

Title IX Athletics

Q & A

Q We provide the best benefits to two men's teams – basketball and football – and two women's teams –

basketball and volleyball. Some on staff refer to those four teams as “major” sports, and refer to the remaining teams as “minor” or “Olympic” sports, even though there is no formal designation like that on our campus or in the department policy manuals. Since the same number of teams for women and men are being provided these benefits, the perception is that this is okay under Title IX. Is there a problem with this approach?

(NCAA Division I Senior Woman Administrator)

A Yes, there is definitely a problem with this approach. Classifying sports as “major” sports, “minor” sports, or “Olympic” sports does not create a concern under Title IX. The concern arises when different teams are provided different levels of benefits, and the result is to provide better benefits to a disproportionately higher number of athletes on the basis of sex. Generally, these practices favor men.

A popular term for this approach is “tiering,” which is not a Title IX term but a label created by athletics professionals. Tiering

is permitted under Title IX, but putting the same number of women's and men's teams in each tier – depending on the teams selected – can create a series of compliance problems that constitute a violation of Title IX. The guide for tiering a program or classifying teams as major or minor, is not the number of teams but the number of participants, or more correctly, the percentage of participants. Specifically, the target should be equivalent percentages of male and female participants in each tier. The one caution to this plan pertains to athletic scholarships.

Tiering is a method for institutions to continue providing participation opportunities, while at the same time saving money by providing certain teams with fewer benefits in areas such as scholarships, coaching, team travel, and equipment and supplies. Many institutions do not design a formal tiering system for their athletics programs, but because they choose to emphasize certain teams over others (often football and men's and women's basketball), they create an informal tiering system nonetheless.

An institution establishing a formal tiering system might plan for certain teams to be nationally competitive, others to be competitive within the regional conference, and the rest to be competitive at the state and local level. The institution provides those teams in the highest tier or tier one with the

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maximum benefits allowed by the governing athletics organization in regard to: scholarships; number of full-time coaches; number of competitive events; all necessary equipment and supplies; desired team travel arrangements, such as use of aircraft and assigning two athletes per hotel room; high quality facilities; and top quality services for publicity and marketing, clerical and administrative support, and budget needs for recruitment travel. In the second tier: perhaps half of the maximum scholarship amounts are awarded; some assistant coaches are half-time rather than full-time; teams travel by bus or van; athletes are assigned three or four per room during travel; facilities are average quality and maintenance is less aggressive; and publicity, marketing, clerical support, and recruitment resources are limited. In the third tier: scholarships are not awarded or are quite limited; teams may not have a second assistant coach permitted by athletics association rules; teams travel by van, unless the size of the travel squad justifies a bus; overnight stays are rare, but athletes are assigned four per hotel room when scheduled; locker rooms are shared; facilities have few features and are average or poor quality; media relations and marketing staff are not assigned to the teams; clerical support is shared by the coaches for all third tier teams; and recruitment budgets are minimal.

Title IX does not prohibit providing specific teams with significantly lesser benefits than other teams. Title IX only prohibits discrimination on the basis of sex, and compliance for athletics programs is determined after comparing the total women's program to the total men's program.

To avoid establishing a tiering system that creates Title IX compliance problems, an institution should designate those teams that account for similar percentages of female and male participants to be in each tier. Football often has more participants than any other team. For that reason, whichever tier that football is assigned to should probably have more women's teams than men's teams. For example, perhaps an institution has 250 male and 200 female athletes in its athletics program for a total of 450 participants. Women are 44% (200 of 450), while men are 56% (250 of 450) of the total participants. The institution chooses to assign football (110 participants) and men's basketball (15 participants) to tier one and support these teams to be nationally competitive. These two men's teams have 125 participants, which represents 50% (125 divided by 250) of the total men's participants. The institution also chooses two women's teams – basketball (15 participants) and volleyball (20 participants) to be in tier one. These two women's teams have a total of 35 participants, which represents only 18% (35 divided by 200) of the female participants. The institution also assigns the same number of men's and women's teams to tiers two and three, but again, the teams represent different percentages of women's and men's total participation. The institution assigns 25% of the male participants and 39% of the female participants to tier two to be competitive

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on a regional basis, and 25% of the male participants and 43% of the female participants to tier three to be competitive on a state or local basis. Thus, even though the institution assigns the same number of men's and women's teams to each tier, the result here is that half of the male participants (50%) compared to less than one-fifth (18%) of the female participants are provided the top quality benefits in this program. Also, a higher percentage of female participants are in the lowest tier being provided lesser benefits. The result is a series of compliance concerns putting women at a disadvantage in several Title IX program components such as coaching, facilities, travel, equipment and supplies, scheduling, medical and training room services, housing and dining services, publicity, support services and recruitment. This equates to a pattern and practice of discrimination that violates Title IX.

The remedy is to assign to each tier whatever numbers of teams are necessary to achieve similar percentages of men's and women's total participation. In the example above, if the institution chooses to provide benefits to football and men's basketball at tier one (the nationally competitive level), and these two men's teams represent 50% of the male participants, then teams accounting for approximately 50% of the total women's participation should be assigned to tier one as well. Fifty percent of the 200 female participants is 100 participants. If the institution wishes to continue offering women's basketball and volleyball with benefits at a level to be nationally competitive, then approximately 65 additional female participants (35 women currently at tier one plus 65 additional women equals 100, or 50% of the total women's participation of 200) should be assigned to tier one. The institution may choose to assign women's soccer (32 participants) and women's lacrosse (31 participants) to tier one. The combined participation for women's soccer and lacrosse (63 participants) plus the 35 women on the basketball and volleyball teams would result in 98 women being assigned to tier one. Thus, four women's teams representing 49% (98 of 200) of the women's participants and two men's teams representing 50% of the male participants would be assigned to tier one. Assuming reasonably similar percentages of female and male athletes in tiers two and three, the likely result is equitable benefits in nearly every athletics program component and compliance with Title IX.

The major caution for any tiering system pertains to athletic scholarships. The Title IX standard for athletic scholarships is for total dollars to be proportionate to women's and men's rates of participation in the total athletics program. Depending on which sports an institution selects to be in each tier, the total scholarship awards for each sport may be limited by NCAA or other athletics association rules. Compliance with NCAA or athletic association rules is not an acceptable justification for noncompliance with Title IX. Therefore, if the teams selected for tier one status are provided scholarships to the

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maximum extent allowed by the athletic association rules, and this creates awards that are disproportionate to women's and men's participation in the overall program, then the institution should make those adjustments in awards as necessary in tiers two and three to achieve a result for scholarships that complies with Title IX.

In short, under Title IX an institution may formally or informally establish a tiering system for its athletics program that maximizes the number of participation opportunities while reducing overall operating costs. The key to Title IX compliance is to assign equivalent percentages of male and female athletes to each tier to help ensure equitable benefits for women and men in the overall athletics program. (34 C.F.R. § 106.37(c); 34 C.F.R. § 106.41(c); 1979 Intercollegiate Athletics Policy Interpretation pages 71413 to 71423; Policy Clarification—scholarships, 7-23-98; 34 C.F.R. § 106.6(c))

