



Association of
Title IX Administrators

June 2021

Title IX Compliance & Athletics

Higher Education Training Course



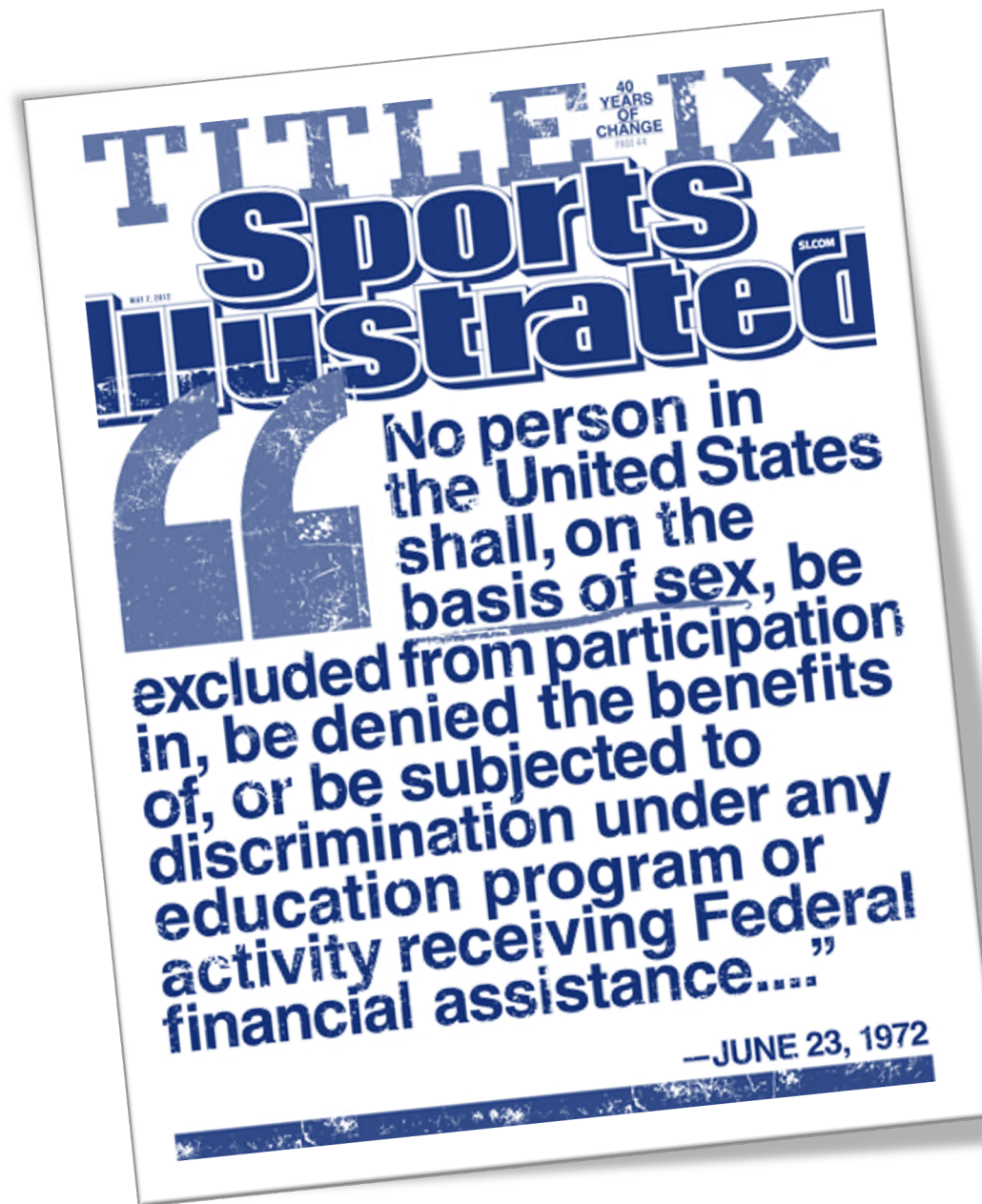
Strategic Risk
Management Solutions



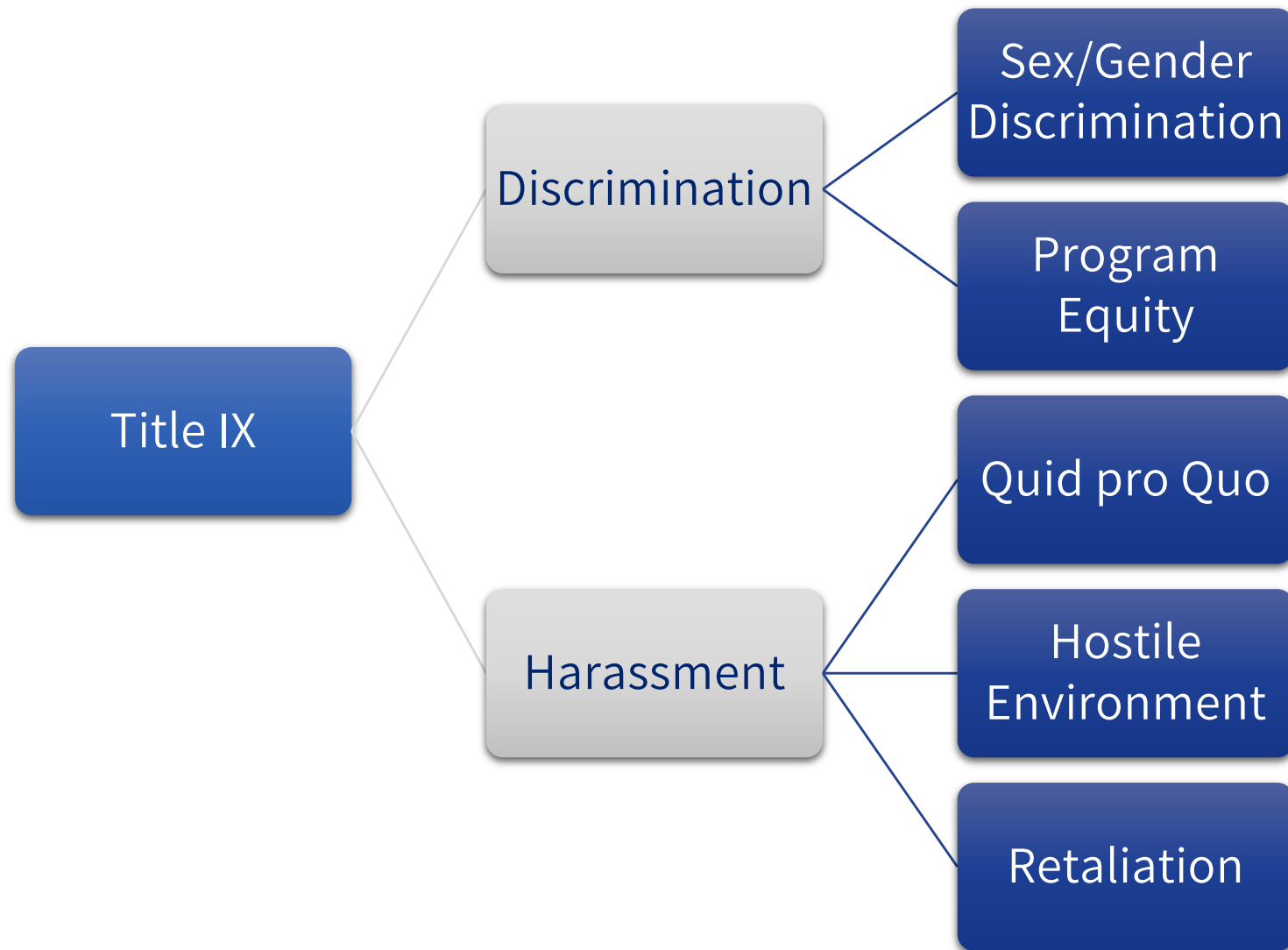
Any advice or opinion provided during this training, either privately or to the entire group, is never to be construed as legal advice. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law, any applicable state or local laws, and evolving federal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

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 Sexual Harassment in Sports
- 7 Inter- and Intra-squad Dating

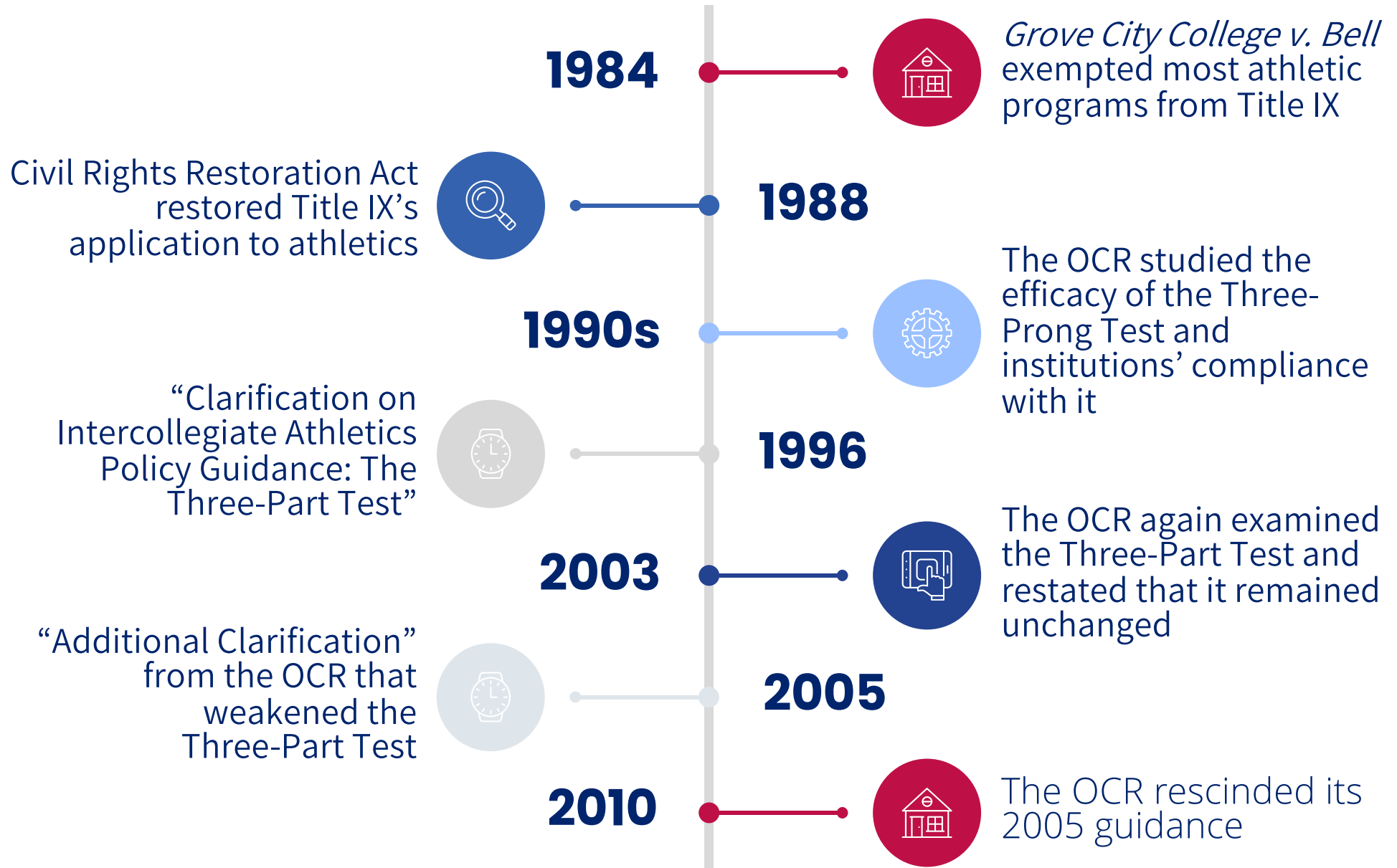


TITLE IX



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

- Effect on athletics interim actions
- Effect on investigations and jurisdiction

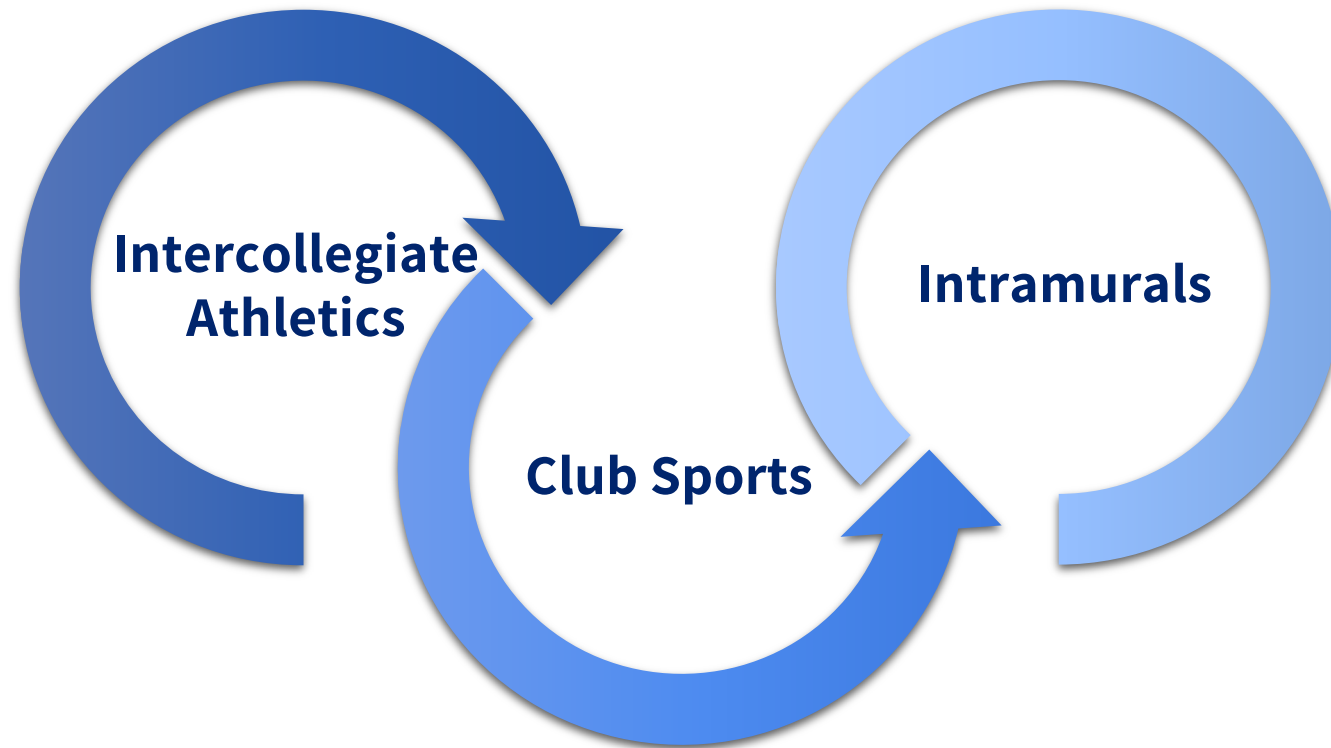


NCAA Campus Sexual Violence Policy – Annual Attestation

- 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)

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 benefits provided by the institution are typically fewer



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*

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”)

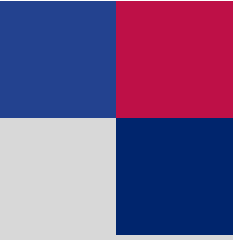
TITLE IX AND ATHLETICS (CONT.)

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

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.

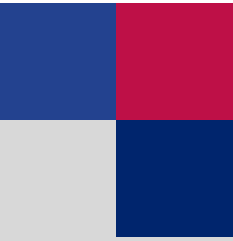
PART 3: FULL ACCOMMODATION

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

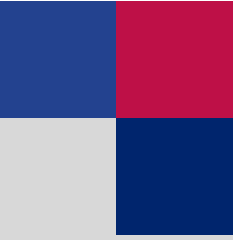
The OCR assesses compliance by examining:

- 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

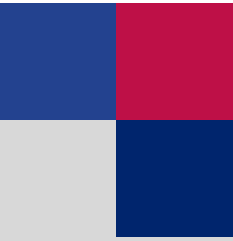
- Must provide **reasonable opportunities** for financial assistance to members of each sex in proportion to the participation rate of each sex in intercollegiate athletics
 - Does **NOT** require same number of scholarships for men and women or scholarship of equal value
- Total amount awarded must 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

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

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

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 (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

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

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)

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

RECRUITMENT OF STUDENT ATHLETES

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

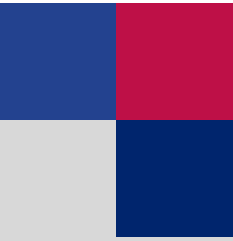
Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

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



RED FLAGS TO LOOK FOR AND ASK ABOUT

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



“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 imbalance
on coaching staff

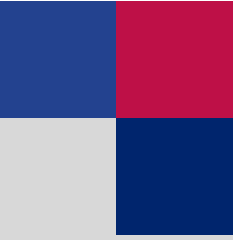
Closed hiring

Salaries not
benchmarked

Female/women's
coaches
disciplined more
often

Complaints about
hostile
environment

Complaints about
gender equity



SEXUAL HARASSMENT, SEXUAL VIOLENCE, AND INTIMATE PARTNER VIOLENCE AND SPORT

- Recent Examples
- Instructive Cases
- Prevalence
- NCAA Position
- Definitions
- Obligations
- Challenges

COLLEGIATE ATHLETICS AND SEXUAL VIOLENCE EXAMPLES

- Florida State University
- University of Montana
- University of Georgia
- University of Colorado
- Vanderbilt University
- Oregon State University
- Xavier University
- University of Missouri
- University of Notre Dame



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

UNDERSTANDING THE THREE FORMS OF SEXUAL HARASSMENT

Sexual Harassment is

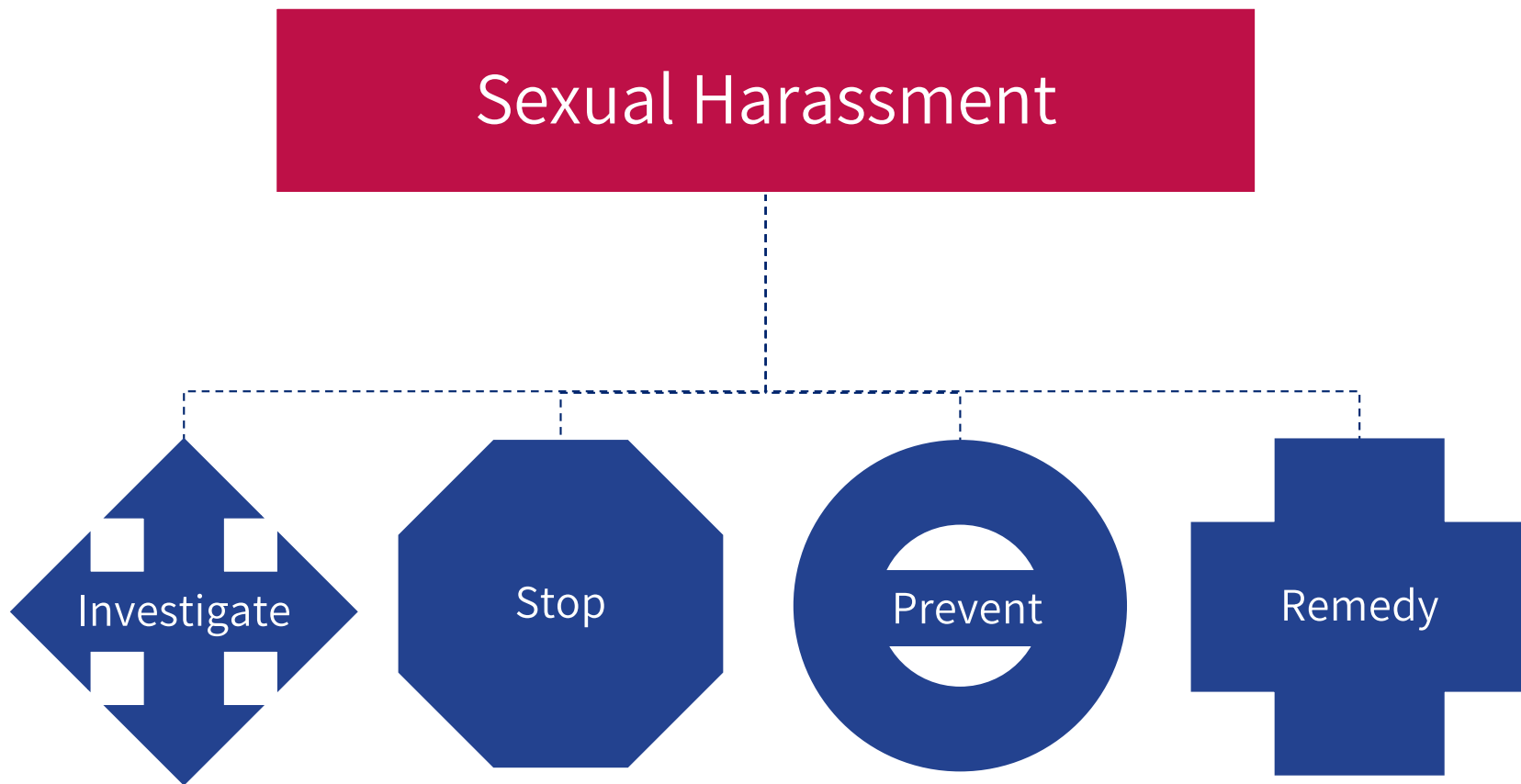
Unwelcome conduct of a sexual nature or that is sex or gender-based

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



To act
reasonably
to stop
discrimination

To act
reasonably
to prevent
recurrence

To 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 CHALLENGES: TITLE IX AND STUDENT ATHLETICS

- Athletic department hostile educational environment
- Insularity of teams and the athletic department
- Protectionism of teams and the athletic department
- Coach-Athlete dynamics
 - Power-based
 - Trust-based
 - Recruitment
 - Performance meetings
- Coach-Coach dynamics



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

- Male privilege
- Body image and focus on the body (especially women)
- Student-athlete on student-athlete violence
- Power dynamics
- Revenue vs. non-revenue sports
- Must-win mentality



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

- Culture of violence and aggressive behavior in sports
- Male bonding and group loyalty
- Sexualization and subordination of women in male team sports
- Approval of sexist language and attitudes
- Perception of “groupie culture”
- Celebrity sense
- Entitlement

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 cliquey or having a big falling out
- Two women on a team dating the same guy on a men's team
- One teammate getting dumped by her boyfriend and then he starts dating one of her teammates
- 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 white and black teammates
- Conflicts between gay and straight teammates
- Conflicts between religiously different teammates

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)



CASE STUDIES

Time-permitting





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Questions?



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