Gender Equity Planning

BEST PRACTICES

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"An athletics program can be considered gender equitable when the participants in both the men's and women's sports programs would accept as fair and equitable the overall program of the other gender. No individual should be discriminated against on the basis of gender, institutionally or nationally, in intercollegiate athletics."

NCAA Gender Equity Task Force

UNDERSTANDING GENDER EQUITY

The NCAA is committed to fair treatment of all student-athletes and staff and includes as part of its core values: *An inclusive culture that fosters equitable participation for student-athletes and career opportunities for coaches and administrators from diverse backgrounds.* The NCAA Constitution includes the following principles:

2.3.1 Compliance with Federal and State Legislation. *It is the responsibility of each member institution to comply with federal and state laws regarding gender equity.*

2.6 The Principle of Nondiscrimination. *The Association shall promote an atmosphere of respect for and sensitivity to the dignity of every person. It is the policy of the Association to refrain from discrimination with respect to its governance, policies, educational programs, activities and employment policies including on the basis of age, color, disability, gender, national origin, race, religion, creed or sexual orientation. It is the responsibility of each institution to determine independently its own policy regarding nondiscrimination.*

While the NCAA does not enforce Title IX, the NCAA membership expects all schools to have an active gender equity plan. The plan is meant to guide the institution in evaluating, monitoring and improving its gender equity performance. The membership, in addition to federal reporting requirements, participates in an annual financial and demographics reporting system that includes gender equity data.

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Title IX of the 1972 Education Amendments to the 1964 Civil Rights Act:
"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving Federal financial assistance."

Title IX is federal law that applies to any educational institution receiving any form of federal funding, including guaranteed student loans. The law protects men, women, staff and students and covers all educational programs, not just athletics. The U.S. Department of Education's Office for Civil Rights (OCR) develops regulations and oversees enforcement of compliance with this civil rights law.

Title IX requires that members of both genders have equal opportunities to participate in sports and receive the benefits of competitive athletics. The law is flexible, allowing schools the opportunity to develop athletics programs that match their institutional mission, student interest and competitive region. Institutions do not have to offer any particular sport or fund sports equally, if there are nondiscriminatory reasons for the differences.

Title IX designates 13 areas in which institutions need to achieve equity. The first is participation opportunities, which includes the three-part test. The second, for schools awarding athletics scholarships, is equitable awarding of financial aid based on the proportion of male and female participants. The remaining areas are often referred to as the "laundry list" and involve 11 categories of benefits provided to student-athletes.

Sexual Harassment

Both the Department of Education and the U.S. Supreme Court have found that sexual harassment is a form of sexual discrimination prohibited by Title IX. In January 2001, the department published Revised Sexual Harassment Guidance: Harassmentof Students by School Employees, Other Students or Third Paties. That Title IX guidance updates and revises the original 1997 guidelines to incorporate and discuss important Supreme Court cases that were decided on the subject in the interim. The guidance is designed to help schools chart a course through what can sometimes be a very complicated area of the law.

Employment Discrimination

Employment discrimination, including retaliation for opposing discriminatory practices, is another gender equity issue of concern for athletics departments. As the U.S. Supreme Court decision in Jackson v. Birmingham Board of Education and several recent cases against athletics departments demonstrate, the law protects not only student-athletes, but also coaches and athletics staff from employment discrimination based upon gender and from retaliatory employment action directed toward one who has raised concerns about gender inequity.

Title IX Coordinator

Federal law requires each institution to appoint a Title IX officer/coordinator. That person is responsible for the entire campus' compliance efforts, including the adoption and dissemination of the school's nondiscrimination policy, and the development of grievance procedures to address complaints of discrimination on the basis of gender in educational programs and activities. The role is usually filled by someone in the human resources or equal employment opportunity offices. While the athletics department's director and/or senior woman administrator may be designated to plan and execute athletics gender equity initiatives, Title IX compliance is a campuswide obligation, and athletics should work closely with the campus coordinator. A letter to all Campus presidents in 2004 from OCR details the coordinator's responsibilities.

The university should designate an athletics staff member, knowledgeable about athletics Title IX requirements, to have a formal reporting line to the campus coordinator. This promotes effective communication between the campus and athletics.

Gender equity planning efforts should include assessment and monitoring of the institution's Title IX compliance efforts, as well as equitable treatment of staff.

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ASSESSMENT

The first step in any gender equity planning effort is to understand the law and NCAA membership expectations, then assess the department's status. Overarching points:

◊ The goal for gender equity planning should be to be proactive. It is far more productive and cost-effective to engage in constructive planning and ongoing review of Title IX compliance than to wait for internal or external complaints, OCR review and/or lawsuits.

◊ Gender equity should be an organizational commitment and a standard that is embraced by both men and women in order to create an environment that promotes understanding and encourages forward-thinking solution-finding.

◊ A review of Title IX requirements and institutional compliance is an important element of the assessment process. Schools are encouraged to "stay current" with changes in the regulations and court decisions.

Summary of Title IX Application to Intercollegiate Athletics

When assessing gender equity status and educating staff, campus constituents, student-athletes and parents about these areas, it should be emphasized that compliance is a campus responsibility and a department duty. Athletics departments must ensure that their coaches' programmatic efforts fit into the department's overall plan and obligations.

1. **Equitable Participation Opportunities:** One of the fundamental requirements of Title IX is that equitable opportunities to participate in intercollegiate sports must be offered to members of each gender. The federal regulations define a participant as one: (1) who receives the institutionally sponsored support normally provided to athletes competing at the institution involved (for example, coaching, equipment, medical and training room services) on a regular basis during a sport's season; (2) who participates in organized practice sessions and other team meetings and activities on a regular basis during a sport's season; (3) who is listed on the eligibility or squad lists maintained for each sport; or (4) who, because of injury, cannot meet 1, 2 or 3 above but continues to receive financial aid on the basis of athletics ability. When counting participants for a Title IX participation analysis (and not for the financial aid analysis as discussed later), it is important to remember that every time a student-athlete occupies a spot on an intercollegiate varsity team, he or she is to be counted as a participant. Accordingly, multi-sport athletes count more than once.

   The Three-Part Test. If a school can meet any one of these tests, it will be found to be in compliance with Title IX's participation requirements. This three-part test has been in effect for almost three decades and has been upheld by every one of the eight federal courts of appeal that have considered it.

   ◊ **Prong One:** Provide participation opportunities for women and men that are substantially proportionate to their respective rates of enrollment as full-time undergraduate students.

   ◊ **Prong Two:** Demonstrate a history and continuing practice of program expansion for the underrepresented sex.

   ◊ **Prong Three:** Fully and effectively accommodate the interests and abilities of the underrepresented sex.

2. **Equitable Scholarships:** Athletics scholarship dollars are to be awarded to women and men at the same proportion as their respective rate of participation in the intercollegiate athletics program. Athletics financial aid spent (as opposed to budgeted) should be within 1 percent of student-athlete participation percentages (not undergraduate enrollment rates).

3. **Equitable Benefits (the "laundry list"):** While the list is not exhaustive, it is often most helpful to start an assessment of these issues with conversations with student-athletes and coaches. Include this topic as part of the student-athlete experience evaluation process and annual staff planning and evaluation meetings.

   ◊ **Equipment and Supplies.** Quality, amount, suitability, maintenance and replacement; availability of equipment, apparel, adequate storage and supplies.

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◊ **Scheduling of Contests and Practice Time.** Equitable number of contests; number, length and time of day of practices; time of day of contests; preseason and postseason opportunities, including foreign tours.

◊ **Per Diem and Travel.** Travel allowance, modes of transportation, housing furnished during travel, length of stay before and after competitive events, dining arrangements and per diem for institutional competition and other competitive opportunities (for example, under Bylaw 16).

4. **Academic Support Services.** Availability of, and equitable access to, academic support services that meet the needs of student-athletes based on individual student-athlete academic profiles and/or performance, and equitable criteria for obtaining assistance.

5. **Coaches.** Availability – full time, part time, assistant and graduate assistants. Assignment – training, experience, professional standing and other professional qualifications. Compensation – total rate of compensation package, duration of contracts, conditions relating to contract renewal, experience, nature of coaching duties, working conditions, and other terms and conditions of employment. Title VII and the Equal Pay Act have additional requirements in the area of compensation of staff and coaches.

6. **Locker Rooms, Practice and Competitive Facilities.** Quality, availability and exclusivity of practice and competitive facilities; quality and availability of locker rooms; maintenance and preparation of practice and competitive facilities.

7. **Medical and Training Facilities and Services.** Availability of medical personnel; availability and quality of weight training and conditioning facilities; availability and qualifications of athletics trainers; health, accident and injury insurance coverage; provision of medical and training expenses.

8. **Housing and Dining Facilities and Services.** Housing provided; special services as part of housing; dining arrangements.

9. **Publicity and Awards.** Availability and quality of sports information personnel; access to other publicity resources; quantity and quality of publications and other promotional devices; availability and quality of institutional awards; opportunity for application and/or nomination for other outside awards (for example, NCAA, national or conference awards).

10. **Support Services.** Administrative, secretarial, clerical support and office space.

11. **Recruitment of Student-Athletes.** Equitable opportunities for professional personnel to recruit; availability of financial and other resources for recruitment; equivalent benefits, opportunities and treatment of prospective athletes.

While similar teams (for example, men's and women's soccer) may be treated differently in respect to the laundry list, department treatment of both genders should be evaluated based on ***overall*** equity in all categories listed in the laundry list. A proportionate number of male and female athletes should receive the same level of benefits.

Tiering Programs

If an athletics program chooses to tier some sports/teams, providing greater resources for some teams than others, that is an institutional option. It would not be compliant to choose the same number of teams for men and women if the actual numbers of participants on those teams differ. For example, placing football, men's basketball, women's basketball and women's soccer in tier one would result in potentially 115 men and 37 women benefiting at the highest level. If the proportional number of female student-athletes overall is 45 percent, then 45 percent of tier one participants should be female, or 94 female student-athletes if 115 male student-athletes are in tier one.

Fundraising

Although not specifically covered above, the issue of fundraising is important and frequently misunderstood. All institutions should have a uniform approach to fundraising and the expenditure of money collected. Title IX requires that the opportunity to fundraise not be limited in a discriminatory fashion. If men's teams are allowed to fundraise and/or supported by institutional personnel, facilities or resources, then women's teams should be provided the same opportunity and support. In this regard, the institution should use its network of contacts to equitably assist its teams with fundraising. The law does not permit provision of disparate benefits on the basis of gender. The institution's duty to provide equitable benefits is not assuaged in situations where certain sports or coaches are more popular or work harder to raise funds.

No matter in what form donations arrive – cash, ticket "taxes," equipment, endowments, services – once expended or provided to teams, those donations must be considered in the institution's evaluation of its gender equity obligations. Finally, institutions must be aware that even though targeted donations are received for a particular purpose, all of the money that comes in is considered the institution's money as a whole. As a result, the institution may need to reallocate some budgeted money from men's programs to women's programs in order to offset the effect of a targeted donation.

Roster Management

Schools may decide to implement a roster management plan to work toward compliance with accommodation of interests and abilities requirements, but must be diligent in their supervision of roster controls. Floors for women's team squad sizes must be realistic and roster spots adequately supported by department resources. The OCR and courts will not simply rely upon roster sizes reported in the EADA, but will consider participation opportunities added and deleted during a sport season to evaluate effective accommodation efforts.

Other Issues

Other areas that should be assessed for inclusion in the gender equity plan include hiring practices, treatment of pregnant and parenting student-athletes, procedures and education to address sexual harassment, work-life balance and other gender-specific policies. The NCAA has resources such as the NCAA Gender Equity Manual and Title IX Resource Center, which are available from the NCAA Gender Equity home page, to provide guidance in these areas.

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DEVELOPING A GENDER EQUITY PLAN

Keys to a Positive Outcome

The keys to having a positive equity outcome are ***education, communication*** and ***commitment***. There are various steps that an institution can take to facilitate achieving gender equity:

1. Include gender equity in the institutional mission statement.
2. Help people to understand gender equity and Title IX. Educating for understanding will result in better buy-in and commitment to achieving equity.
3. Include Title IX and gender equity information in department and university speakers forums that are available to student-athletes, coaches, administrators and faculty. There are many speakers nationally who can enhance your educational efforts.
4. Discuss with staff, administration, board and community members the importance of gender equity in athletics, including Title IX.
5. Evaluate the program objectively for equity, and on an ongoing basis. The process should be a continuous one of action and progress.
6. Obtain a commitment from the department and university administrators to correct any inequities in a timely manner. Support from key decision-makers is critical to achieving equity.
7. Identify ways to implement changes in a constructive manner. Involve staff in identifying solutions. It is easier to make changes when those affected are a part of the process.
8. Be open and honest in communicating any changes.
9. Establish a gender equity committee with diverse representation. The committee should include men and women from various campus departments and disciplines and of diverse races and ethnicities. Different perspectives and experiences will allow for a thorough evaluation of men's and women's programs and expansive exploration of solutions where disparities exist. The committee should be a standing committee, so it is available not only to develop the plan, but also to help monitor progress on goals, adjust the plan over time and communicate with campus and community constituents about the efforts.

Suggested Composition for a Gender Equity Committee

◊ Men and women (both in the athletics department and across campus).

◊ Athletics department representatives (Consider male and female administrators and men's and women's coaches.)

◊ Senior woman administrator (This is the highest-ranking female in the athletics department, who must be a part of the department's senior management team.)

◊ Title IX coordinator (Title IX mandates that institutions or other recipients of federal funds designate at least one employee as a Title IX coordinator to oversee compliance efforts. This individual is usually an appointment outside the athletics department and responsible for all aspects of campus compliance with Title IX. This function is often managed by the EEO or human resources office on campus.)

◊ University legal counsel.

◊ Faculty (which might include the institution's faculty athletics representative).

◊ President's office designee (This appointment is important to ensure that the president is informed throughout the process and will support the final plan.)

◊ Students (student-athletes and other student representatives; consider including alumni athletes).

The committee could be divided into subcommittees to concentrate on specific areas of the gender equity review, but all members of the committee should be kept informed of the work of each subcommittee and given an opportunity to offer input in all areas.

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GENDER EQUITY PLANNING PROCESS

Positive attitudes are important to successful creation and implementation of any plan. This process should be approached with a constructive commitment to doing the right thing for male and female student-athletes and the institution.

1. Review documents used for NCAA Division I certification, or Division II and III self studies, as well as other NCAA reports and resources. These documents provide a means to begin your gender equity review.
2. Review the federal Equity in Athletics Disclosure Act (EADA) information for accuracy and a comparison of previous years' status. Where disparities exist in any of the 13 elements of Title IX, those areas should be part of what is addressed in your gender equity plan.
3. If the institution is pursuing the second or third prong for participation opportunities, keep a detailed record of those efforts with the purpose of helping the institution explain how it has worked toward compliance.
4. Include staff composition and hiring efforts if appropriate.
5. Identify issues, problems and solutions. Using information from the EADA report and input from coaches, student-athletes and the gender equity committee, develop a list of the areas where disparities exist and what actions should be taken to correct the inequities.
6. Seek feedback from participants (student-athletes) and those involved with men's and women's athletics (coaches and administrators). In addition to EADA information, interviews and/or a written evaluation tool addressing the 11 treatment components of Title IX (the "laundry list") can produce valuable information. One excellent example of such an evaluation tool has been created at the University of Iowa and is available at http://bailiwick.lib.uiowa.edu/ge/.
7. Develop forms for collecting information and data that can be used by committee members and others involved in the process. Historical records that detail exceptional or unusual facts affecting equity efforts are critical.

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MEASUREMENT, MONITORING AND REPORTING ON PROGRESS

Assessment should be an ongoing process. Determine a timeline for periodic reviews and progress reports to ensure corrective action is taking place as scheduled. At a minimum, an annual evaluation should take place of progress on the plan and determination of any adjustments that might need to be made. Updated information should be provided to the administration annually. The NCAA has a sample gender equity plan.

- State measurable goals to address the issues. Goals should be articulated in a manner in which outcomes can be accurately measured. Thus the outcomes should be clearly described in ways that allow for specific means for assessment of success.
- Identify steps to achieve goals. This is the actual road map of steps that must be taken in order to achieve the determined measurable goals.
- Determine the costs for meeting these goals and possible funding sources.
- Identify who will be responsible for carrying out proposed solutions. An individual should be assigned to each goal and held responsible for leading the action required for achieving the goal.
- Establish a timeline and deadlines. Each goal should have a specific and realistic time frame for completion, and there should be regular monitoring of the progress that will ensure successful implementation in a timely manner.
- Get institutional approval. The plan should be reviewed and approved by the president's office or the president's designated decision-maker. This approval is critical to the actual implementation of the plan.
- File all records and identified remedial steps for monitoring purposes. Maintain records of all progress.

The responsibility for evaluation, monitoring progress in implementing the gender equity plan, and meeting the requirements of Title IX should be a shared department, gender equity committee and university commitment and not be left only to the senior woman administrator.

If the expertise and experience related to understanding Title IX and identifying viable solutions does not exist on campus, it may be helpful to contract with a consultant or external review team to assist in assessment and development of a plan.

Even in challenging financial times, an institutional commitment to gender equity must be upheld. A lack of money is not an acceptable reason for not meeting goals of your gender equity plan and eliminating disparities. All other options should be pursued before eliminating opportunities for male or female student-athletes. If there is no other alternative, general counsel and the Title IX coordinator should be involved in assessing the legal implications of dropping sports, especially for the under-represented gender, before any action is taken. It may also be helpful to discuss implications with public relations personnel and have a communications strategy for any decisions that will negatively affect student-athletes.

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ADDITIONAL RESOURCES

NCAA Gender Equity
NCAA Gender Equity Manual
NCAA Title IX Resource Center
NCAA Gender Equity Planning PowerPoint
NCAA Gender Equity and Issues Forums
NCAA Certification – sample gender equity plan
National Women's Law Center
Women's Sports Foundation
National Association of Collegiate Women Athletics Administrators
National Association for Girls and Women in Sport
National Coalition for Women and Girls in Education

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