

Title IX Athletics

Q & A

Q *The men's basketball team would like to do a foreign tour that we are allowed to schedule every four years, and they would like to travel to Europe. Our estimate is that the trip will cost about \$60,000. The men's basketball team expects to be able to fundraise the entire amount. The women's basketball team would also like to travel to Europe, but it is highly unlikely that they could fundraise the \$60,000 this year. If the women's basketball team cannot fundraise the money, do we have to pay for the women's team to travel to Europe? What are our obligations under Title IX? (Director of Athletics, NCAA Member Institution)*

A There is great flexibility in complying with Title IX, and a quick answer is – no, you do not have to pay for the women's basketball team to travel to Europe. But, the more realistic answer is – it would be an excellent plan for the university to pay the difference between the funds the women's basketball team can raise and the actual cost of the trip.

A foreign tour provides a unique travel opportunity for a team. Under Title IX, this unique opportunity for a men's team can be offset by providing a women's team with an equivalent benefit. The offsetting

benefit does not have to be for the women's basketball team; it can be for any women's team. And, it does not have to be for a travel opportunity; it can be a benefit in the area of coaching, facilities, or equipment. The offsetting benefit needs to be of equivalent weight or importance, and the challenge is, figuring out what type of non-travel benefit might be of equivalent weight or importance to a foreign tour. Athletics professionals are as capable as civil rights professionals in figuring out the types of benefits in athletics programs that are of equivalent weight or importance. While we may not be able to come up with good examples for offsetting benefits, we might suggest that providing travel sweats to a women's team when no other teams receive this benefit, even embroidered with the students' names, is not equivalent to the experience, unique educational opportunity, and potential lifetime of memories that may occur during a foreign tour.

You have mentioned that you are allowed to schedule a foreign tour every four years. Under Title IX, it would be viewed as equivalent to provide this unique experience every four years to a women's team and a men's team; but, these trips do not have to be in the same academic year. For example, if the men's basketball team is able to fundraise the \$60,000 and schedule this trip for the current academic year, perhaps the women's basketball team would be successful, or able to raise more funds, if they scheduled the

Title IX Athletics Q & A

same trip for the following academic year. One caution is to ensure that the coaches' time in the fundraising efforts is not so affected that the coaches for one team are spending significantly more time fundraising than coaches for another team to provide the same level of benefits to their athletes. If the fundraising efforts consist mainly of phone calls soliciting donations, this should not involve excessive time on the part of the athletes or coaches. Other types of fundraising can, of course, affect a coach's availability and student-athletes' academic efforts. Perhaps one plan might be to require that the coaches and athletes conduct the same fundraising activities for the same amount of time. The university may then cover the difference (if any) between the monies raised and the actual cost of the trips.

Fundraising can provide many challenges for administrators. Some coaches are more skilled at fundraising than other coaches. Coaches of more popular sports may not need any fundraising skills at all; the popularity of the sport simply generates donations. Nevertheless, a coach's success or lack of success in fundraising is not an acceptable justification for disparate benefits to student-athletes. Quite simply, the institution is responsible for providing equitable benefits for female and male athletes, and support from "student fees, general revenues, gate receipts, alumni donations, booster clubs, and non-profit foundations" does not exempt any portion of the athletics program from this requirement (quoting the Office for Civil Rights' 1975 Memorandum entitled "Subject: Elimination of Sex Discrimination in Athletics Programs").

A coach's success or lack of success in fundraising cannot justify disparate benefits to students on the basis of sex.

From an administrator's perspective in overseeing a finite budget, it is understandable that the administrator would advise two coaches who want the same special benefit for their teams to fundraise a specific dollar amount. However, this approach can lead to Title IX concerns. For example, if a special benefit costs \$50,000, the administrator might tell the men's coach and the women's coach that they each must raise \$35,000, and the university would cover the rest. The men's coach simply needs to make one phone call or play a round of golf with certain donors to raise \$35,000. The women's coach does not have wealthy donors on speed-dial. She has to make appearances, organize car washes, direct her athletes in operating the concessions at the football games, etc. The women's coach, after weeks of fundraising efforts, raises \$20,000. As a result, the men's team receives the coveted benefit; the women's team does not. This scenario raises Title IX concerns in two areas: the male athletes on the men's team receive a special benefit that female athletes do not; and the coach for the women's team is less available to her athletes in planning and organizing her team's practices and game strategies because she is expending more time and energy than the men's coach in fundraising activities.

Title IX Athletics Q & A

There is no simple answer to this scenario. No administrator wants to discourage the ease with which the men's coach can raise \$35,000. However, the administrator also should not want the women's coach to spend inordinate time fundraising and focusing on financial matters rather than coaching strategies that lead to her team's success. The answer to this scenario can differ among institutions and the personnel that the administrators supervise. In effect, administrators may do what coaches try to do – maximize the strengths of their personnel, and minimize the weaknesses. If coaches are required to fundraise for their teams, then administrators should set limits on the minimum and maximum number of hours per week any coach should spend fundraising. In addition, administrators should ask coaches to keep track of their hours, the specific fundraising activities, and the amount of money raised. In time, administrators may be able to identify the more successful fundraising activities that will maximize the efforts of their staff. From there, administrators may determine the dollar amounts that each team may retain, versus the amounts deposited into the general athletics budget that benefit the total program and ensure gender equity.

When fundraising is an important part of the athletics department's operations, then administrators may wish to make this a collective effort among coaches and administrators, developing procedures that staff view as fair and appropriate, while encouraging new ideas from all involved. (34 C.F.R. § 106.41(c)(4); § 106.41(c); PI pages 71413-71423)

