

Higher Ed



TITLE IX: ATHLETICS

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MEET YOUR PRESENTER

COURTNEY BULLARD

- Creator, Title IX U
- Founder and Owner of ICS
- Education Law Attorney



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LESSON ONE

OVERVIEW OF THE COURSE



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AGENDA

- Lesson One Overview
- Lesson Two Obligations of your Institution in Response to Sexual Harassment
- Lesson Three Obligations Cont'd: The Formal Title IX Grievance Process
- Lesson Four The Prevention Layer and Your Role
- Lesson Five Beyond Sexual Harassment: Gender-Equity in Athletics
- Lesson Six Wrap Up & Final Assessment of Knowledge



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TRAINING OBJECTIVES

Understand law and regulations

Explain Title IX process and your role in it

Recognize and evaluate Sexual Harassment

Understand the role of athletics in prevention



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DISCLAIMERS:

- ☒ Not legal advice
- ☒ Compliance with Title IX is complex, the focus of this course is your role
- ☒ Cannot possibly cover everything
- ☒ Title IX Coordinator is your on the ground expert



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SEE YOU IN LESSON 2!

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LESSON TWO

TITLE IX OBLIGATIONS



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WHAT IS TITLE IX?

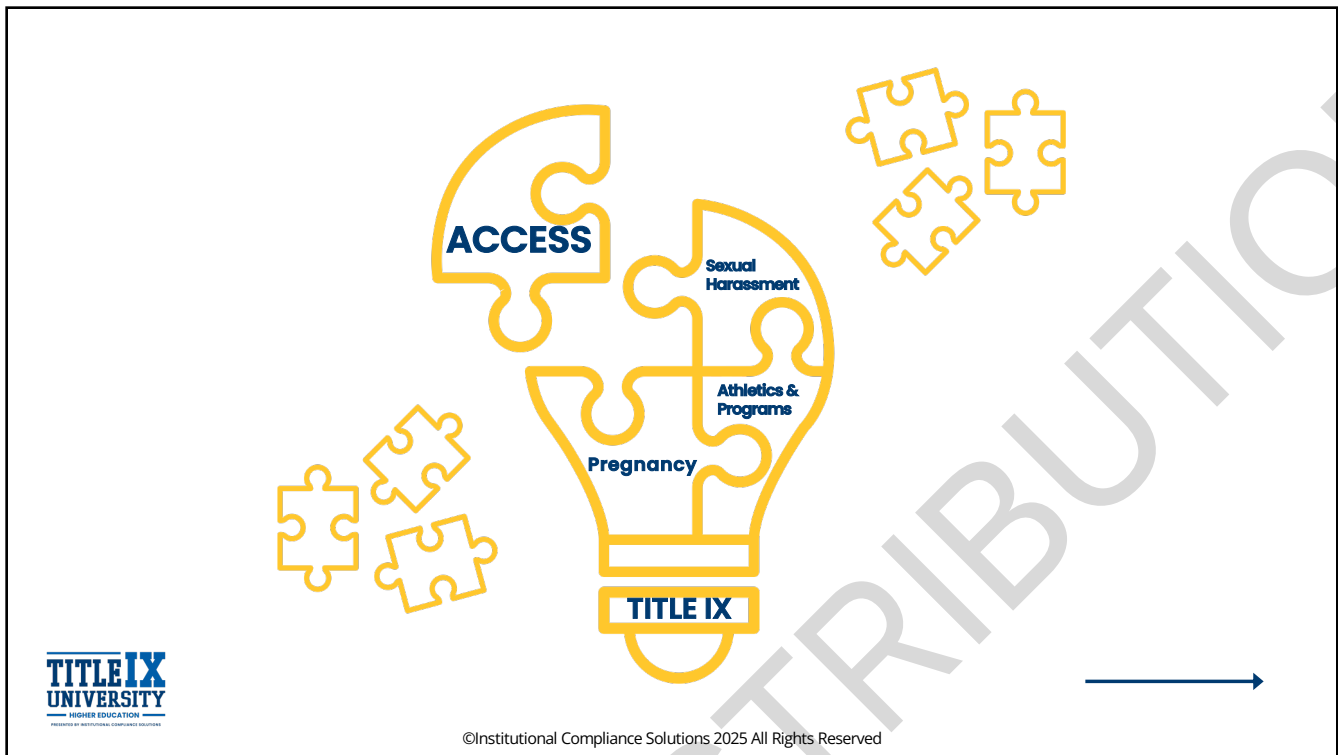


"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."



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TITLE IX TEAM



TITLE IX COORDINATOR



Investigator(s)



Decision-Maker(s)



Appellate Decision-Maker(s)



Informal Resolution Facilitators?



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ROLE OF TITLE IX COORDINATOR

Build a Title IX Team

Oversee all aspects of Title IX compliance obligations

Coordinate training for Title IX Team and all employees

Coordinate response to all complaints involving Sexual Harassment

Provide and track supportive measures

Monitor investigations, resolutions, outcomes, remedies, and sanctions

Monitor patterns and trends

Avoid conflicts of interest and biases

Update policies and procedures

Recordkeeping



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TITLE IX TEAM



- ✓ Know your Title IX Coordinator
- ✓ Familiarize yourself with process
- ✓ Be careful serving as an advisor in a student-athlete matter



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CONDUCT THAT INVOLVES



01

Student on student

02

Employee on employee

03

Student on employee

04

Employee on student



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WHAT TYPE OF CONDUCT CONSTITUTES SEXUAL HARASSMENT

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SEXUAL HARASSMENT

1



Quid Pro Quo Harassment

2



Hostile Environment Harassment

3



Specific Offenses

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QUID PRO QUO



1. An employee of the school
2. Conditioning the provision of an aid, benefit, or service of the recipient
3. On an individual's participation in unwelcome sexual conduct



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HOSTILE ENVIRONMENT HARASSMENT



Unwelcome conduct determined by a reasonable person to be so severe, pervasive AND objectively offensive that it effectively denies a person equal access to the recipient's education program or activity

1. Severe - can be non-verbal through sexual assault (touching/fondling)
2. Pervasive - how often and how widespread
3. Objectively Offensive - behavior that would be offensive to a reasonable person under the circumstances



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SPECIFIC OFFENSES



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SPECIFIC OFFENSES

1. SEXUAL ASSAULT
 - a. RAPE
 - b. FONDLING
 - c. INCEST
 - d. STATUTORY RAPE
2. DATING VIOLENCE
3. DOMESTIC VIOLENCE
4. STALKING



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SEXUAL ASSAULT

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Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Fondling/Criminal Sexual Contact:

- The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.
- The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim, for the purposes of sexual degradation, sexual gratification, or sexual humiliation.
- This includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

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DATING VIOLENCE:

A CRIME COMMITTED BY A PERSON:

Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

Where the existence of such a relationship shall be determined based on a consideration of the following factors:

- Length of relationship
- Type of relationship
- Frequency of interaction between the persons involved in the relationship



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DOMESTIC VIOLENCE:

FELONY OR MISDEMEANOR CRIMES COMMITTED BY A PERSON WHO:

Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction* of the recipient (school), or a person similarly situated to a spouse of the victim;

Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;

Shares a child in common with the victim; OR

Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.



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STALKING:

ENGAGING IN A COURSE OF CONDUCT DIRECTED AT A SPECIFIC PERSON THAT WOULD CAUSE A REASONABLE PERSON TO:

Fear for the person's safety or the safety of others; OR

Suffer substantial emotional distress.



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JURISDICTION = THE WHERE

"Education program or activity"



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THE BIG QUESTION



Does the Institution have control?

- Control over the location and/or event
- Control over the Respondent (employee or student)

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REMINDER!!!



Title IX Coordinator is responsible for determining if a matter falls under Title IX.



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SEE YOU IN LESSON 3!

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LESSON THREE

OBLIGATIONS (CONT'D): FORMAL TITLE IX GRIEVANCE PROCESS



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Secondary Report

Secondary report from friend, co-worker, student, etc.

Direct Report

Direct report from student or employee who is potential victim of sexual harassment

Direct Observation

Direct observation, personally observed, eyewitness, etc.



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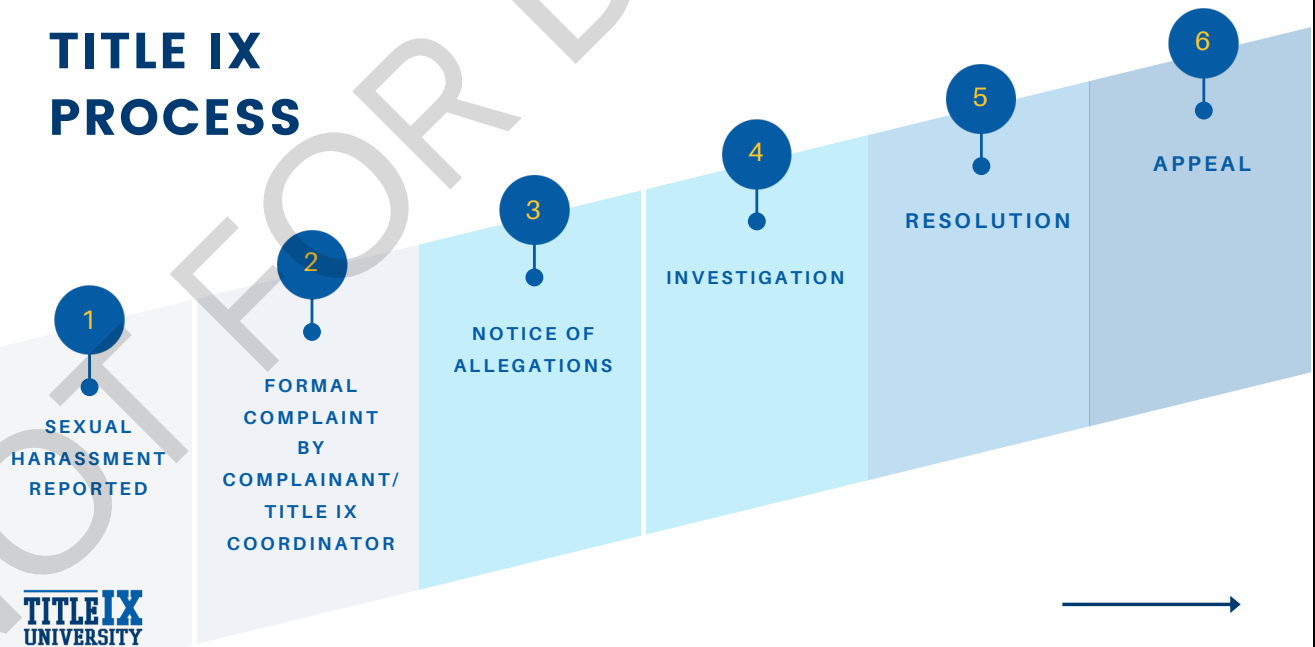
WHAT HAPPENS AFTER I REPORT?



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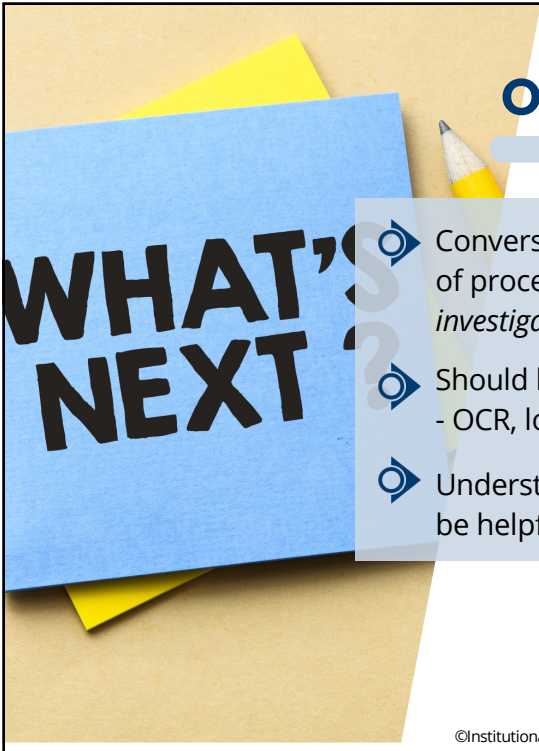
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TITLE IX PROCESS



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ONCE REPORTED TO TITLE IX

- Conversant on policies and procedures - general understanding of process - *Caveat: aiding in facilitating but not an advocate or investigator*
- Should be familiar with reporting options - OCR, local police, Title IX Coordinator
- Understand the institution support available - pamphlet can be helpful

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SEE YOU IN LESSON 4!

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LESSON FOUR

YOUR ROLE IN PREVENTION



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FACILITIES OVERSIGHT



Responsible for environments that student-athletes and others may frequent - i.e., locker rooms, team rooms, athletic training rooms, weight and conditioning facilities, practice areas, competition venues



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FACILITIES OVERSIGHT

Many cases arise out of locker room behavior - "boys will be boys"

"Athletics faces a particular concern in regard to derogatory, sexist, or offensive language."

"[C]an contribute to a hostile environment and perpetuate dominance-based and misogynistic attitudes towards women."



"Intent of language irrelevant"

"Unchallenged, such language makes it easier for student-athletes, coaches, and other staff in athletics to persist with their unacceptable behaviors and may encourage sexual assailants to commit their crimes since they do not fear negative consequences."

-NCAA



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ATHLETICS ROLE - PREVENTION

Policies

Within athletics, policies and procedures must be clearly understood and consistent with institution policies



Collaboration

Athletics must be part of a unified effort to change the culture



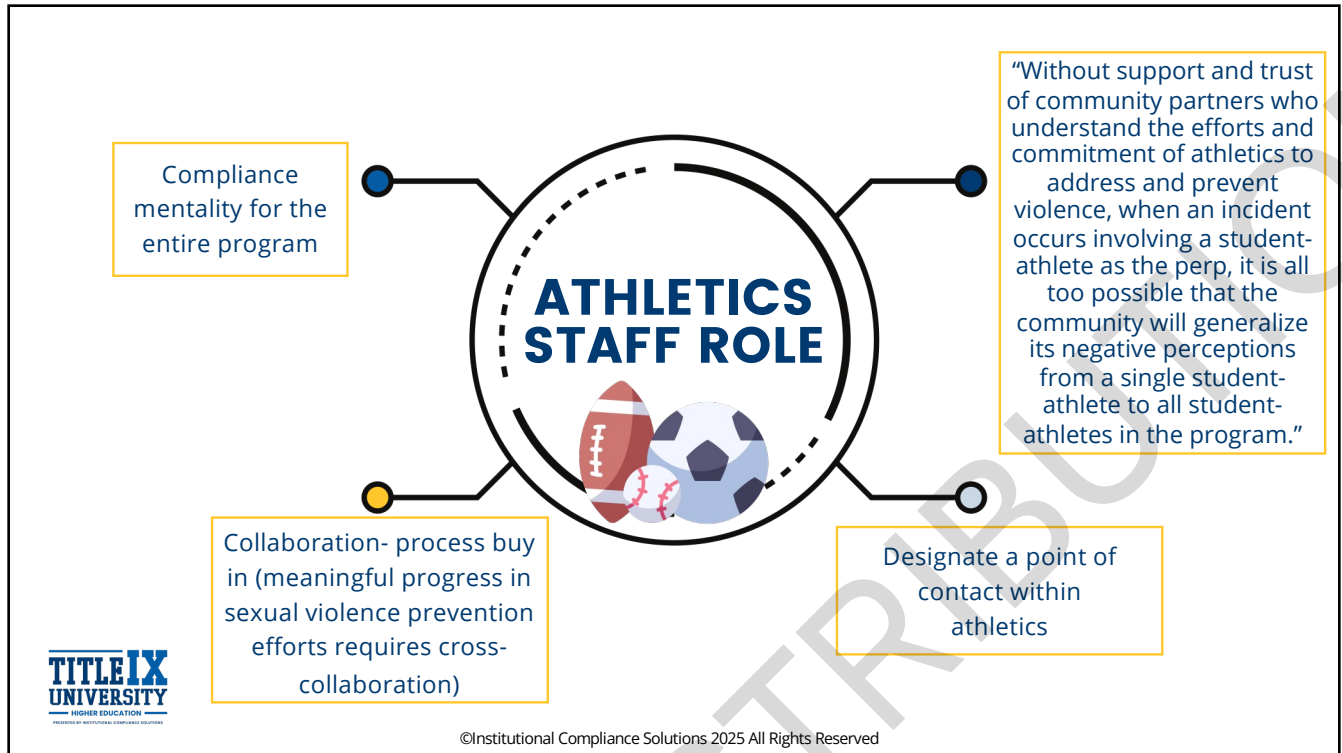
Education

Educational programming in athletics is essential



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HAVE A LOOK IN THE MIRROR

all it takes is a good example and modeling

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CONSISTENTLY SET & CLEARLY DISPLAY YOUR SPEED LIMITS

CONSISTENTLY CALL OUT BEHAVIOR THAT VIOLATES SPEED LIMITS

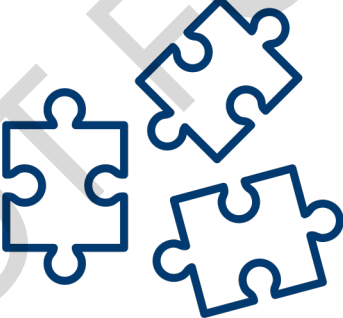
CONSISTENTLY PRAISE POSITIVE BEHAVIOR

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PUTTING IT ALL TOGETHER



- Know your process
- Collaborate
- Report, report, report
- Do NOT investigate/insert yourself in the Title IX process
- Conduct training
- Compliance mentality
- Document, document, document

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SEE YOU IN LESSON 5!

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LESSON FIVE

BEYOND SEXUAL HARASSMENT



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ARE YOU PROVIDING
EQUAL OPPORTUNITIES,
BENEFITS, AND
TREATMENT FOR BOTH
SEXES?

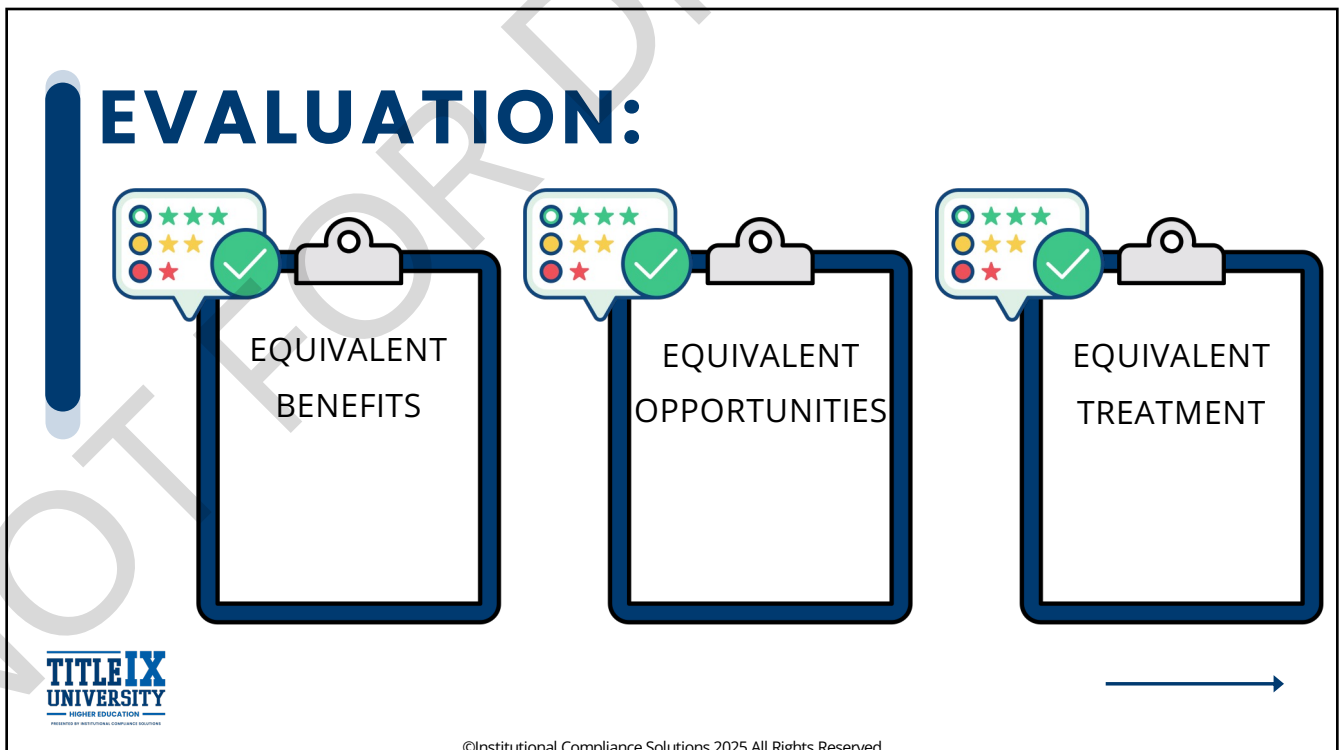


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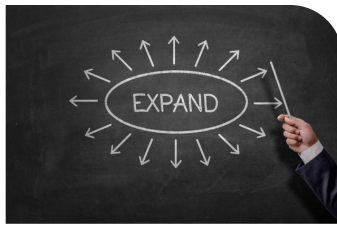


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EQUAL OPPORTUNITIES THREE PART TEST



PARTICIPATION IN PROPORTION
TO ENROLLMENT



HISTORY OF PROGRAM
EXPANSION



INTERESTS AND ABILITIES



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PARTICIPATION IN PROPORTION TO ENROLLMENT

The athletic participation opportunities for male and female students are provided in numbers that are substantially proportionate to their respective enrollments



1 Number of Students Enrolled

3 # of Athletic Opportunities
(total number of athletes - counting as multiple if they are participating in multiple sports)

2 # of Males vs. # of Females Enrolled (calculate percentage)

4 # of Males vs. # of Females in Athletics
(counting as multiple when they are participating in multiple sports)

Compare the percentages of 2 and 4. OCR stated in 2010 resolution agreement, that a 2.45% disparity represented an underrepresentation in an athletics program.



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HISTORY OF PROGRAM EXPANSION

Is there a showing by the institution of a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the underrepresented sex?



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Historical record of adding interscholastic teams for the under-represented sex.
(when were opportunities added and were there gaps in expansion?)

02

Implementation of nondiscriminatory policy /procedure for requesting the addition of sports.

03

Effective communication of policy/procedure for requesting additional sports to students.

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INTERESTS AND ABILITIES

Demonstration that the interests and abilities of the underrepresented sex are fully and effectively accommodated by the present program

Considerations:

- Assessments of any unmet interest and ability in its athletics program
- Developing sports on a regional or national level
- Local youth and feeder programs in the areas from which an institution draws its students

When an institution cannot demonstrate compliance with either Part 1 or 2, OCR may still find the institution in compliance through the Three-Part Test **IF** it can be shown that the underrepresented sex's interests and abilities are met by the current program!

NOTICE



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EXAMPLE:

- Baseball has Varsity, Junior Varsity, and Freshman Teams
- Softball only has Varsity and Junior Varsity
- Players and families and community members are unclear of the process to start a Freshman Softball Team



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EQUAL LEVELS OF COMPETITION

Examination of the level and quality of competitive opportunities provided to the athletes

Considerations:

- Whether the competitive schedules for men's/women's teams, on a program-wide basis, afford proportionately similar numbers of male and female athletes equivalently advanced competitive opportunities.
- Comparison of the competitive events for each team at the institution's declared competitive levels and determination of whether any of the teams compete below the declared level.



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FACTORS TO CONSIDER

- Equipment & Supplies
- Game & Practice Times
- Travel & Per Diem
- Medical & Training Facilities and Services
- Coaching & Academic Tutoring
- Publicity
- Housing & Dining Facilities & Services
- Locker Rooms, Practice, & Competitive Facilities
- Assignment & Compensation of Coaches/Tutors

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EQUAL LEVELS OF COMPETITION

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FUNDING/BOOSTER CLUBS

- Schools have a responsibility under Title IX to ensure that equivalent benefits and services are provided to members of both sexes in its athletics programs, regardless of their funding source(s) for these benefits and services.
- OCR considers benefits and services provided through the use of private funds, including booster club funding, in combination with all other benefits and services. Where booster clubs provide benefits or services that assist only teams of one sex, the school must ensure that teams of the other sex receive equivalent benefits and services.
- If booster clubs provide benefits and services to athletes of one sex that are greater than what the [school] is capable of providing to athletes of the other sex, then the [school] shall take action to ensure that benefits and services are equivalent for both sexes.

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LOCKER ROOMS, PRACTICE, & COMPETITIVE FACILITIES

Considerations:

- Quality and Availability of Locker Rooms, Practice Facilities, and Competitive Facilities
- Exclusivity, Maintenance, and Preparation of Competitive Facilities



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Examples of Potential Inequities



- Men's team permitted to play in a stadium with scoreboard, lights, permanent stands, etc.
- Women's team must carry a scorers table, portable scoreboard, temporary benches



- Women's field hockey team has facility in disrepair
- Men's wrestling facility is high quality



- Disparity in location and accessibility of locker rooms



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COMPENSATION FOR COACHES & STAFF

A violation will be found where compensation or assignment policies or practices deny male and female athletes coaching of equivalent quality, nature or availability.

Considerations:

- Rate of compensation for men's and women's coaches
- Duration of contracts
- Conditions relating to contract renewal, experience, nature of coaching duties, working conditions, etc.



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SCHEDULING GAMES AND PRACTICES

- The number of competitive events per sport
- The time of day that competitive events are scheduled
- The number and length of practice opportunities
- Opportunities to engage in pre-season and post-season competition



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TRAVEL & PER DIEM

- Type of Transportation
- Opportunities (training trips and distance competitions)
- Accommodations
- Meal Money



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PUBLICITY

Concerns/Considerations



- Inequality in publicity based on the popularity of the sport as well as their success
- Announcements
- Posts on athletics and school based social media
- Notification of scores/results to media outlets



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EQUIPMENT & SUPPLIES

- Uniforms
- Apparel
- Sport Specific Equipment and Supplies
- Instructional Devices
- Conditioning and Weight Training Equipment

Consider inequalities in distribution of booster club benefits



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A REMINDER... IT IS MORE THAN COMPARING SIMILAR SPORTS!



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SEE YOU IN LESSON 6!

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LESSON SIX

WRAP UP AND ASSESSMENT OF KNOWLEDGE



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TITLE IX COMPLIANCE IS MULTIFACETED

Discrimination Based on Sex = Sexual Harassment + Gender Equity + Pregnancy Discrimination



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REMINDERS REGARDING SEXUAL HARASSMENT

You have a crucial role in addressing and preventing sexual harassment

Your role is NOT to investigate matters

Sexual Harassment often mischaracterized as "horseplay"

Supervision is a key component to compliance – facilities, travel, practice

You are the role model for behavior – gendered language is never appropriate



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SPECIAL ATHLETICS CONCERNS

Relationship of staff to students-athletes - especially coaches

Heightened scrutiny on athletics and student-athlete behavior

Perception of "win at all cost"/favoritism for student-athletes

Played out in the media-damaging to the program

Student-athletes have "more access"

Pack mentality

Sports aggression = sexual aggression



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REMINDER!!!

-  Familiarize yourself with your policies/procedures
-  Get to know your Title IX Coordinator
-  Be a team player to ensure a safe and healthy learning environment
-  Other courses within Title IX U may be of interest
-  ICS has support to assist with all aspects of Title IX compliance and unique issues with athletics

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QUESTIONS?

Title IX Coordinator
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