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Association of
Title IX Administrators

Title IX Compliance & Athletics

Higher Education Training Course



Strategic Risk
Management Solutions



Any advice or opinion provided during this training, either privately or to the entire group, is never to be construed as legal advice. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law, 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.

ATIXA faculty members may offer examples that emulate the language and vocabulary Title IX practitioners encounter in their roles including slang, profanity, and other graphic or offensive language.

AGENDA

- 1 Overview and History of Title IX and Athletics
- 2 Accommodation of Interests and Abilities
- 3 Athletic Financial Assistance
- 4 Other Athletic Benefits and Opportunities
- 5 Red Flags
- 6 eSports
- 7 Sex Discrimination and Sexual Harassment in Sport



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

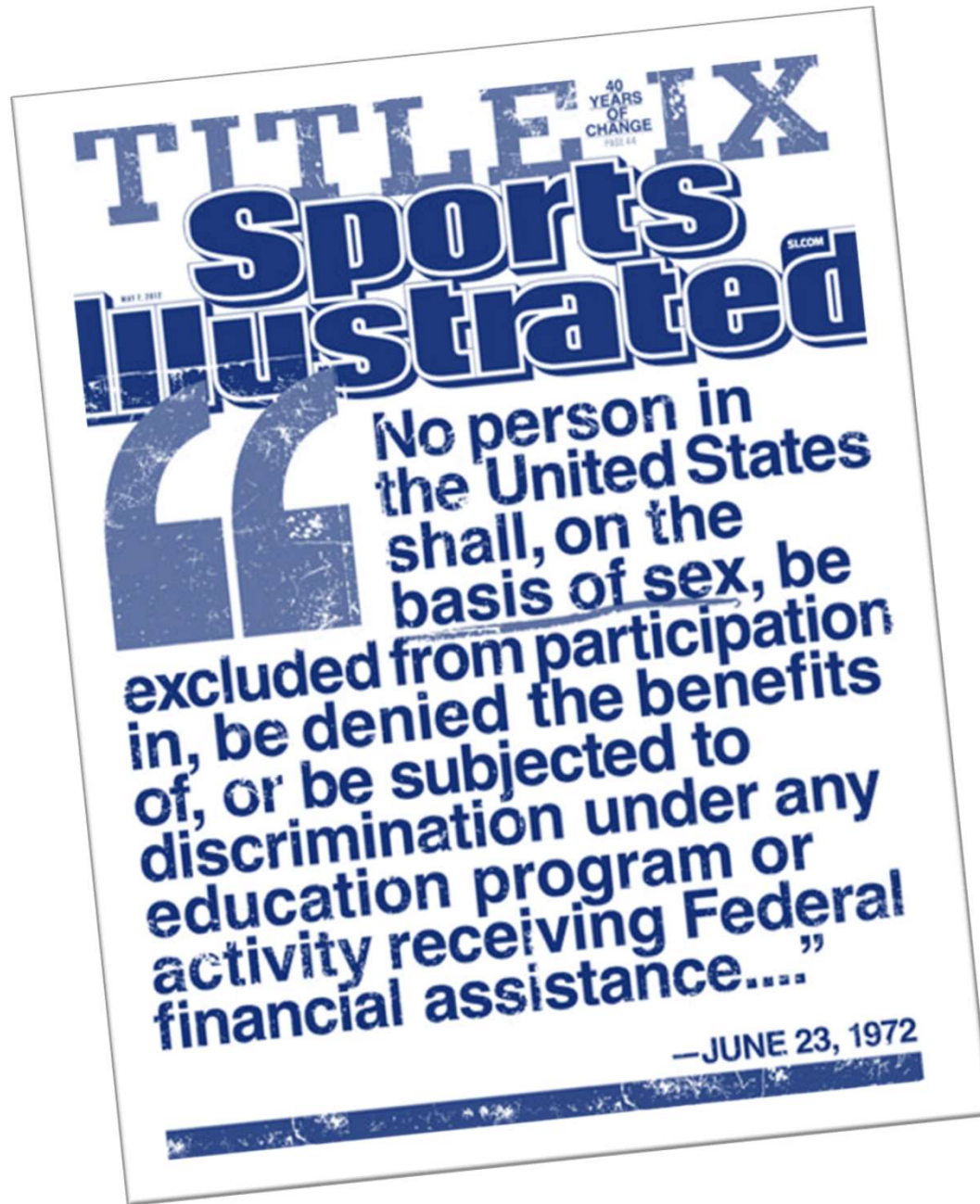
- **July 2022:** NPRM published in the Federal Register and the 60-day public comment period began
- **September 2022:** Review and comment period ended
 - Received 240,000+ comments
- **April 2023:** OCR published a separate NPRM outlining proposed changes to the Title IX regulations focused on gender identity and athletic participation; 30-day public comment period
 - Received 150,000+ comments
- **October 2023:** Anticipated publication of both the sexual harassment and athletics Title IX Final Rules
- **OCR has not yet announced an implementation deadline or timeline for either set of new regulations.**

PREPARING FOR IMPLEMENTATION

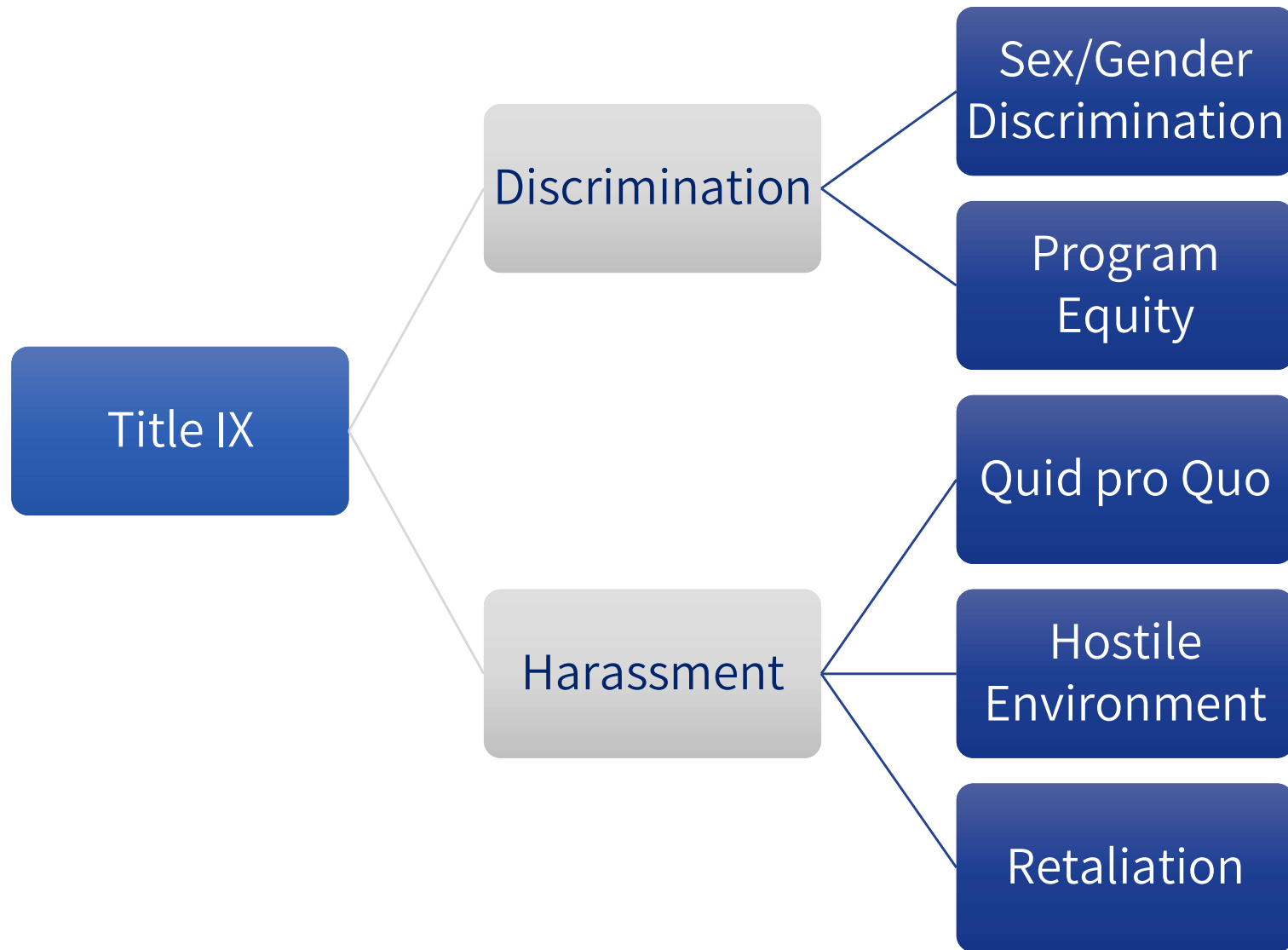
- Continue to fulfill obligations under the current regulations for the start of the 2023-2024 academic year.

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 (e.g., whether to have hearings)
- 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

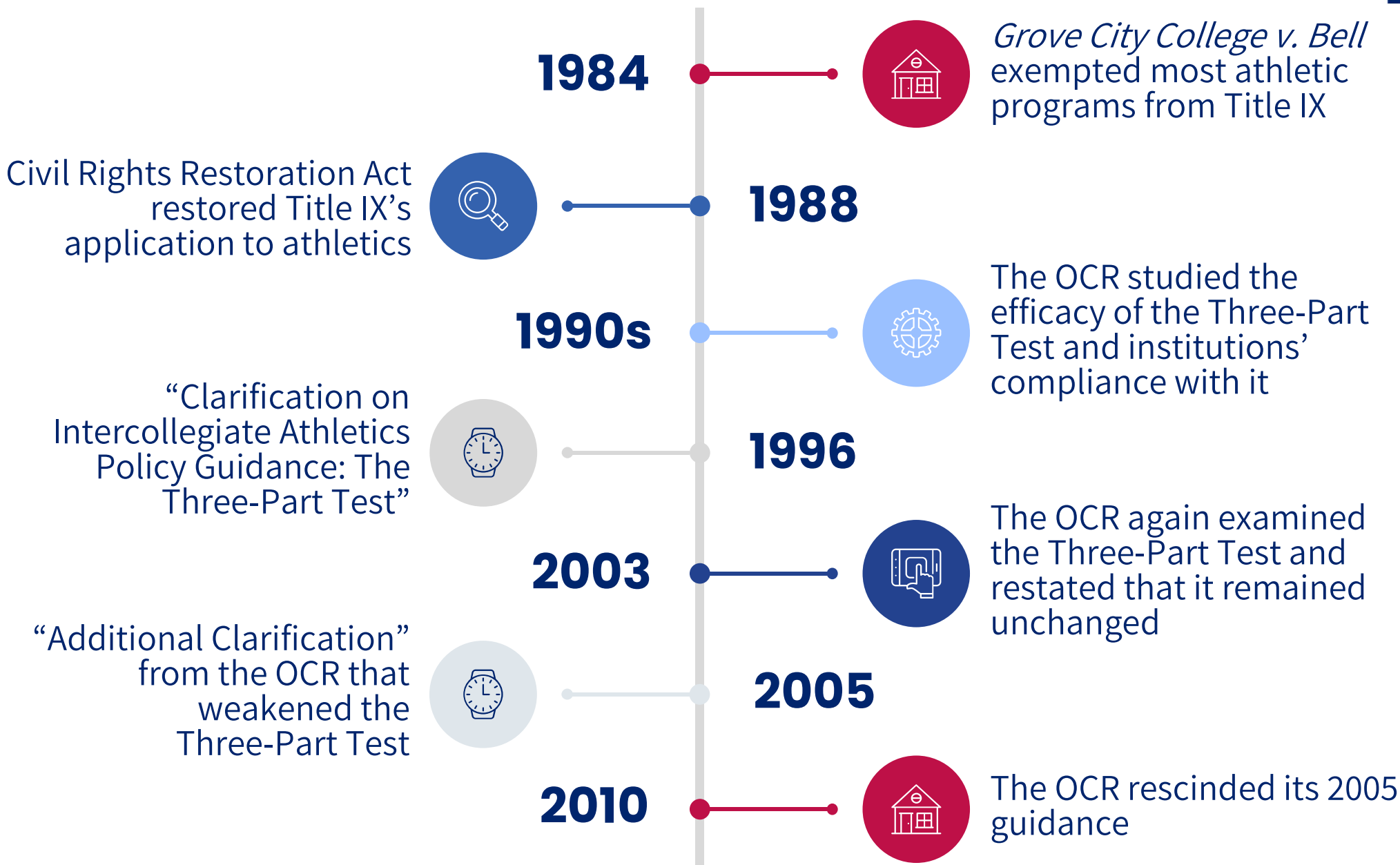


TITLE IX



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 2021)

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

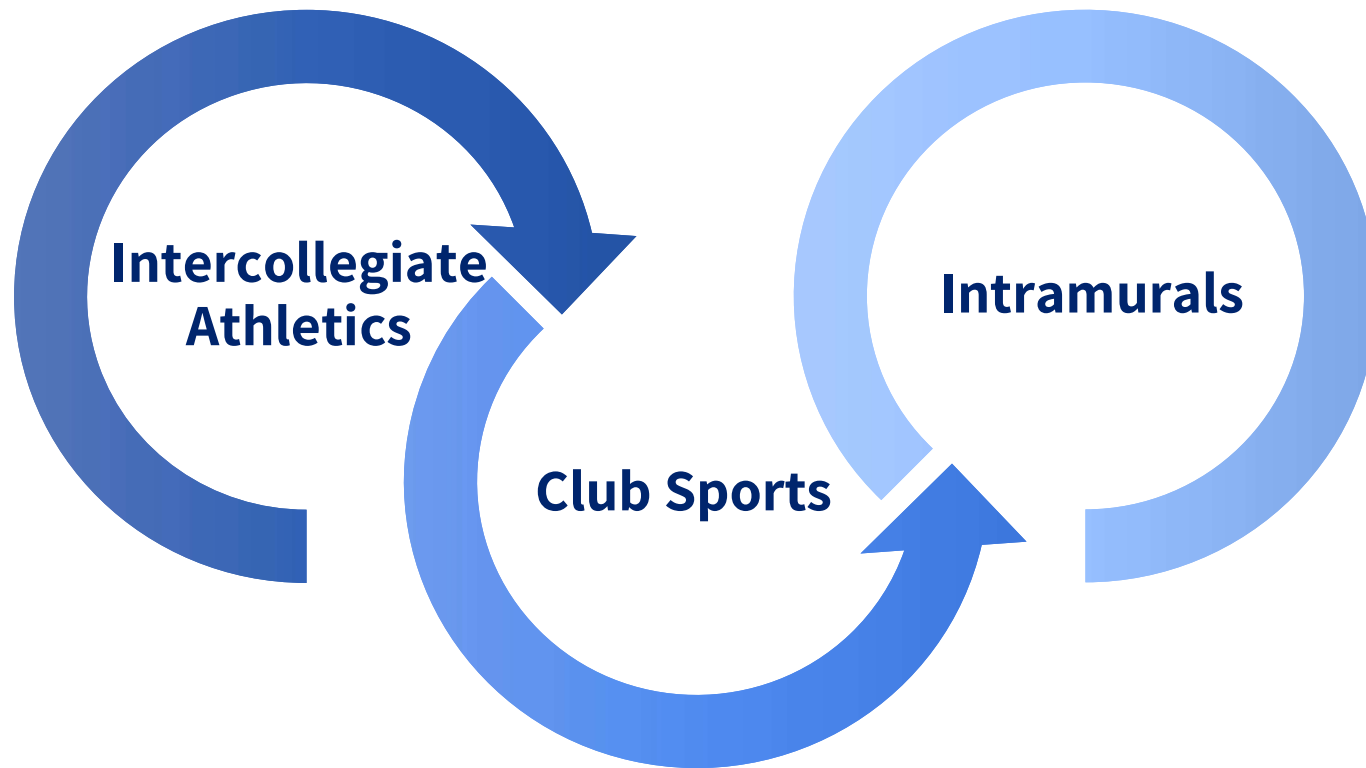
Source: NCAA Interim Name, Image, and Likeness Policy (2021)

NAME, IMAGE, AND LIKENESS

- 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 this type of activity without violating NCAA rules related to name, image, and likeness.
- Individuals can use a professional services provider for NIL activities.
- Student-athletes should report NIL activities consistent with state law or school and conference requirements to their school.

Source: NCAA Interim Name, Image, and Likeness Policy (2021)

TITLE IX AND ATHLETICS



Three-Part Test and the 13 program components are typically not as problematic for Intramurals and Club Sports because those programs are typically self-initiated and fewer benefits are provided by the institution



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



EQUITY
*acknowledges systemic
impediments with targeted fixes*



JUSTICE
eliminates systemic barriers



AGENCY
*individuals know that access
is their right*

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



TITLE IX AND ATHLETICS (CONT.)

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 program as compared to the overall men’s program
 - Analyzed according to thirteen (13) different program components (The “Laundry List”)

Source: Bonnette, V.M. (2004), *Title IX and Intercollegiate Athletics*, p.7.

TITLE IX AND ATHLETICS (CONT.)

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 sports for men and women
- Provide the same benefits to men's and women's teams in the same sport
- Compete at a specific level

Source: Bonnette, V.M. (2004), *Title IX and Intercollegiate Athletics*, p.7.

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 TIXC should **not** be the Recipient's TIXC



THE THREE-PART TEST: ACCOMMODATION OF INTERESTS AND ABILITIES

- Proportionality
- Program Expansion
- Full Accommodation

THREE-PART TEST (1979)

Effective accommodation of interests and abilities

1

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

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**

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

COUNTING PARTICIPANTS

- For purposes of Title IX compliance, a **participant** is defined as those athletes who:
 - Regularly receive institutionally sponsored support normally provided to athletes
 - Regularly participate in organized practices or team meetings and activities during the season
 - Are listed on the eligibility or squad list
 - Are injured, but continue to receive financial aid on the basis of athletic ability

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

COUNTING PARTICIPANTS (CONT.)

- **Participants** also include those who:
 - Are listed on a team's squad or eligibility list AND are on the team as of the team's first competitive event
 - Join the team during the season*
 - Are a walk-on
 - Are a member of the JV, freshman, "B" team, etc.
 - Quit or were cut after the first competitive event
 - Are a Redshirt athlete
 - Are a mid-year transfer eligible to participate in the spring

*Season begins on the date of a team's first intercollegiate competitive event and concludes on the date of the final intercollegiate competitive event.

Sources: HEW (1979). Intercollegiate Athletics Policy Interpretation; OCR (1996). Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test; Bonnette, pp. 91-92.

COUNTING PARTICIPANTS (CONT.)

- The following are **not** participants:
 - Unfilled team slots or positions
 - Club, intramural and recreation program participants
 - Cheerleaders*
 - Athletes who quit or are cut BEFORE first competitive event of the season
 - Sport participants out of season (e.g., spring football)
 - Scrimmage or practice squads
 - Student managers,* student coaches,* student trainers*
 - Students who are academically ineligible
 - Mid-year transfers if no spring season

*Even if they receive scholarships

Sources: HEW (1979). Intercollegiate Athletics Policy Interpretation;

OCR (1996). Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test; Bonnette, pp. 91-92.

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
- The OCR uses a case-by-case analysis, rather than a rigid statistical requirement (e.g., within 1% of student body)
- The 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

Source: OCR (1996). Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test.

PART 2: PROGRAM EXPANSION

History and continuing practice of program expansion responsive to the developing interests and abilities of the underrepresented sex

In analyzing a history of program expansion, the 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 who are members of the underrepresented sex

Source: OCR (1996). Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test.

PART 2: PROGRAM EXPANSION (CONT.)

- An institution's affirmative responses to requests by students or others for addition or elevation of sports
- An institution's current implementation of a nondiscriminatory 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's current implementation of a plan of program expansion that is responsive to developing interests and abilities

Source: OCR (1996). Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test.

PART 3: FULL ACCOMMODATION

Whether it can be demonstrated that the interests and abilities of that sex have been fully and effectively accommodated by that present program

The OCR will consider whether:

- There is sufficient unmet interest to support an intercollegiate team
- There is sufficient ability to sustain an intercollegiate team
- There is a reasonable expectation of competition for the team

Source: OCR (1996). Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test.



LEVELS OF COMPETITION

- Equivalently Advanced Competitive Opportunities
- Upgrades of Competitive Opportunities

LEVELS OF COMPETITION

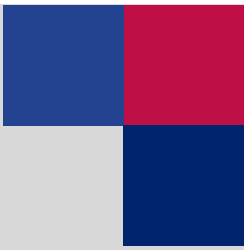
The OCR assesses compliance by examining:

- 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

- 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

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.



ATHLETIC FINANCIAL ASSISTANCE

- Financial Assistance
- Counting Participants for Financial Assistance

FINANCIAL ASSISTANCE

- Must provide **reasonable opportunities** for financial assistance to members of each sex in proportion to the participation rate of each sex in intercollegiate athletics
 - Does **NOT** require same number of scholarships for men and women or scholarship of equal value
- Total amount awarded must be “substantially proportionate to the participation rates” of men and women in the institution’s athletic programs
- Disparities could be non-discriminatory in origin
 - E.g., in-state vs. out-of-state recruits; reasonable professional decisions
- Also applies to work-related aid programs or loans

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

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; Bonnette, pp. 92-93.



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

ATHLETIC OVERSIGHT – GENDER EQUITY



EQUIPMENT & SUPPLIES

Key factors in examining the equivalence for men and women:

- Quality of equipment and suppliers
- Amount of equipment and supplies
- Suitability of equipment and supplies
- Maintenance and replacement of the equipment and supplies
- Availability of equipment and supplies

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

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

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

TRAVEL AND PER DIEM ALLOWANCES

Key factors in examining the equivalence for men and women:

- Modes of transportation
- Housing furnished during travel
- Length of stay before and after competitive events
- Per diem allowances
- Dining arrangements

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

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

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

COACHING (CONT.)

Key factors in examining coaching:

- Compensation of coaches
 - Rate of compensation (per sport, per season)
 - Duration of contracts
 - Conditions relating to contract renewal
 - Experience
 - Nature of coaching duties performed
 - Working conditions
 - Other terms and conditions of employment

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

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
- 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

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

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
- Preparation of facilities for practice and competitive events

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

MEDICAL AND TRAINING FACILITIES AND SERVICES

Key factors in examining the equivalence for men and women:

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

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

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 (e.g., laundry facilities, parking space, cleaning service)

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

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

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

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

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

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

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.



RED FLAGS TO LOOK FOR AND ASK ABOUT

- Proportionality
- Program Expansion
- No Unmet Interest
- Retaliation
- Equal Pay
- Hostile Environment
- Donations
- Fundraising



“Our proportionality is within 5 percentage points - close enough!”

“We just added a women’s team, so we definitely comply with prong two!”

“We will reach proportionality through roster management!”

“It’s OK, we are cutting a men’s and a women’s team!”

“We absolutely have enough money to add a new men’s team!”

“But no one has complained about our lack of women’s sports!”

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

DONATIONS (CONT.)

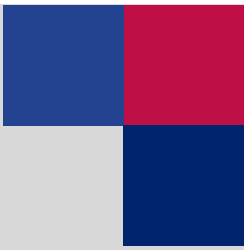
- Can provide assistance to a school's athletic programs
- Often, they only want to support a specific team or program or provide a specific service
- Oversight and guidance from the Title IX Office are necessary to ensure compliance
- Often involves educating the donor/club
- Ideally, they support **ATHLETICS**

FUNDRAISING

- Fundraising = Teams raising money on their own
 - For a specific opportunity
 - For equipment, uniforms, etc.
 - For special equipment, uniforms, etc.
- Private fundraising is permissible
- Title IX requires that male and female teams must have equal access and equal opportunities to comparable benefits and services no matter the source of money

THE LAW

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



ESPORTS



ESPORTS

- 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
- NCAA Position
- Definitions
- Obligations

NCAA & SEXUAL VIOLENCE

The Executive Committee expects NCAA members to...**operate fairly and ethically**, and further to assure that student-athletes are neither advantaged nor disadvantaged by special treatment and that institutions' athletics departments must:

- Comply with campus authorities and ensure that all athletics staff, coaches, administrators and student-athletes maintain a hostile-free environment for **all student-athletes** regardless of gender or sexual orientation
- **know and follow campus protocol** for reporting incidents of sexual violence
- **report immediately any suspected sexual violence to appropriate campus offices for investigation and adjudication**

NCAA & SEXUAL VIOLENCE (CONT.)

- **Educate all** student-athletes, coaches, and staff about sexual violence prevention, intervention and response
- Assure compliance with all federal and applicable state regulations related to **sexual violence prevention and response**
- **Cooperate with but not manage, direct, control, or interfere with** college or university investigations into allegations of sexual violence ensuring that investigations involving student-athletes and athletics department staff are managed in the same manner as all other students and staff on campus

Source: NCAA Executive Committee: August 8, 2014

NCAA POLICY IMPLEMENTATION TIMELINE

- NCAA member institutions have access to policy examples (log-in required) and additional resources through the NCAA website: <https://ncaa.org/csvpolicy>
- **2021-22 Academic Year**
 - Attestation period begins March 1, 2022
 - Attestation period ends May 15, 2022
 - President/chancellor, director of athletics, and campus Title IX coordinator attest their compliance with the policy for the 2021-22 academic year
 - Attesting to items 1 -3 of the policy

NCAA POLICY IMPLEMENTATION TIMELINE (CONT.)

- **2022-23 Academic Year**

- Attestation period begins March 1, 2023
- Attestation period ends May 15, 2023
- President/chancellor, director of athletics, and campus Title IX coordinator attest their compliance with the policy for the 2022-23 academic year
- Attesting to items 1-6 of the policy

NCAA POLICY ON CAMPUS SEXUAL VIOLENCE

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 and adjudication, and the name and contact information for the campus Title IX Coordinator*, are readily available within the department of athletics, and are provided to student-athletes.

*For international members and schools that do not receive federal funding, or are otherwise exempt from Title IX, the signature should be from the Title IX coordinator or institutional staff member with comparable responsibilities

Source: NCAA Policy to Combat Campus Sexual Violence.

POLICY ON CAMPUS SEXUAL VIOLENCE (CONT.)

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.

Source: NCAA Policy to Combat Campus Sexual Violence.

POLICY ON CAMPUS SEXUAL VIOLENCE (CONT.)

**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 nonforcible 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.

Source: NCAA Policy to Combat Campus Sexual Violence.

POLICY ON CAMPUS SEXUAL VIOLENCE (CONT.)

5. Institutions have taken reasonable steps to confirm whether incoming, continuing and transfer student-athletes have been disciplined through a Title IX proceeding or criminally convicted of sexual, interpersonal or other acts of violence.** In a manner consistent with federal and state law, all NCAA member institutions must share relevant discipline information and incomplete Title IX proceedings as a result of transfer with other member institutions when a student-athlete attempts to enroll in a new college or university.

Source: NCAA Policy to Combat Campus Sexual Violence.

POLICY ON CAMPUS SEXUAL VIOLENCE (CONT.)

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 sexual, interpersonal or other acts of violence.** Failure to have it written and to gather information consistent with that procedure could result in penalties.

Source: NCAA Policy to Combat Campus Sexual Violence.

UNDERSTANDING THE THREE FORMS OF SEXUAL HARASSMENT

Sexual Harassment is

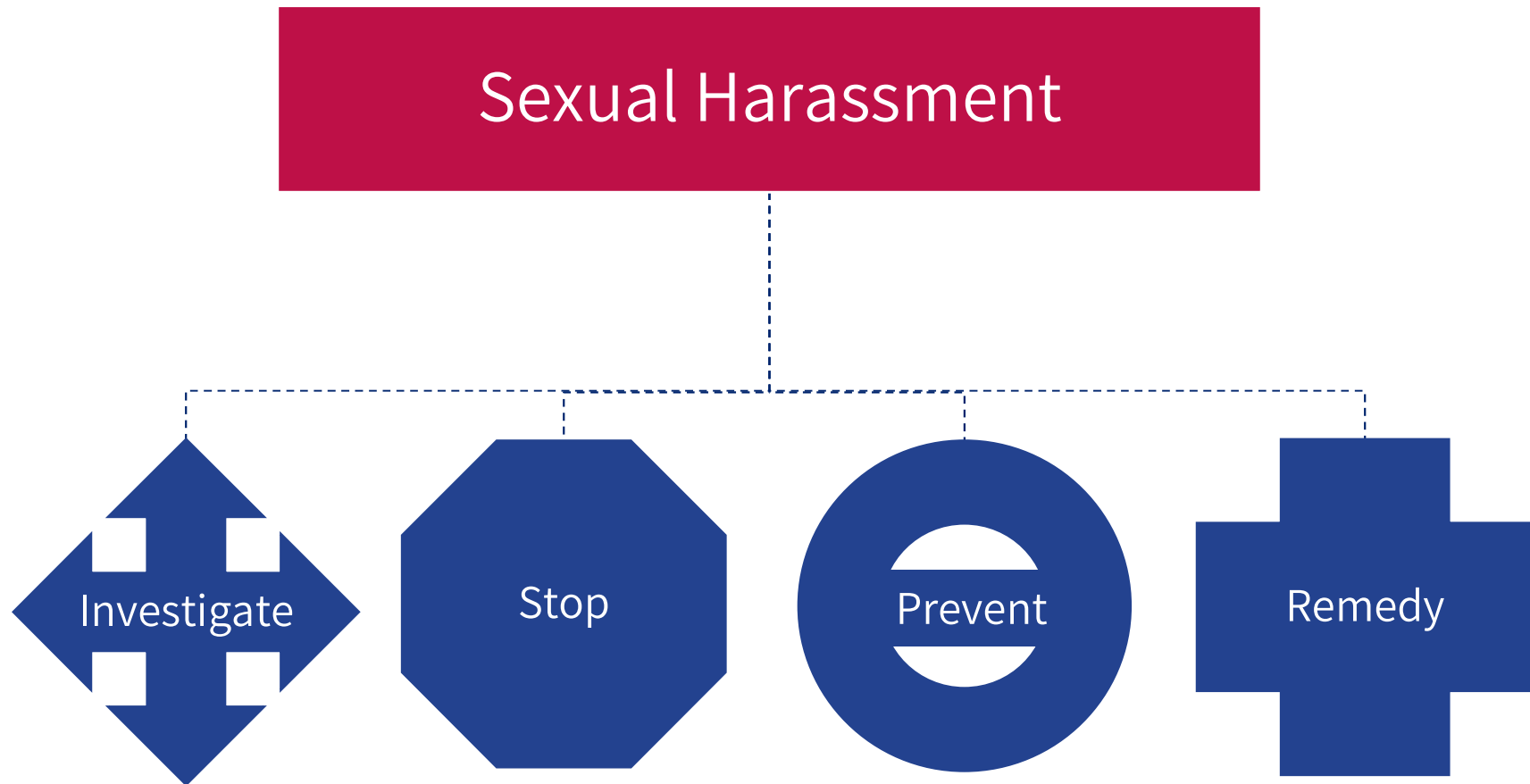
Unwelcome conduct of a sexual nature or that is sex or gender-based

Based on power differentials
(**quid pro quo**)

The creation of a
hostile environment

Retaliation

INSTITUTIONAL OBLIGATIONS UNDER TITLE IX



THE IX COMMANDMENTS

INVESTIGATION

(plus prompt & fair per VAWA Sec. 304)



Thorough

Reliable

Impartial

PROCESS



Prompt

Effective

Equitable

REMEDIES



Act reasonably to stop discrimination

Act reasonably to prevent recurrence

Act equitably to remedy effects

INSTRUCTIVE CASES

Simpson v. Univ. of Colorado Boulder,
500 F.3d 1170 (10th Cir. 2007).

- Recruiting visits
- Off-campus parties
- Climate

Williams v. Bd of Regents of Univ. of Georgia,
477 F.3d 1282 (11th Cir. 2007).

- Recruit histories

Jennings v. UNC Chapel Hill,
482 F.3d 686 (4th Cir. 2007).

- Climate in locker room
- Player evaluation meetings
- Power of a coach

Jackson v. Birmingham,
544 U.S. 167 (2005).

- Retaliation



UNIQUE ISSUES IN SPORT

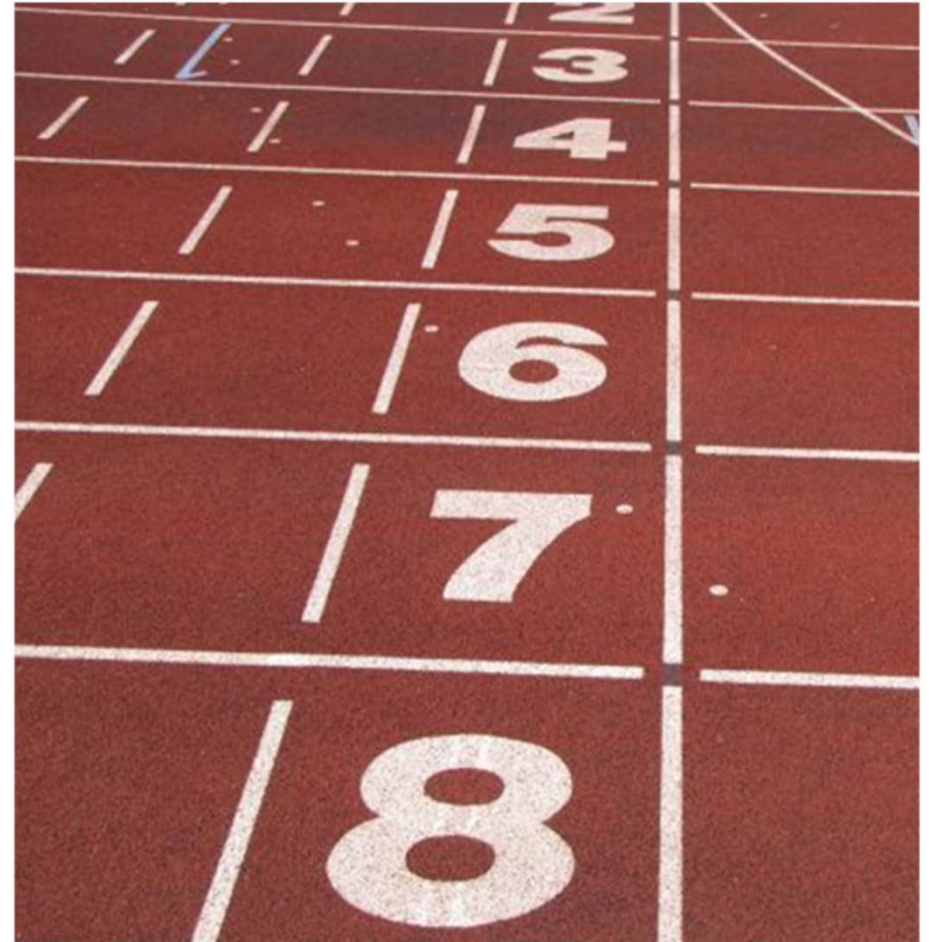
UNIQUE CHALLENGES: TITLE IX AND STUDENT ATHLETICS

- Insularity of teams and the athletic department
 - Loyalty to Coach/Team/Dept.
- Protectionism of teams and the athletic department by other groups
- Coach-Athlete dynamics
 - Recruitment
 - Trust-based
 - Power-based
- Revenue vs. non-revenue sports
 - vs. Premier Sports



UNIQUE CHALLENGES: TITLE IX AND STUDENT ATHLETICS (CONT.)

- Male sport privilege
- Body image and focus on the body (especially women)
 - Track and Field Comments
 - Gym wear issues
- Student-athlete on student-athlete violence
- Must-win mentality



UNIQUE CHALLENGES: TITLE IX AND STUDENT ATHLETICS (CONT.)

- Culture of violence and aggressive behavior in sports
- Approval of sexist/homophobic language and attitudes
- Groupie culture
- Celebrity sense/Entitlement



PREGNANCY AND ATHLETICS

PREGNANCY AND ATHLETICS

- The law recognizes pregnancy as affecting only one gender
- The [NCAA guidelines](#) on management of pregnant athletes is a good document to review and follow
- The OCR speaks to pregnancy and parenting on the whole
 - A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or **extracurricular activity**, on the basis of such student's **pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom**, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient. 34 C.F.R. § 106.40(b)(l).

PREGNANCY AND ATHLETICS (CONT.)

- [2007 Dear Colleague Letter](#) on Nondiscriminatory Treatment of Pregnant Students in Athletic Scholarships
- [2013 Guidance](#) on Supporting the Academic Success of Pregnant and Parenting



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
- The OCR has stated they recognize sexual orientation, gender identity, and gender expression as protected characteristics (Title VII 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 cliquy or having a big falling out
- Two teammates dating the same person on another team
- One teammate getting dumped by their partner and then teammate starts dating the ex-partner
- Heterosexual dating on a mixed team

MANAGING DATING RELATIONSHIPS AMONG TEAMMATES (CONT.)

- 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 on 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 (CONT.)

- 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)



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Questions?

Thanks for joining us today.



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