedies that institution officials may choose, such as adding teams, renovating or constructing facilities, or hiring staff, should be completed as quickly as possible, but officials should plan on two or three years at the most. Interim compliance measures, such as reassigning existing facilities, should be implemented while significant long-term remedies are in progress. Delaying any relief for the disadvantaged sex for three years or more would be viewed as dilatory. Officials who choose to delay compliance for as long as five years invite speculation, and potential legal consequences, regarding their intentions to comply.

(34 C.F.R. § 106.41 and § 106.37(c); 1979 Intercollegiate Athletics Policy Interpretation pages 71413 - 71423)

