

# Title IX Athletics

## Q & A

**Q** *Our institution is now allowing us to fundraise for assistant coaches. Some programs are able to add specialty coaches for positions because they have fundraising capabilities. Almost every program now has a paid assistant coach at some level. As assistant coaches are added through fundraising efforts, what do we have to be concerned about under Title IX? Do we have to keep it equitable?* (NCAA Division III Associate Athletics Director)

**A** Yes – absolutely. You must keep it equitable to comply with Title IX.

This question covers two important issues under Title IX – coaching availability, and benefits provided with fundraised dollars. Both issues are significant not just for collegiate programs, but high school and middle school programs as well.

### Coaching

The availability of coaches is one of the most important benefits provided to student-athletes. (We rank it right behind the opportunity to participate and scholarships in terms of importance for compliance with Title IX.) Unfortunately, determining whether coaches are equally

available to female and male student-athletes is challenging, and especially so at Division III institutions.

OCR has not established any required methods for analyzing coaching availability. OCR's guidance suggests that the number of coaches, lengths of contract, and full-time versus part-time status at the institution should be considered. In our reviews of Division III athletics programs, most coaches have non-coaching duties at the institution or other jobs in the community. The non-coaching duties are varied and usually affect an individual coach's availability; however, there is often a balance program-wide between the men's and women's programs for these non-coaching duties, which is comparable under Title IX. The result is that compliance often turns on two other factors: the number of coaches per team; and coaches' full-time and part-time status as employees at the institution. The coach who is employed full-time at the institution is nearly always more available to athletes than the part-time coach who is otherwise not on campus.

The number of coaches per team should be balanced program-wide. Even though Title IX does not require it, we strongly suggest that institutions provide women's and men's teams in the same sport with the same number of coaches. In effect, if the men's soccer team has a head coach and two assistant coaches,

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then the women's soccer team should have a head coach and two assistant coaches. Title IX does permit offsetting benefits. For example, if the men's soccer team has three coaches while the women's soccer team has two, that can be balanced or offset by providing three coaches to the women's lacrosse team and two coaches to the men's lacrosse team. It can be challenging administratively to keep track of and ensure that assignments are truly offsetting and balanced; thus, it is simpler to assign the same number of coaches to women's and men's teams in the same sport.

A common practice at many institutions is to allocate a lump sum per team to pay assistant coaches, and the head coaches have the discretion to hire the assistant coaches they choose to pay from the total stipend amount. This practice may create minor to significant disparities for coaching availability. For example, an institution allocates \$10,000 each for the women's and men's soccer teams for assistant coaches. The head women's soccer coach hires two assistant coaches and pays each a stipend of \$5,000. The head men's soccer coach hires four assistant coaches and pays each a stipend of \$2,500. The institution may assume this is equitable because both teams have spent the same total amount for coaching of \$10,000. From the student-athletes' perspective, however, the men's soccer team has five coaches, while the women's soccer team has three coaches. The athletes on the men's team have much greater coaching availability. This is a clear disparity in coaching availability disadvantaging the women's soccer team. If this is not offset elsewhere in the program, it creates a compliance concern for the Title IX coaching program component. Coaches' compensation is a secondary issue under the Title IX athletics provisions, which are aimed at protections for students, not employees. Athletes are affected directly by the availability of coaches and the coaches' qualifications, and not the compensation of coaches.

We strongly recommend that to the extent an institution may allow head coaches to hire the number of assistant coaches they deem appropriate, administrators should monitor the number of assistant coaches selected to ensure a balance program-wide for coaching availability. Otherwise, administrators may consider specifying the number of assistant coaches for each team to ensure compliance, and allow the head coaches to determine the stipends paid to the assistant coaches selected based on qualifications (for example, whether two assistants should receive \$5,000 each, or whether one assistant should receive \$7,000, while the other receives \$3,000).

### **Fundraising**

Under Title IX, the institution is responsible for ensuring that female and male athletes have coaches who are equally available program-wide. This obligation does not change simply because the source of the funding for paying coaches changes. The institution is not absolved of its responsibility to provide equivalent benefits to students on the basis of sex because of the fundraising efforts of coaches. In effect, a coach's success or lack of success at fundraising cannot justify disparate benefits to students on the basis of sex. This is particularly true for an extremely important benefit like coaching.

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The Title IX athletics provisions protect the students – not coaches or administrators. The bottom line for Title IX compliance is what all male student-athletes receive as benefits compared to what all female student-athletes receive as benefits. It is important to keep this in mind because the benefits paid for by a coach's fundraised dollars are viewed under Title IX as being provided by the institution. For example, a coach may, on her/his own, choose to do speaking engagements for a fee and use that money to buy equipment, improve the competitive facility, and/or pay for a better mode of transportation for team travel. These benefits are viewed under Title IX as being provided by the institution. This is true even though the coach may choose on his/her own to conduct these fundraising activities. The institution would be obligated to offset these benefits in the program for the other gender.

Administrators' challenges arise on two fronts: ensuring that fundraised dollars do not result in disparate benefits to student-athletes on the basis of sex; and ensuring that fundraising efforts do not affect either coaches' availability or compensation in a discriminatory manner. The focus under Title IX is the benefits (additional coaches, equipment, better modes of transportation, facility improvements, etc.) purchased and provided to the student-athletes, not the actual dollar amounts raised. Also, if coaches on one side of the program, such as the women's side, must spend an inordinate amount of time fundraising compared to time spent by coaches on the men's side, then this is likely to create a compliance problem by making coaches less available to female than to male student-athletes.

Administrators might start by evaluating what benefits are purchased with fundraised dollars. This may involve asking coaches to list their fundraising efforts, the hours they spent fundraising, the dollars raised, and the benefits purchased with the fundraised dollars such as equipment or team travel benefits.

The good news is that fundraising efforts often result in equivalent benefits program-wide, because the benefits "offset" each other. Offsetting benefits means that students of one gender are provided an advantage in some aspect of the athletics program, while students of the other gender are provided an advantage in a different aspect of the program. If the benefits are of equivalent weight or importance, they may "offset" each other or provide a balance of benefits; in effect, comply with Title IX. For example, the baseball coach's fundraising efforts enable him to arrange for a charter bus for some away events rather than the typical van transportation. The volleyball coach is able to provide shoes, travel sweats, and extra practice gear for her team that no other teams receive. The special transportation for some trips for the baseball team may be offset by the special equipment for the volleyball team. The result is compliance, so administrators need take no action to balance benefits.

When fundraising efforts result in offsetting benefits program-wide, this is compliance. If fundraising efforts create imbalances program-wide, then administrators must take action to ensure equitable benefits. Coaching is an extremely important benefit, and it is highly

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unlikely that the availability of an assistant coach can be offset by less important benefits such as modes of transportation or equipment. So, administrators should ensure that coaching availability is equitable program-wide regardless of the source of funding for coaches' stipends.

Administrators do not need to discourage or eliminate fundraising efforts, particularly if fundraising is an important part of the athletic department's budget. Nevertheless, administrators do need to pay close attention and make good decisions. To ensure compliance, administrators may set a policy that all fundraised dollars automatically go to the general athletics fund, so coaches know this before performing fundraising chores. Another option is for a coach's fundraised dollars to be placed into a special account specifically for the team; to avoid compliance problems, administrators should monitor and control how those dollars are spent, rather than leave the spending decisions to the individual coaches. (34 C.F.R. § 106.41(c)(5) and (6); PI VII. B. 3. d. and e., page 71416)

