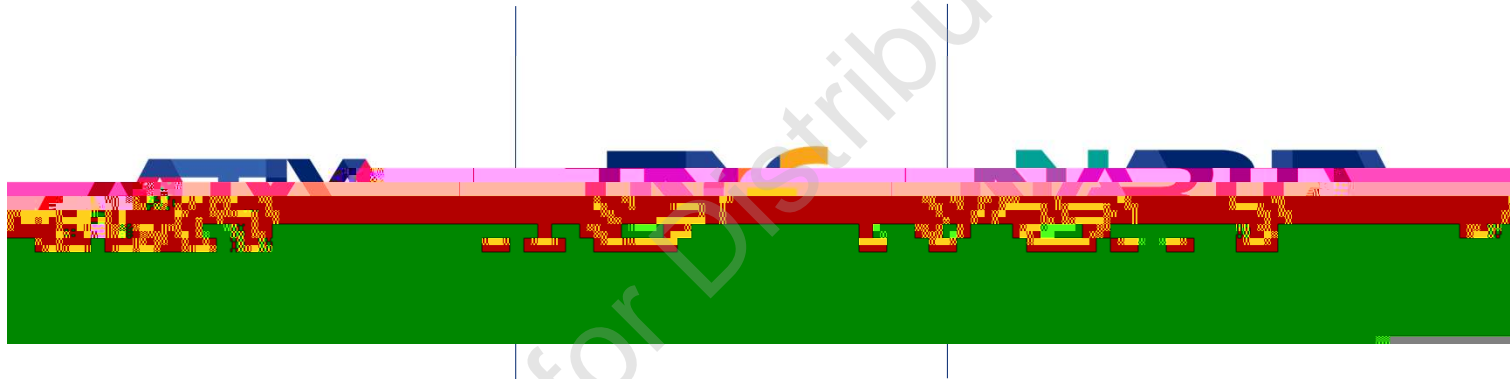




Title IX Compliance & Athletics in Higher Education

Training and Certification Course



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, and violence and associated sensitive topics that can evoke strong emotional responses

All AIA 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



The primary focus of this course is preparing Title IX and Athletics practitioners with

Title IX Notices of Proposed Rulemaking 2022 & 2023

Title IX Regulations

1972 Congress passed Title IX of the Education Amendments

1980 the Department of Education's Office for Civil Rights (OCR) given primary responsibility for enforcing Title IX

November 2018 OCR proposed the most detailed and comprehensive Title IX regulations to date, which focused on sexual harassment response

August 2020 Significantly amended, due process oriented Regulations took effect (proposed in Nov. 2018)

June 2022 OCR published a Notice of Proposed Rule Making (NPRM) outlining proposed changes to the Title IX regulations focused on sexual harassment response and pregnancy and related conditions

NPRM Process Timeline

July 2022 NPRM published in the Federal Register and the 60 day public comment period began

September 2022 Review and comment period ended

Received 24,000+ comments

April 2023 OCR published a separate NPRM outlining proposed changes to the Title IX regulations focused on gender identity and athletic participation, 30 day public comment period

Received 15,000+ comments

ED has indicated a March 2024 deadline for releasing the Final Rule

ATIX's experts believe an April – June 2024 publication date is more realistic and anticipate an August 2024 implementation deadline

Continue to fulfill obligations under the current regulations for 2023-2024 academic year

Steps to Take Now

Educate yourself on the proposed regulations

Prepare to educate your community on the changes

Identify stakeholders that will need to be involved in making policy decisions

Determine how you will manage policy changes

Plan for the training needs for your community

Consider state laws, court decisions, and other regulations that may affect your institutional approach



History of Title IX and Athletics

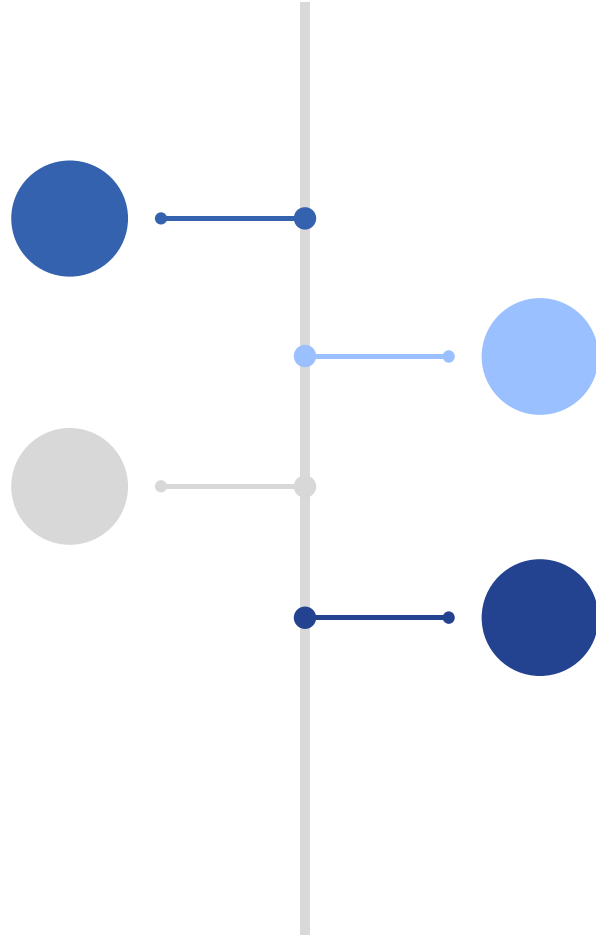
Athletics is not mentioned in the 1972 Title IX statute

Proposed regulations (1974) did and created a fire storm

Regulations passed in 1975 and athletics was given three years to comply

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

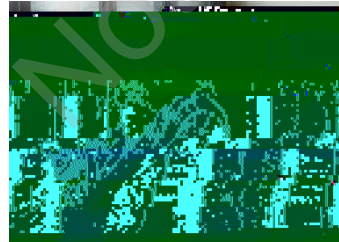


Recent Regulations & Requirements

2020 Title IX Regulations

VRA- The effect on athletics interim actions

Effect on investigations and jurisdiction



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 conduct check

Policy regarding gathering information from previous institution(s)

Source: NCAA Sexual Violence Policy (April 2020)

NCAA Attestation

Why it Matters to CC/JC

Community colleges are NOT members of the NCAA, so the attestation requirements do NOT apply to them

That said, NOT attesting to the issues requested may result in the student athlete not being permitted to participate

Some institutions are moving toward “serious misconduct” policies and may ask broader questions – these can be referred to the dean of students or student conduct office as well

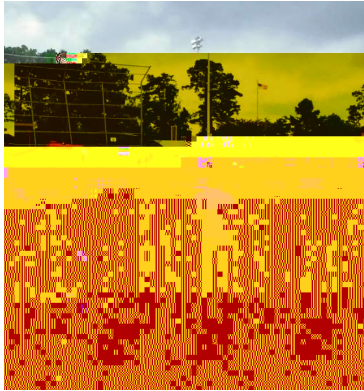
Individuals can engage in name, image, and likeness (NIL) activities that are consistent with the law of the state where the school is located

Colleges and universities may be a resource for state law questions

College athletes who attend a school in a state without an NIL law can engage in

TiL e an ! L e ∞

**Three Pa Tes a L 1 pk c pon n a L
fk nL u o a Q o c L
in L a a fe e b n f L a pk ide b L**



EQUALITY
*requires a level playing field
that doesn't yet exist*

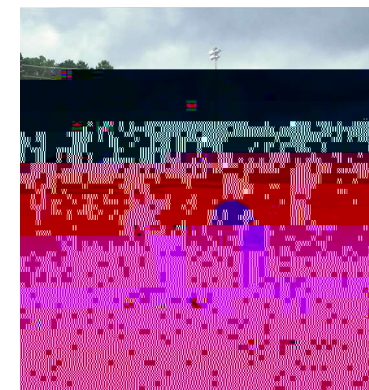


JUSTICE
eliminates systemic barriers

**The journey
starts by
asking
those
affected
how they
see and are
impacted
by the
conditions,
rules, and
resources**



EQUITY
*acknowledges systemic
impediments with targeted fixes*



AGENCY
*individuals know that access
is their right*

Adapted from Pittman, Karen (2018). *Changing the Odds Together*.

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 (“prongs”)

Provide equitable treatment of participants in the overall women’s programs compared to the overall men’s program

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 spots for men and women

Provide the same benefits to men's and women's teams in the same sport

Compete at a specific level

Athletic Oversight – Gender Equity

The oversight of compliance remains the responsibility of the *Institution's* Title IX Coordinator (TIXC)

Compliance in athletics may be delegated to the Senior Woman Administrator (SWA = NCAA distinction) or compliance officer in athletics

Need for outside education on the various areas of TIX

Institutions should have a Deputy TIXC in athletics

Athletics Deputy TIXCs should not be the Recipient's TIXC

The Three Part Test: Accommodation of Interests and Abilities

Proportionality

Program Expansion

Full Accommodation



Opportunities for males and females substantially proportionate to their respective enrollments; OR



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

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

For purposes of Title IX compliance, a participant is defined as those athletes who

Regularly receive institutionally sponsored support normally provided to athletes

Part 1: Proportionality

Opportunities for males and females substantially proportionate to their respective enrollments

Substantially proportionate accounts for natural fluctuations in enrollment and participation rates, but institutions must adjust if shifted enrollment or participation shifts persist

OCR uses a case by case analysis, rather than a rigid statistical requirement (eg, 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

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

An institution's record of increasing the numbers of participants in

intercollegiate athletics for the underrepresented sex

nt©

An institution is current implementation of a non-discriminatory 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

An institution is current implementation of a plan of program expansion that is responsive to developing interests and abilities

Other Athletic Benefits and Opportunities

Equipment and Supplies
Scheduling
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

Mist provide

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

Source: OCR (1996). Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test; Borette, pp. 92-93

Red Flags to Look for and Ask About

Proportionality

Program Expansion

No Unmet Interest

Retaliation

Equal Pay

Hostile Environment

Donations

Fundraising

Equipment

**Equitable/Equivalent
Treatment of Student
Athletes**

Equipment & 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

Scheduling 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

Key factors in examining the equivalence for men and women

Modes of transportation

Household responsibilities and child care

Coaching

Key factors in examining coaching

Opportunity to receive coaching

Relative availability of full-time coaches

Relative availability of part-time and assistant coaches

Relative availability of graduate assistants

Assignment of coaches

Training experience, and other professional qualifications

Professional standing

Coaching

Key factors in examining coaching

Compensation of coaches

Rate of compensation (per spot, 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

Academic Tutoring

Compensation of Tutors

Hourly rate of payment by nature subjects tutored

Pupil loads per tutoring season

Tutor qualifications

Experience

Other terms and conditions of employment

Not for Distribution

Locker Rooms, Practice and Competitive Facilities

Key factors in examining the equivalence for men and women

Quality and availability of the facilities provided for practice and competitive events

Exclusivity of use of facilities provided for practice and competitive events

Availability of locker rooms

Quality of locker rooms

Maintenance of practice and competitive facilities

Reparation of facilities for practice and competitive events

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 (eg, laundry facilities, parking space, cleaning service)

Not for Distribution

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

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

The administrative and clerical support provided to an athletic program can affect the overall provision of opportunity to male and female athletes, particularly to the extent that the provided services enable coaches to perform better their coaching functions.

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

**Gender imbalances on
coaching staff**

Closed hiring practices

**Salaries not
benchmarked
(conference, geographic)**

**Roster Management vs
Roster Manipulation**

**Complaints about hostile
environment
How managed?
By whom?**

**Complaints about gender
equity from anywhere**

Donations

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

Booster club and donor contributions to schools can affect a school's Title IX compliance

Can provide assistance to a school'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

f f f

Booster/Donor money can be looked at as clandestine financing for major school sports programs – most of which are overwhelmingly male

Impact of NIA at the college level

While funding may be unequal, the benefits and services for programs must be equal/equitable

If not, the Recipient has to 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

Lack of funds, however, cannot justify sex discrimination

These contributions should be a big concern



ESPORIS

- Proportionality issues**
- Harassment concerns**
- Competitions in/out of school**
- The future**

Sex Discrimination, Sexual Harassment, Sexual Violence, and Intimate Partner Violence and Sport

Recent Examples
Instructive Cases
Prevalence

Definitions
Obligations

- 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**

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**

NCAAPolicy 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 either 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 non-forcible 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

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 institutional 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

NCAA member institutions have access to policy examples (login required) and additional resources through the NCAA website: <https://ncaa.org/cspolicy>

2020

Policy updated to include items 46

Ö W š

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

Retaliation

||

THROUGH

RELIABLE

IMPARIAL

PROMPT

EFFECTIVE

EQUITABLE

**Act reasonably
to STOP
discrimination**

**Act reasonably
to PREVENT
recurrence**

**Act equitably
to REMEDY
effects**

Unique Issues in Sport

Unique Challenges Title IX and Student

Misprivilege

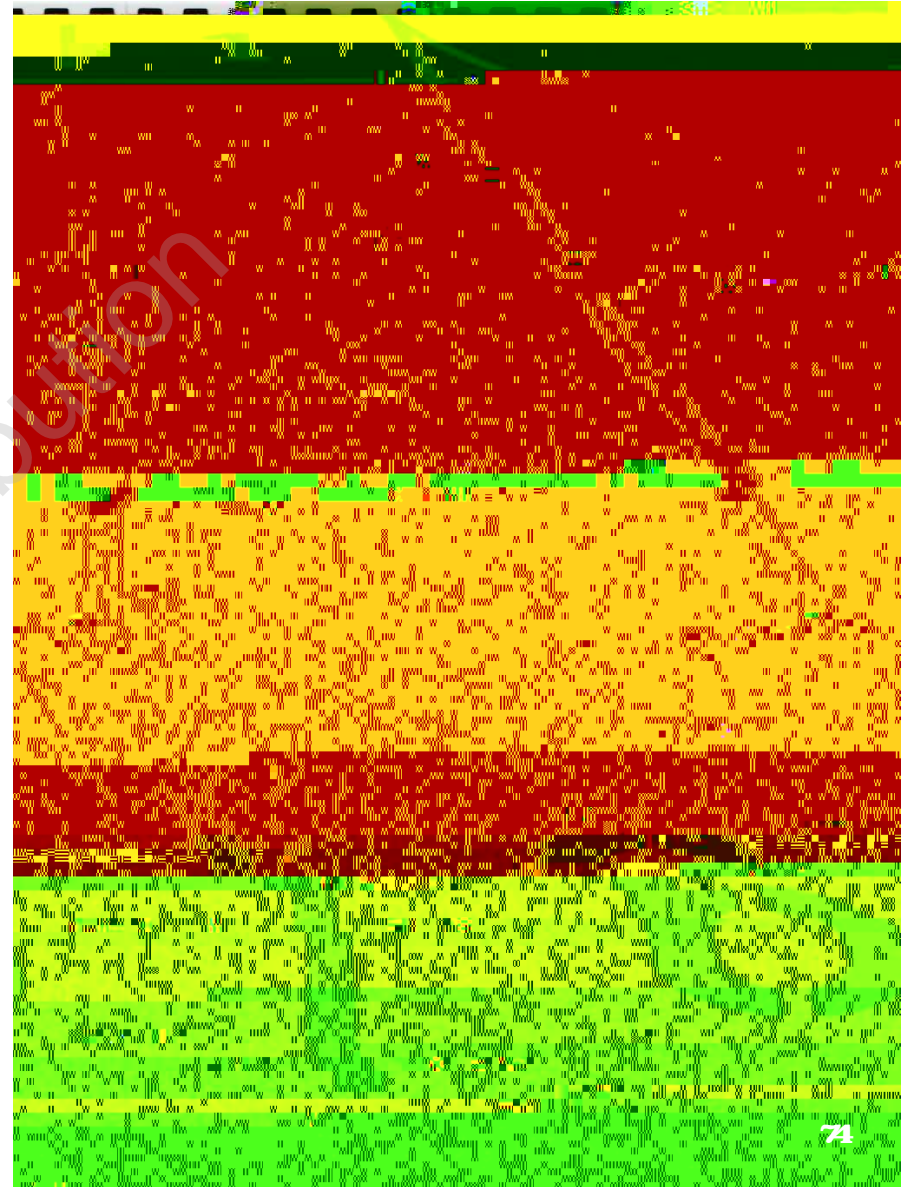
**Body image and focus on the body
(especially women)**

Track and Field Comments

Gymwear issues

**Student athlete on student athlete
violence**

Miswin mentality





The law recognizes pregnancy as affecting only one gender

The NCA guidelines on management of pregnant athletes is a good document

2007 Dear Colleague Letter on Nondiscriminatory Treatment of Pregnant

LGBTQIA+ Issues

Current LGBTQIA+ Issues in Competition

International Olympic Committee (IOC)/United States Olympic and Paralympic Committee (USPOC) guidelines are the current standards adopted by the NCAA

OOR has stated they recognize sexual orientation, gender identity, and gender expression as protected characteristics (Title VI already does)

State laws and rules regarding competition are being challenged in federal courts

Idaho, Arizona, Kentucky, Florida, West Virginia, Utah, Georgia, Iowa, Louisiana, South Carolina, Tennessee

At least 14 other states have proposed bills

ATIXA will continue to update members on these issues

Dating and Other Relationships

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, such as

Best friends on a team being diquey or having a big falling out

Two teammates dating the same person on another team

One teammate getting dumped by their partner and then another teammate starts dating the ex partner

Dating on a mixed sex team

Managing Dating Relationships Among Teammates

Heterosexual dating on men's and women's teams that practice together and travel to competitions together

Same sex teammates dating on a men's or a women's team

Conflicts between teammates based on race

Conflicts between teammates based on sexual orientation

Conflicts between teammates based on religion

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)



Title IX Administrators

Questions?



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