



DIVISION III

DISCOVER | DEVELOP | DEDICATE



NCAA Sexual Violence Policy – What It Is and Isn't for Division III

January 20, 2022



Presenters

- Gretchen Miron
 - NCAA, Director of Inclusion
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 - TNG, Managing Partner

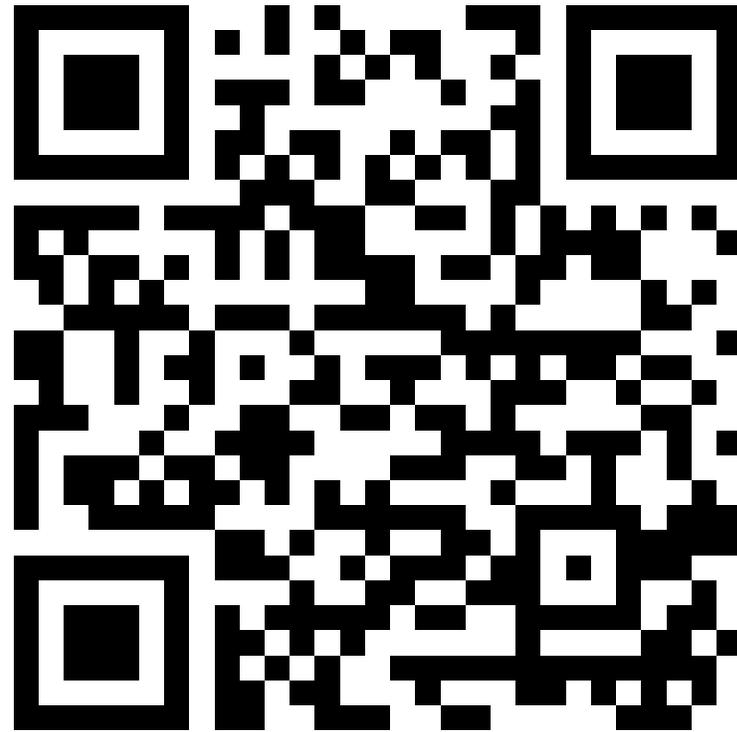


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Session Overview

- NCAA policy overview.
- Title IX office overview.
- Division III common questions.
- Additional Q&A.



Legal Disclaimer

- This presentation is not intended as a practical guideline or legal standard of care and should not be used as a substitute for legal advice. Rather, this presentation and materials serve as a guide and, as such, are of a general nature. Individual treatment and reporting obligations may vary by jurisdiction and will depend on the facts and circumstances specific to each individual case.



NCAA Policy on Campus Sexual Violence

Gretchen Miron, Director of Inclusion,
NCAA



Policy Overview

- Long-term engagement in sexual violence prevention.
- Association-wide policy on campus sexual violence (2017, 2020).
 - Completed fourth year of attestation in 2020-21.
 - Attestation process runs from March 1 – May 15 each year.
- Policy Implementation Task Force.
 - Representatives from all three divisions (athletics administrators, Title IX coordinators, general counsel, student-athlete).
 - Concluded work in April 2021 that was approved by Board of Governors.
 - Encouraged a flexible approach and framework to prioritize institutional decision-making and implementation.



Policy Implementation Timeline

- 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.
- 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.



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.”



Policy on Campus Sexual 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.”



Policy on Campus Sexual Violence – 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.”



Policy on Campus Sexual Violence – 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.”



Policy on Campus Sexual Violence – 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.”



Policy on Campus Sexual Violence – 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.”



Implementation Resources

- ncaa.org/csvpolicy
 - Also available under the “Membership” icon on ncaa.org.
- Recommended checklist and timeline.
- Administrator FAQ.
- Student-Athlete FAQ.
- Convention education sessions and other webinar recordings.
- Sample policies and procedures page through Member Secure Resources app.
- questions@ncaa.org



Title IX Overview

W. Scott Lewis, Managing Partner, TNG





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.

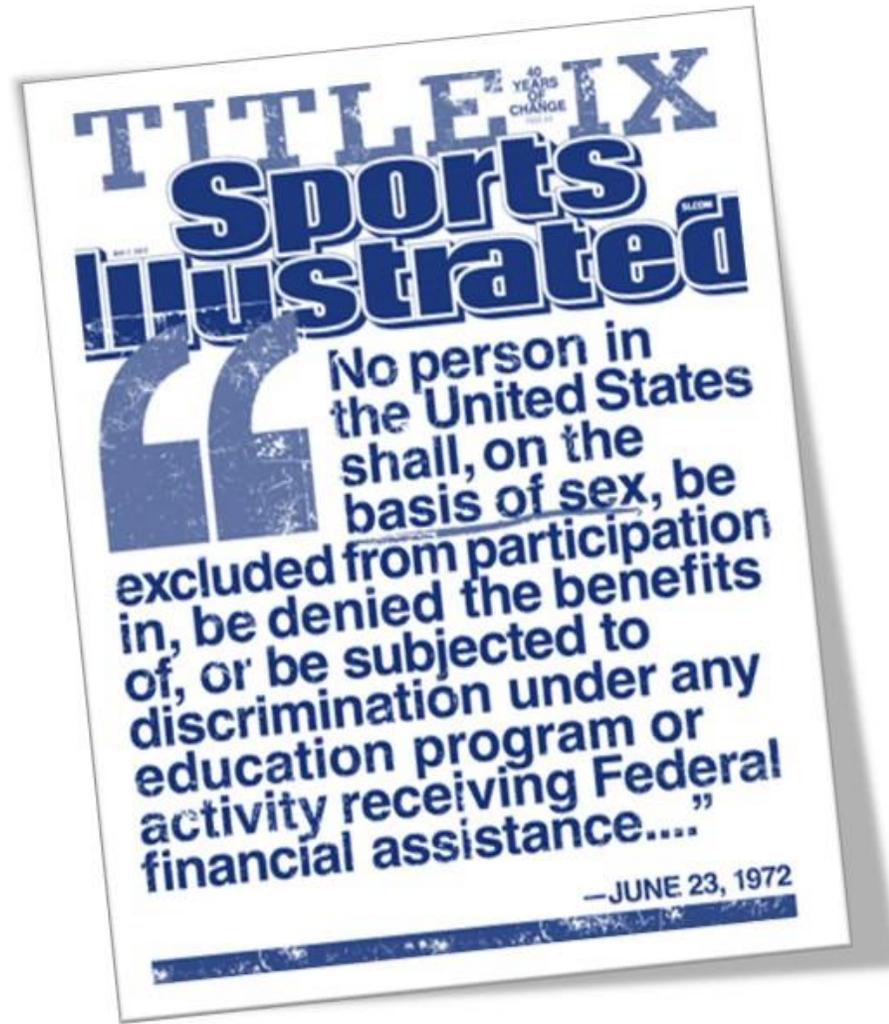
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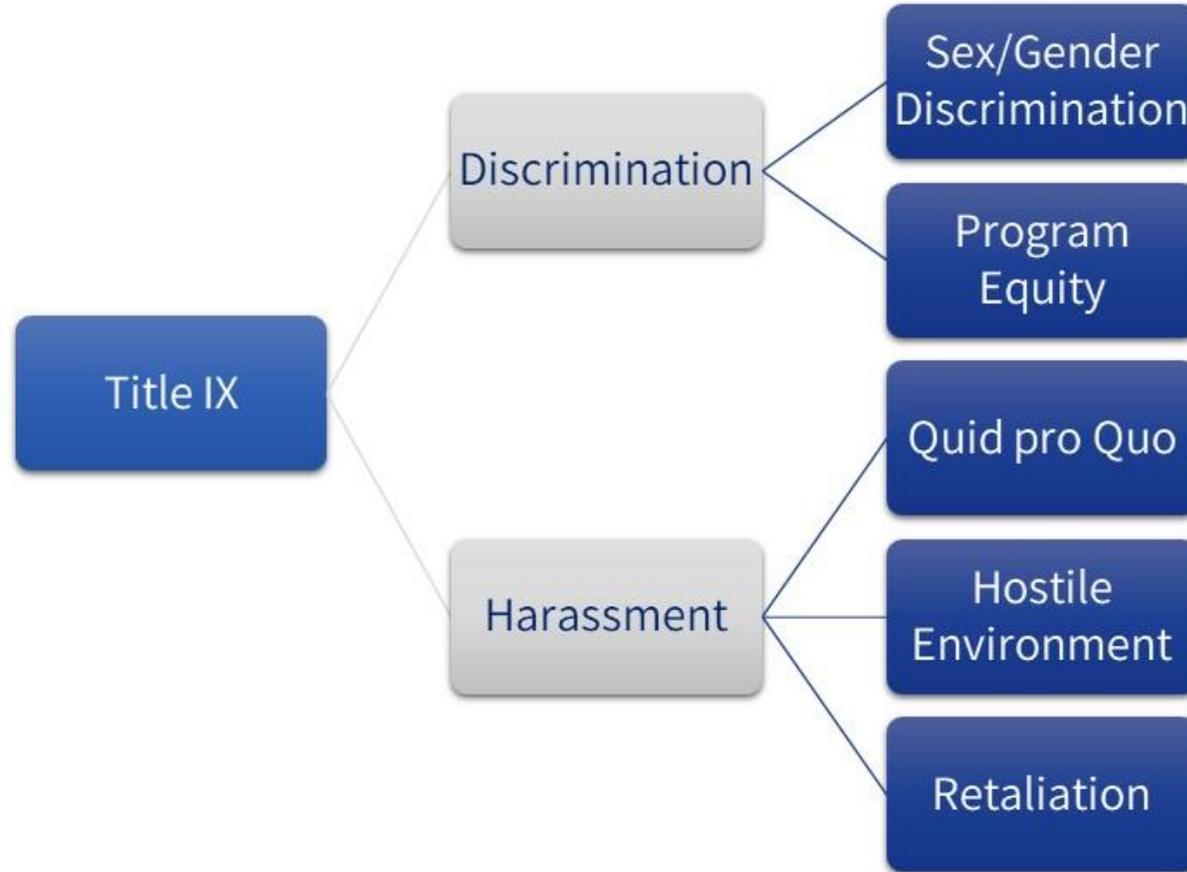
CONVENTION

#whyd3





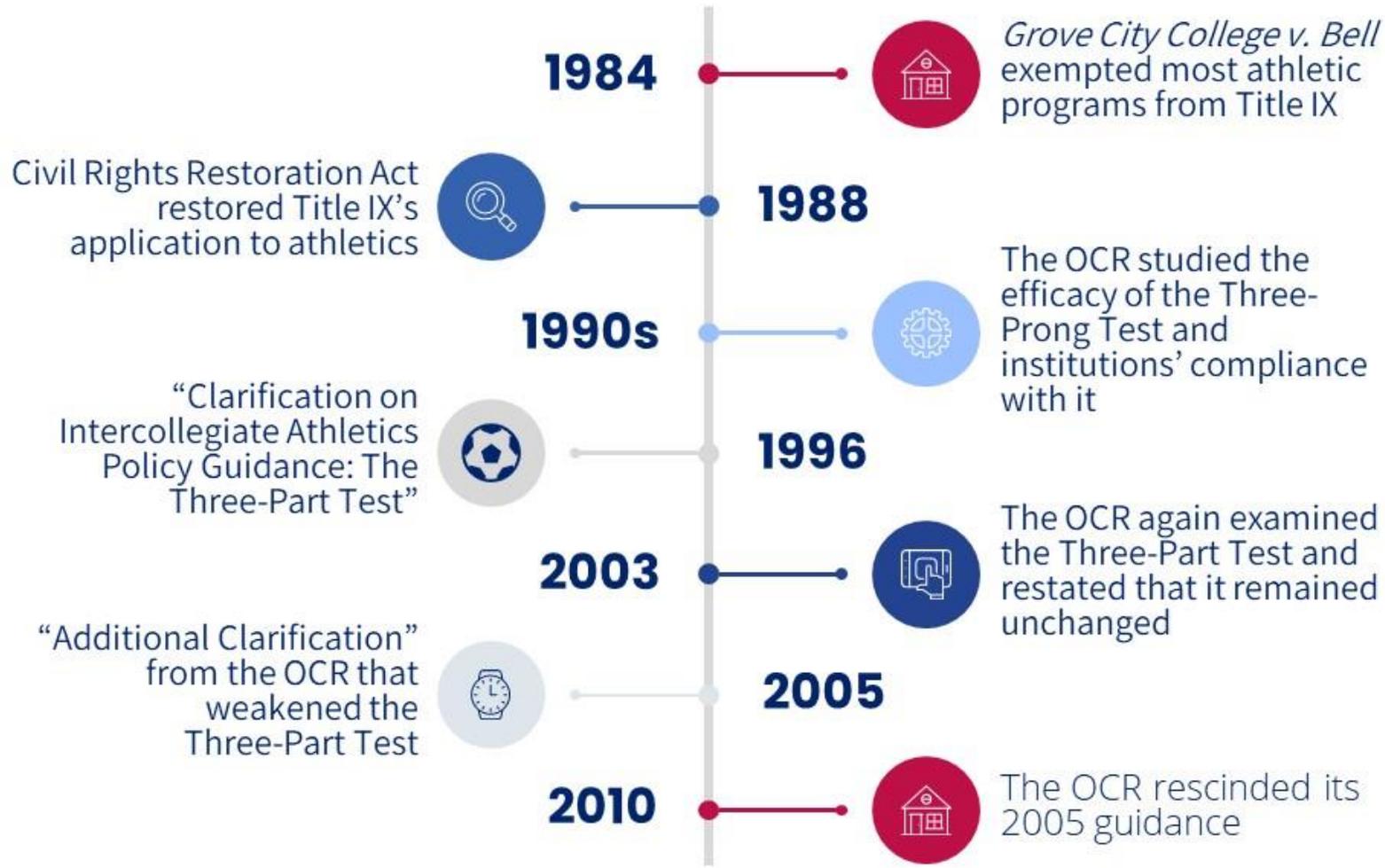
TITLE IX



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





OCR GUIDANCE

Sept. 17, 2008	Criteria for a Sport
April 4, 2011*	Sexual Violence
Jan. 25, 2013	Disabled Student-Athletes
June 23, 2013	Pregnant & Parenting Students
April 24, 2013	Retaliation
Oct. 1, 2014*	OCR Enforcement
April 24, 2015*	Title IX Coordinators
May 12, 2016*	Transgender Students

*Denotes rescinded guidance



OCR GUIDANCE (CONT.)

June 15, 2016	Career & Technical Education
Feb. 22, 2017	Transgender Students (withdrew 5/2016 DCL guidance)
Sept. 22, 2017	Q&A on Sexual Violence (withdrew 4/2011 DCL guidance and 4/2014 Q&A guidance)
Jan. 14, 2021	Q&A on Single Sex Scholarships, Clubs, and other Programs
May 19, 2021	Notice of Interpretation: Enforcement of TIX in Light of <i>Bostock v. Clayton County</i>
July 20, 2021	Q&A on Title IX Regulations on Sexual Harassment

*Denotes rescinded guidance



RECENT REGULATIONS & REQUIREMENTS

2020 Title IX Regulations

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



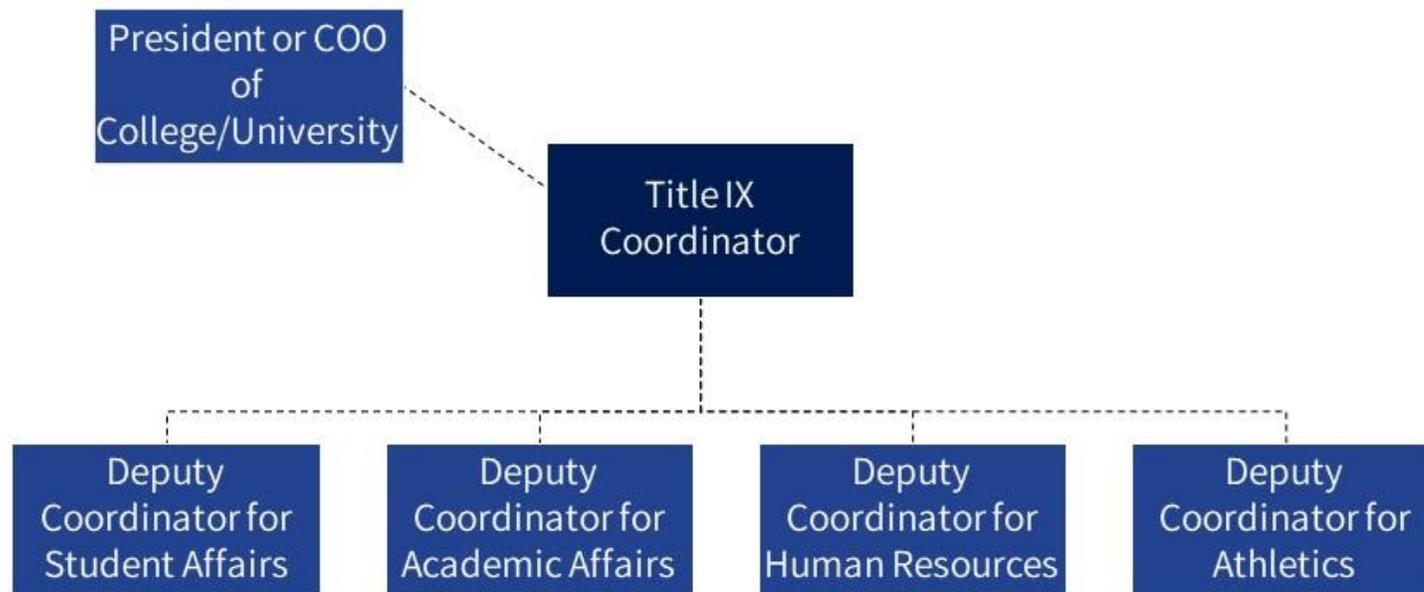
NCAA Campus Sexual Violence Policy – Annual Attestation

- 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)



SAMPLE TITLE IX TEAM STRUCTURE FOR HIGHER EDUCATION



THE TITLE IX TEAM

- Title IX Coordinator(s)
- Deputy Coordinator(s)
- Investigator(s)
- Decision-Makers—can be a single Decision-maker or a panel of Decision-makers
 - Policy Violation
 - Appeal
- Informal Resolution Facilitator(s)
- Institution-appointed Advisors



TITLE IX TEAM STRUCTURE: ADDITIONAL CONSIDERATIONS

- Co-Coordinator?
- Job responsibilities of Deputy Coordinators
 - Tailor scope and roles based on school/campus culture
 - Delegation
- Multiple campuses/locations
 - Campuses within a larger system (e.g., SUNY schools)
 - Extension campuses
 - Online communities
 - District-level (e.g., community college systems)
- Dual-enrollment oversight
- Investigator oversight



ATHLETIC OVERSIGHT – GENDER EQUITY

- The oversight of compliance remains the responsibility of the **school's** Title IX Coordinator (TIXC)
- **Compliance in athletics** may be delegated but for most recipients, this will be the responsibility of the school's athletic director(s) and Title IX Coordinator.



THREE-PART TEST (1979)

Effective accommodation of interests and abilities

1

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

2

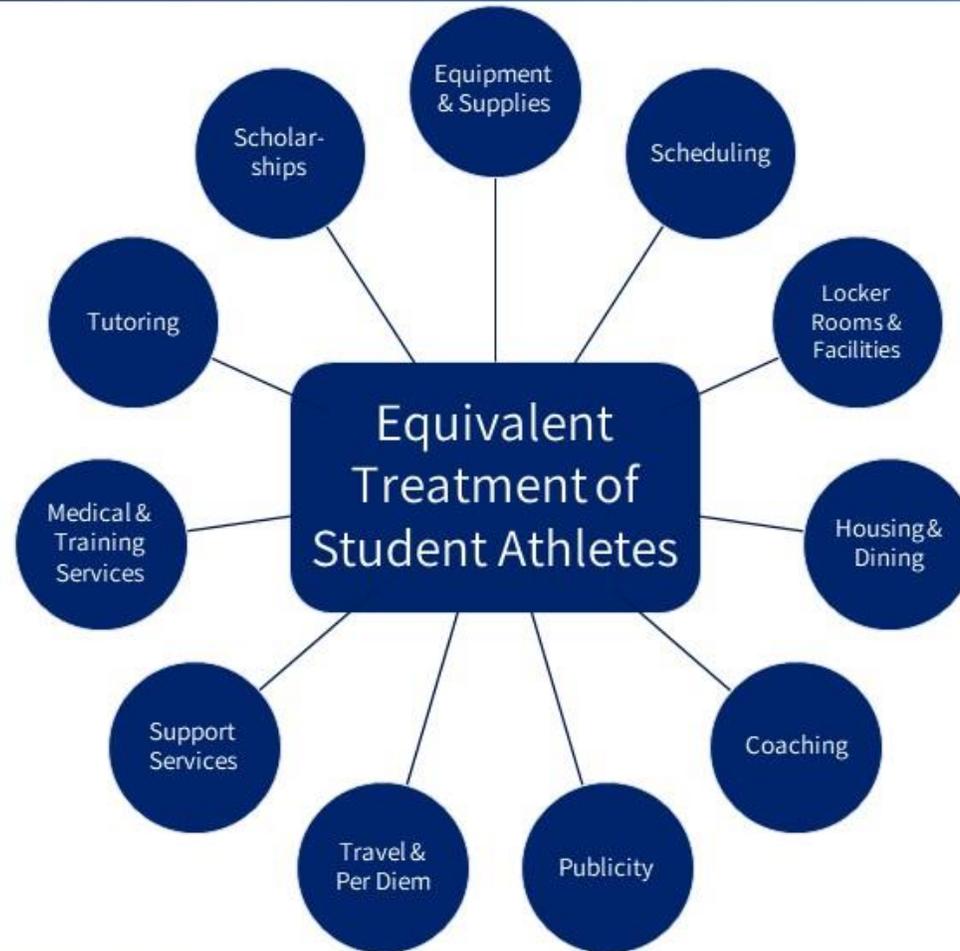
Where one sex has been underrepresented, a history and continuing practice of program expansion responsive to the developing interests and abilities of that sex; **OR**

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



ATHLETIC OVERSIGHT – GENDER EQUITY



Division III Common Questions



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How do we balance this policy with institutional policies and philosophies?



How does this new policy differ from what we did before?



How does this policy work with the Division III model of treating student-athletes like students?



Will a form be added to the annual forms that we can use to gather this information?



Will this information be required on transfer tracer forms or in the transfer portal?



Other Questions



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