

Title IX Athletics

Q & A

Q We are trying to increase men's enrollment, and have been looking to expand our club and intramural programs for that purpose. We are meeting test one – proportionality of the three-part test for our intercollegiate program. Do the club sports affect Title IX compliance in any way? For example, if we provide financial support to these club sport participants, does that create any concerns? What if the clubs have a coach, budget, and use athletics facilities? What Title IX issues should we be concerned about? (NCAA Division II Director of Athletics)

A The very same Title IX requirements for intercollegiate athletics programs also apply to club programs and intramural programs. However, each program is evaluated separately from each other for compliance. Title IX views intercollegiate, club, and intramural sports as three separate programs, and compliance findings are for the specific facts within each separate program; compliance in one program does not determine compliance in another program. The participation for club sports and benefits for participants are analyzed to determine Title IX compliance for the club sports

program. The participation for intramural sports and benefits for participants are analyzed to determine Title IX compliance for the intramural sports program. The participation for intercollegiate sports and benefits for participants are analyzed to determine Title IX compliance for the intercollegiate sports program.

The same 13 Title IX athletics program components that are evaluated to determine compliance for the intercollegiate athletics program are also applied to club sports and intramural sports. In effect, to determine if your club sports program is operating in compliance with Title IX, the following would be evaluated: the three-part test (the access issue evaluating if female and male students have an equal opportunity to become a participant), and the twelve treatment issues (treatment of those who have become participants) for athletics scholarships, equipment, scheduling, travel, tutoring, coaching, facilities, medical services, housing and dining, publicity, support services, and recruitment. The major differences between intercollegiate programs and club sports programs are that club teams are most often self-initiated. This means that participation in club sports programs usually meets test three (full accommodation) of the three-part test, whereby every sport of interest, ability, and available competition is offered for the underrepresented sex. In effect, the

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institution meets one of the tests of the three-part test, and complies for the accommodation of interests and abilities. As for the twelve treatment issues, institutions typically provide facilities for club sports, but typically do not provide athletics scholarships, scheduling, tutoring, coaching, medical services, housing and dining, publicity, support services, and recruitment benefits for club teams. Otherwise, when institutions do provide support, it may involve funding to purchase uniforms and pay for van transportation, and possibly a small stipend for a coach. Some institutions just provide facilities and no other benefits. Yet other institutions provide extensive benefits, including athletic scholarships. The same analysis that applies for intercollegiate athletics would also apply for any scholarships for club sports. In effect, women's and men's rates of participation in the club sports program would be identified. This would be followed by determining whether the rates of scholarship awards to male and female club sports athletes are proportionate to their rates of participation within one percentage point. If not, a violation of Title IX is likely. Some institutions have donors who fund athletic scholarships for participants in specific sport clubs (athletic scholarships based on athletic skill, rather than academic scholarships or need-based scholarships). Donated dollars are viewed under Title IX as dollars provided by the institution. Bottom line - if athletic grant dollars for female and male club sport athletes are not proportionate to women's and men's rates of club sports participation within one percentage point, then a violation is likely.

The challenge in determining the appropriate non-scholarship financial support for clubs is that different sports may have different needs, just as for intercollegiate athletics. Unlike intercollegiate athletics, however, the institution is unlikely to fully fund the equipment and uniform needs for clubs, pay for transportation by bus or aircraft instead of a van, or pay a salary to one or more coaches. In other words, the funding is limited and may only cover parts of the club's costs for equipment, travel, coaching, etc. Thus, it may be appropriate to establish the same policy and dollar amounts for all clubs or by participant. For example, the institution might provide \$40 per participant for "uniforms," which might consist of a t-shirt and shorts; the institution might pay for gasoline expenses for each van that it allows the club to reserve; and the institution may fund \$1500 as a stipend for a coach. Should club participants desire more elaborate uniforms, better modes of transportation, or additional coaches or more experienced coaching, then the individual participants may pay the additional costs. One red flag is providing different amounts of financial support for women's and men's club teams in the same sport; possible justifications might be significantly different participation numbers, or an unusual event, such as providing support for a club team that qualifies for a national tournament.

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Intramural programs tend to be more recreational and less competitive than club sports programs, and institutions often do not provide benefits other than facilities, scheduling of games and practices, and officials for game operations. Title IX compliance problems for intramural programs are rare; however, the concerns that are more likely to arise are for the assignment of higher quality facilities or priority in the scheduling of games and practices on the basis of sex.

The main interrelationship among intercollegiate, club, and intramural programs is that participation in club sports and intramural sports will be reviewed as evidence of potential interest for intercollegiate sports. In effect, if an institution does not offer a women's intercollegiate lacrosse team, and there is a women's lacrosse club at the institution, that would be viewed as strong evidence of interest in lacrosse; however, the question remains whether club lacrosse participants might also be interested in intercollegiate participation. Additionally, a review of intramural participation, community participation, and the participation at high schools in the areas where coaches routinely recruit may confirm sufficient interest for a women's intercollegiate lacrosse team. Another interrelationship may be that club and/or intramural teams use the same facilities as the intercollegiate teams. The compliance question is whether overuse or scheduling of any facilities affects athletes of one gender more than athletes of the other gender. If so, then a compliance concern is likely.

In short, the same Title IX requirements that apply to intercollegiate athletics also apply to club and intramural sports. However, compliance is reviewed separately for these three separate education programs. (34 C.F.R. § 106.41(a), (b), and (c); 1979 Intercollegiate Athletics Policy Interpretation pages 71413 - 71423)

