

# **Gender Equity and Title IX: Compliance Strategies and Best Practices**

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# **AGENDA**

- 1. Title IX Gender Equity “refresher”**
- 2. Institutional Obligations**
- 3. Pitfalls and Strategies**
- 4. Best Practices and Takeaways**

## Sex Based Discrimination:

*Generally:*

- ◆ Assault/Sexual violence/Sexual misconduct
- ◆ Accommodations
- ◆ Equal Pay Considerations (for Coaches)
- ◆ **Gender Equity**



# TITLE IX

## The History of Gender Equity Law

# Title IX: HISTORY

## 20 USCS § 1681 Education Amendments of 1972:

“no person shall be discriminated against on the basis of sex in any federally funded education program or activity”

*This seems pretty simple....*

# Title IX: HISTORY

Congress leaves implementation and interpretation of that seemingly simple law to executive administrative bodies (Education Amendments of 1974)

## *First to:*

- ◆ HEW (Health Education and Welfare)

## *Later to:*

- ◆ Department of Education
  - Office of Civil Rights

# Title IX: HISTORY

- ◆ 1975: HEW Issues first “Regulation” to demonstrate how institutions provide “equal athletic opportunity”

## **Areas Covered:**

1. Accommodation of Interests and Abilities
2. Equivalent Experience
3. Mention of allowing female student-athletes to compete on male teams
4. Disbursement of finances to provide equal athletic opportunity for both

# Title IX: HISTORY

*Let's see how HEW interpreted that seemingly simple 1972 law...*

§1681 interpreted to cover *four areas* :

- ▶ No person in the United States shall, **on the basis of sex**, be **excluded from participation** in {*accommodation*}, be **denied the benefits** of {*benefits/program analysis*}, or be **subjected to discrimination** {*sexual discrimination*} under any education program or activity receiving Federal financial assistance
- ▶ *§1682 Interpretation:*
  - ▶ Administrative enforcement – agency given authority to issue rules, regulations to “**effectuate the provisions**” of §1681 (Department of Education)

# Title IX: HISTORY

## *Additional Regulation is Promulgated...*

### **34 C.F.R. §106.41 (1974)**

- ▶ Implements Title IX – finally in affect in 1980
  - ▶ (a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of (*so far same as Title IX*), **be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient**, and no recipient shall provide any such athletics separately on such basis
  - ▶ (c) Equal Opportunity
    - ▶ A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide **equal opportunity for members of both sexes**

Provides for factors to consider in evaluating equal opportunity, which largely transforms into the “laundry list” which is used today to determine compliance with the program benefits portion of the law.

# Title IX: HISTORY

- ◆ In 1979 HEW splits into three divisions: Department of Education is given responsibility to carry out Title IX through OCR
- ◆ OCR Issues Policy Clarification in 1979 which is still central to Title IX compliance
  - ▶ Explains the regulations to provide a framework to resolve Title IX complaints
  - ▶ Provide additional guidance for institutions on the requirements for compliance with Title IX in intercollegiate athletic programs
  - ▶ Defines the scope of Title IX (designed for collegiate athletics but applicable to HS, club and intramural sports)

# TITLE IX

**“The Law” of Gender Equity**

## OCR Policy Interpretation of 1979

Three areas of programmatic Title IX Compliance (MUST COMPLY WITH ALL):

1. Accommodation of “interests and abilities”
2. Opportunities for athletics scholarships (Financial Aid)
3. Equivalence in athletic benefits and opportunities (Program Benefits)

## 1. Accommodation of Interests and Abilities

Institutions Demonstrate Compliance with Accommodating the Interests and Abilities of its students by meeting one of the following three:

1. Whether intercollegiate level participation opportunities for male and female students are provided in numbers **substantially proportionate** to their respective enrollments; or
2. Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a **history and continuing practice of program expansion** which is demonstrably responsive to the developing interest and abilities of the members of that sex; or
3. Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been **fully and effectively accommodated** by **the present program**.

# Title IX: The Law

## 1. Accommodation of Interests and Abilities (continued)

### 1996: Additional Clarification Issued by OCR

#### ▣ Part 1

- ▣ Met if number of opportunities to be proportionate not enough to make viable team
- ▣ Can chose to eliminate or cap teams to meet part one of test but nothing requires elimination of opportunities for men
- ▣ 5% is a number thrown out there sometimes, but not necessarily the indicator

#### ▣ Part 2

- ▣ Must be responsive to projected female interests and includes interests already there

#### ▣ Part 3

- ▣ Even if men overrepresented still okay if can show women not interested
- ▣ If eliminate a women's team then court will find there is interest in that sport
- ▣ OCR considers
  - » Is there unmet interest?
  - » Would this sustain a team?
  - » Is there reasonable expectation of competition for the team?

## 2. Provision of Athletics Financial Assistance

Institutions who provide athletics scholarships demonstrate compliance by providing athletics financial assistance in proportion with the percentage of male and female varsity student-athletes

Compliance Measured by the “**Z-Test**” and “**T-Test**”

**Z-Test:** Used to determine if athletes of one gender are receiving disproportionate of scholarship funding (>1% disparity = violation)

**T-Test:** Used to evaluate whether the average grant in aid for one gender is significantly worth more than the average grant in aid for the other gender.

## 3. Equivalent Program Benefits (“The Laundry List”)

OCR assesses compliance in the following areas on a program-wide basis and assesses any disparities to determine if they are significant enough to constitute a violation:

- Provision of equipment and supplies
- Scheduling of games and practice time
- Travel and per diem allowance
- Opportunity to receive coaching & academic tutoring
- Assignment and compensation of coaches and tutors
- Provision of locker rooms, practice and competitive facilities
- Provision of medical and training facilities/services
- Provision of housing and dining facilities/services
- Publicity
- Sport Services
- Recruiting

## 3. Equivalent Program Benefits (“The Laundry List”)

### Analyzing Compliance:

- ◆ Program-wide analysis
- ◆ Comparable and Unique Sport Comparisons
- ◆ Number of Participants (higher % = higher weight)
- ◆ Non-discriminatory Factors
- ◆ Disparity Analysis
  - Off-set
  - Disparity
  - Disparity: Violation

## What Sports are Covered?

- ◆ Dear Colleague Letter, September 2008 (OCR)
  - PRESUMPTION: Many institutions are members of intercollegiate athletic organizations, such as the National Collegiate Athletic Association and the National Association of Intercollegiate Athletics, or state high school associations that have organizational requirements, which address the factors identified by OCR. **When the organizational requirements satisfy these factors and compliance with the requirements is not discretionary, OCR will presume that such an institution's established sports can be counted under Title IX.** This presumption can be rebutted by evidence demonstrating that the institution is not offering the activity in a manner that satisfies the factors below.
  - Factors
    - 1. Program Structure and Administration
    - 2. Team Preparation and Competition



# TITLE IX

## Institutional Obligations

# Title IX: Institutional Obligations

## OBLIGATION 1: Policies and Procedures

*Does your institution's policies and procedures account for:*

### Athletics Financial Assistance

- Active monitoring of G&As
- Z and T test calculations
- **Non-discriminatory factor strategy**
- Proactive planning with coaches and athletics admin
- Documentation of calculations

### Interest and Ability Accommodation

- Surveys
- Monitoring of sports
- Monitoring of recruiting base
- Monitoring of institutional peers
- **Feasibility studies and meetings**
- Request and complaint collection and assessment
- Official annual I&A review reports

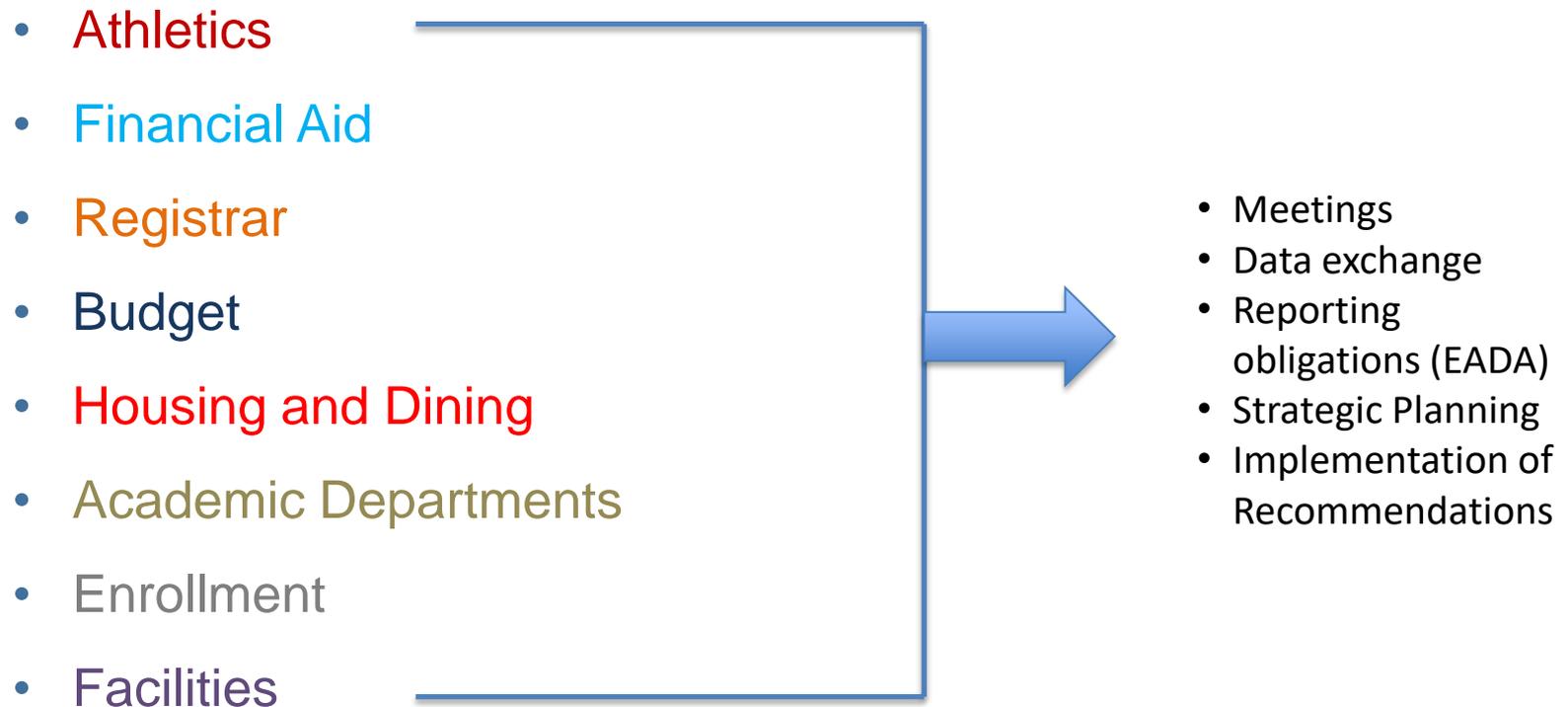
### Program Benefits

- P&P for every component of laundry list
- **Disparity calculation and documentation**
- Proactive planning with coaches and athletics admin
- Shared facility policies\*

# Title IX: Institutional Obligations

## OBLIGATION 2: Proactive Compliance Monitoring

### Cross-Campus Coordination



# Title IX: Institutional Obligations

## OBLIGATION 3: Responses to Monitoring Efforts

**IMPLEMENT CHANGES BASED ON  
YOUR MONITORING EFFORTS  
AND REVIEW FINDINGS!**

.... and document them.

Also, don't forget to fulfill your reporting obligations....



# TITLE IX

## Pitfalls and Prevention Strategies

# Title IX: Pitfalls and Prevention Strategies

## **Pitfall:** Inadequate Interest and Ability Monitoring System

The institution conducts annual comprehensive surveys, sponsors sports in line with its institutional enrollment base, and sponsors the same sports as its conference affiliates and regional peers. The institution is concerned however, because in its most recent survey, 15 female students have indicated that they would like to participate in equestrian. Per the institution's policy and procedure, it must now create opportunities in equestrian.

**HELP!!**

**Strategy:** Construction of Policies and Procedures to account for “feasibility” and “ABILITIES”

# Title IX: Pitfalls and Prevention Strategies

## **Pitfall:** Financial Aid “Reverse” Discrimination

The institution monitors its provision of athletics scholarships for males and females during the fall and spring semesters. The institution is abundantly cautious about not providing enough scholarship money to female student-athletes. So much so, that this past year the institution awarded 10% more aid to females, proportionately, than male student-athletes.

OCR just red-flagged the institution, what gives??

**HELP!!**

**Strategy:** THIS PORTION OF TITLE IX DOES NOT HAVE THE “UNDER-REPRESENTED” SEX QUALIFIER!!

# Title IX: Pitfalls and Prevention Strategies

## **Pitfall:** Misunderstanding of Disparity Calculation

The institution has meticulously assessed its program benefits provided to male and female student-athletes and has identified two disparities which it has determined “off-set” each other: One involving women’s track and field, and the other involving men’s golf. Even though the disparities seem equal, OCR is convinced that a violation currently exists.

## **HELP!**

**Strategy:** Take into account the percentage of student-athletes affected by disparity.

# TITLE IX

## Final Takeaways

# Title IX: Final Takeaways

- ◆ Compliance with gender equity law is a complex process!
  - If you go the internal route with your compliance monitoring, be sure to Consult the 1990 Investigator's manual, subsequent OCR guidance, and relevant Eighth Circuit guidance.
  - If you go the external route, our recommendation is to fulfill as much legwork with data collections as possible.
- ◆ Do not assume!
  - Communicate with peer institutions.
  - Consult with professionals if you have questions
- ◆ Gender Equity is here to stay
  - Despite changes to accommodations and assault aspects of Title IX, Gender Equity remains untouched.

# Thank You

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